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7 Keys to Managing the 21st Century Practice

January 22, 2016 | Seattle, WA

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*Presented in partnership with
the Solo & Small Practice Section*

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Chair and Faculty

A Special Thank You to Our Program Chair 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 Chair

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

Program Faculty

Forrest J. Carlson — *Law Office of Forrest Carlson, Seattle, WA*

Nicholas A. Gillard-Byers — *Brookland Legal Services, Seattle, WA*

Brandon S. Gillin — *Genesis Law Firm, PLLC, Everett, WA*

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

Vitaliy Kertchen — *Kertchen Law + CPA, Tacoma, WA*

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

Virginia A. Leen — *VL Law and Mediation Office, PS, Kirkland, WA*

Greg McLawsen — *Puget Sound Legal, PC, Tacoma, WA*

Gerald J. Moberg — *Jerry Moberg & Associates, P.S., Ephrata, WA*

Kevin O'Keefe — *LexBlog, Inc., Seattle, WA*

Peter Roberts — *Practice of Law Advisor, Seattle, WA*

Brett T. Sullivan — *Lucent Law PLLC, Spokane, WA*

George O. Tamblyn — *Advocates Law Group PLLC, Mercer Island, WA*

Devon M. Thurtle Anderson — *Heffernan Law Group PLLC, Kirkland, WA*

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



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Program Schedule

7 Keys to Managing the 21st Century Practice

Friday, January 22, 2016

-
- 8:00 a.m.** **Check-in • Walk-in Registration • Coffee and Pastry Service**
- 8:25 a.m.** **Welcome and Introductions by Program Chair and Moderator**
Ann M. Guinn, G&P Associates, Reno
- 8:30 a.m.** **Improve Your Law Practice by Expanding Your APP-titude**
The Mobile Revolution is here to stay. Attorneys rely heavily on mobile devices to manage their law practices and their lives. This panel presentation features practitioners who use mobile apps on a daily basis to improve their law firm's productivity and ultimately increase bottom line efficiencies. You will learn about the essential apps to use for Android, Apple and Windows mobile devices plus a few non-essential (aka fun) apps. Bring your devices and your questions and prepare to geek out!
Jennifer R. Willner, Halvorson Losie Willner PLLC, Bellingham
Devon M. Thurtle Anderson, Heffernan Law Group PLLC, Kirkland
Kristina T. Larry, Sassy Litigations LLC, Seattle
- 9:15 a.m.** **Competing with the Forms Sellers: How to Position Yourself as the Smarter Choice**
In this age of easy access to on-line legal services, how does a small firm attorney compete? We all know the downside of using on-line forms, but John Q. Public. When your potential clients see a low price for something that will seemingly meet their needs, why should they choose you? Learn to:
 - Convey the value you bring to the table in your marketing message
 - Explain the potential problems with on-line forms
 - Help potential clients make informed decisions about how to meet their legal needs*Brett T. Sullivan, Lucent Law PLLC, Spokane*
Virginia A. Leen, VL Law and Mediation Office PS, Kirkland
Forrest J. Carlson, Law Office of Forrest Carlson, Seattle
- 10:00 a.m.** **BREAK**

Schedule continued on next page

Program Schedule (cont.)

- 10:15 a.m. Social Media Marketing for the Small Firm**
There has never been a time in history when a small firm’s marketing activities could be more effective than right now – and our speaker Kevin O’Keefe is a recognized leader in effective business development and marketing opportunities offered by social media. Join Kevin as he shares tips on how to:
- Blog your way to influence, relationships, and a reputation that will support you for a lifetime
 - Choose the right social networks for you and your practice
 - Measure ROI on your social media activities
- Kevin O’Keefe, LexBlog, Inc., Seattle*
- 11:00 a.m. Attorney Under-Earning: The Signs, Symptoms and Solutions**
Under-earning is defined as “earning below your potential or your needs” and is a common ailment of solo and small law firms. Smart attorneys make revenue-limiting choices every day, including undervaluing their services, giving away time, not recording time contemporaneously, and much more. You’ll start earning more money when you learn to:
- Identify your personal under-earning behaviors
 - Understand how your under-earning impacts your family and your clients
 - Develop an action plan to stop under-earning and earn what you’re worth
- Ann M. Guinn, G&P Associates, Reno*
- 11:45 a.m. Q & A with the Morning Speakers**
Use this opportunity to ask any of the morning speakers follow-up questions, or ask the panel for advice on a related practice issue you are having, or a tactic you are considering.
Moderator: Ann M. Guinn, G&P Associates, Reno
- 12:00 p.m. LUNCH on your own**
- 1:15 p.m. Encryption for Attorneys – What You Want to Know**
The RPCs are very specific in requiring client confidentiality, but in this age of the Internet, that can present unusual challenges – and threats from unknown sources and undetected directions. Is encryption the answer? Find out what you need to know about using encryption to insure an impenetrable level of confidentiality for everything from e-mails to work product. Learn to:
- Protect your e-mail communications to clients against prying eyes
 - Insure the confidentiality of your clients’ matters – even if you get hacked
 - Safeguard your firm’s business information from those who would misuse it
- Nicholas A. Gillard-Byers, Brookland Legal Services, Seattle*

Schedule continued on next page

Program Schedule (cont.)

- 2:00 p.m. What Every Attorney Needs to Know About E-Signatures and Submission of On-Line Forms**
Did you really ever think you'd see the day when a pen-and-ink signature on a document, or even an original document, wasn't required? Well, that day has come – and you need to insure you are not only in compliance with court rules, but also ethics rules. We'll examine:
- The RPCs relevant to documents and signatures (RPC 1.6 on confidentiality of information), and touch upon on the attorneys duty to supervise associate attorneys, legal support staff, and LLLTs (5.1, 5.2, 5.3, and 5.10)
 - The competent use of various e-signature services
 - The ethical and technical requirements for safeguarding client signatures
 - How to competently and safely complete and submit on-line forms
- Greg McLawsen, Puget Sound Legal PC, Tacoma*
Vitaliy Kertchen, Kertchen Law + CPA, Tacoma
- 3:00 p.m. BREAK**
- 3:15 p.m. Alternative Law Firm Models for the Small Practice**
Whether you are a solo or practice in a small firm, you might want to consider an alternative business model that will allow you to expand your practice to better serve your clients (and share some of the load). This session will take a closer look at:
- Creating smart partnerships
 - Developing beneficial co-counsel/alliance relationships
 - Incorporating LLLTs into your practice
 - Creating virtual attorney partnerships
- Brandon S. Gillin, Genesis Law Firm, PLLC, Everett*
Gerald J. Moberg, Jerry Moberg & Associates PS, Ephrata
Peter Roberts, Practice of Law Advisor, Seattle
George O. Tamblyn, Advocates Law Group PLLC, Mercer Island
- 4:00 p.m. Q & A with the Afternoon Speakers**
Use this opportunity to ask any of the afternoon speakers follow-up questions, or ask the panel for advice on a related practice issue you are having, or a tactic you are considering.
- Ann M. Guinn, G&P Associates, Reno*
- 4:15 p.m. Adjourn • Complete Evaluation Forms**



Chair Biography

Ann M. Guinn

Ann M. Guinn, practice management consultant to solo and small law firms, helps her clients build and maintain profitable, client-focused, and satisfying practices by reinforcing what's working and fixing what's not working in their businesses. Ann particularly enjoys helping attorneys earn what they are worth by showing them how to replace the behaviors that result in underearning with positive behaviors that honor their value to their clients. She regularly shares her knowledge through webinars, CLEs, private membership groups, and one-on-one consulting. Ann has served 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 and Small Firm Conference. She is a member of the advisory board for the LexisNexis Firm Manager program, and is a regular contributor to the LexisNexis "Business of Law" blog.

Ann has been a featured speaker at ABA meetings, NY Legal Tech, 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 bookstore. To receive her free management tips newsletter, please e-mail her at ann@annguinnconsulting.com.



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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 11.6(a)(1)), 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 general/ethics 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.

Seminar Sponsor: WSBA-CLE

Seminar Name: 7 Keys to Managing the 21st Century Practice (16626SEA/WEB)

Seminar Date: January 22, 2016

Approved Credits: 6.0 CLE Credits for Washington Attorneys (5.0 General and 1.0 Ethics)

Hours of Attendance:

TIME OF ARRIVAL	TIME OF DEPARTURE

Credits Earned: _____ general _____ ethics

Printed Name: _____ **Bar #:** _____

I hereby certify that I have earned the number of general/ethics credits inserted above on the Credits Earned line.

Signature: _____ **Date:** _____

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CHAPTER ONE

IMPROVE YOUR LAW PRACTICE BY EXPANDING YOUR APP-TITUDE

January 2016

Jennifer R Willner
Halvorson Losie Willner PLLC

Phone: (360) 392-3995
Email: jennifer@HLWworkplaceattorneys.com

Devon M. Thurtle Anderson
Heffernan Law Group PLLC

Phone: (425) 284-1150
Email: devon@heffernanlawgroup.com

Kristina T. Larry
Sassy Litigations LLC

Phone: (206) 497-1725
Email: Kristina@sassylitigations.com

JENNIFER R. WILLNER is a principal in Halvorson Losie Willner PLLC, a boutique law firm with offices in Bellevue and Bellingham, Washington. The firm's attorneys have over 75 years combined experience representing employers throughout the Northwest in the entire range of 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. Jennifer is also a member of the Mt. Baker Chapter of the Society for Human Resource Management and speaks frequently to SHRM chapters and other industry groups. Jennifer received her B.A. in Psychology from Reed College and her J.D. cum laude from Seattle University School of Law. Jennifer is a gadget geek and reads voraciously on the subjects of technology, entrepreneurship and law practice management. The firm is paperless, the lawyers are mobile and both the Bellevue and Bellingham offices are semi-virtual.

DEVON M. THURTLE ANDERSON is a partner with Heffernan Law Group PLLC. She handles complex commercial litigation of insurance coverage matters in state and federal courts across the country. Ms. Thurtle Anderson is admitted to practice in Washington, Oregon and California; as well as before the federal courts for the Western District of Washington, the Northern District of California, the Southern District of California, and the Ninth Circuit Court of Appeals. She earned her law degree, magna cum laude, from Seattle University School of Law. Ms. Thurtle Anderson is also the owner and Principal Bookkeeper with Skepsis Solutions, a business support firm providing IT and bookkeeping services nationwide, with a focus on small to medium law firms.

KRISTINA T. LARRY operates The Sassy Litigator, providing consulting services to solos, small firms, and law students. The Sassy Litigator blog focuses on lawyer life from fashion, to practice tips, to work/life balance, and more. Kristina is also the founder and managing attorney of Sassy Litigations, LLC along with its complementary brands The PreNup Princess and The Seattle Wedding Lawyer. Kristina completed her undergraduate work at the University of Wyoming and is a graduate of Thurgood Marshall School of Law at Texas Southern University. She was admitted to the Washington State Bar in 2009. You can find her on Twitter @SassyLitigator, Instagram @TheSassyLitigator, or visit www.TheSassyLitigator.com.

Presenters:

[Devon M. Thurtle Anderson](#)

Heffernan Law Group PLLC

1201 Market Street

Kirkland, WA 98033-5440

Direct: 949.385.0741

Main: 425.284.1150

devon@heffernanlawgroup.com

<http://www.heffernanlawgroup.com>

[@InsLawSavvy](#)

[Kristina T. Larry](#)

The Sassy Litigator

Direct: 253-237-2746

Kristina@TheSassyLitigator.com

www.TheSassyLitigator.com

[@SassyLitigator](#)

[@TheSassyLitigator](#)

[Jennifer R. Willner](#)

HALVORSON | LOSIE | WILLNER | PLLC

114 W. Magnolia Street, 4th Floor

Bellingham, WA 98226

Office: 360-392-3995

Direct: 360-920-4573

jennifer@HLWorkplaceattorneys.com

[@jenniferwillner](#)

Speaker Bios: Clicking on our names will take you to our respective LinkedIn profiles.

The Washington State Bar Association neither recommends nor endorses the products mentioned in this chapter.

IMPROVE YOUR LAW PRACTICE BY EXPANDING YOUR APP-TITUDE: Useful and Practical Mobile Apps for Solo & Small Firm Practitioners

The Mobile Revolution is here to stay. Attorneys rely heavily on mobile devices to manage their law practices and their personal lives. These materials were collaboratively created using Google Docs by the panelists Devon, Kristina and Jennifer, all whom use some or all of these mobile Apps on a daily basis. Prepare to geek out!

MOBILE SECURITY APPS

1. [Lookout Security and Antivirus](#)

Platforms: 

Cost: Free

With free data backup, a "find my device" option, continuous low-key virus scanning and more, Lookout has plenty of great features in the free version. After scanning your device, Lookout gives you a message: "Everything is okay." Bonus positive affirmations, all day long!

2. [Avast Mobile Security and Antivirus](#)

Platforms: 

Cost: Free with option to upgrade to premium version

A great suite of antivirus, security and backup programs built into one app. Lock, locate and protect your device with a wide array of features and options ranging from password protection to siren activation.

3. [Boxcryptor](#)

Platforms: 

Cost: Free

Protect your cloud services with Boxcryptor. This app allows you to put added protection on your sensitive materials that you have stored in the cloud. The app works with Dropbox, Google Drive, Skydrive, Sugarsync and others.

4. [Encrypt File Free](#)

Platforms: 

Cost: Free (with ads); \$1.49 (ad free)

Encrypt word files, music, pictures, pdfs or any number of other files with this app. You can either have the app automatically encrypt with a master password or you can manually encrypt chosen files with unique passwords.

OFFICE PRODUCTIVITY APPS

1. [OfficeSuite / OfficeSuite Pro:](#)

Platforms:    

Cost: Free (ads) and paid (\$14.99) version.

Microsoft now has Word, Excel and Powerpoint apps for IOS, Android and of course Windows mobile platforms and the apps are free. So why purchase OfficeSuite Pro? Because Jennifer needed document creation capability on her KindleFire. Also, OfficeSuite Pro takes up far less space on your mobile device and doesn't want to update every. single. day. OfficeSuite has Microsoft-like document, spreadsheet and presentation functionality and even sort of looks like their Microsoft counterparts. The Pro version allows you to link all your cloud based files. So Jennifer deleted the Microsoft Apps and installed OfficeSuite Pro on all her mobile devices.

2. [Microsoft Office 365:](#)

Platforms:    + Web

Cost: [Subscription based, \\$8-\\$35/user/month](#)

Microsoft Office 365 is the same Microsoft Office you're already using; however, 365 is required to run the Office suite on your tablet. What's more, 365 takes the traditional Microsoft Office experience online. Familiar programs like Outlook, Word, Power Point, and Excel are included in Microsoft Office 365. The advantage to Microsoft Office 365 is the familiarity of traditional Office program interfaces and their availability across platforms, so that your documents can be accessed on the go from anywhere at any time. The drawback is that some advanced editing and formatting is not available in the tablet versions of Office 365, so to the extent you use those features, you'll still need to work on your desktop or laptop occasionally.

NOTE TAKING / BOOKMARKING APPS

1. [Evernote](#)

Platforms:   

Cost: Free

Probably the best note-taking, save things, remember things app of all time. This cross-platform app integrates with almost every popular app so you can save a variety of files. Save your to-do lists, quotes, articles for future reference and other web snippets with time and date tags. Evernote allows you to save an entire webpage with all the content. The cloud framework provides a data backup and synchronizes your data between different devices, so that you can leave something unfinished on one device and resume it on another.

2. [OneNote](#)

Platforms:    
iOS Android Windows Amazon

Cost: Free

Microsoft OneNote allows your notes and information to be accessed from anywhere on any device. The app is an all-in-one go to source for to-do lists, meeting/lecture notes, daily planning, and any other information needing to be organized and stored. Notebooks can be synced across devices, tabbed, and shared with others.

One great feature of OneNote – and what makes it particularly valuable in a variety of situations – is that it works with both keyboard input and stylus input. In other words, you can take notes in OneNote either with the keyboard by typing them in, or by hand using a stylus. Another great feature is the ability to import PDFs, and use a stylus (or keyboard) to markup documents within the app, and mail them back out. When you're done, simply save your notebook to your cloud-based client file storage platform, and you can stop asking your assistant to scan and save all those notes for you. OneNote is the gold standard for digital note taking in the business world.

3. [Google Keep](#)

Platforms:  

Cost: Free

Google's note-taking, list-creating, idea-recording app that also lets you share these snippets in real time with others. It's a minimalist version of Evernote but oh so handy!

4. [Pocket](#)

Platforms: Web based with apps for:    
iOS Android Windows Amazon

Cost: Free

Pocket was previously known as Read It Later. It's an app and web-based service for managing reading lists of articles and web pages from the Internet to read later. It integrates with a lot of other things, like Twitter, Flipboard and Zite.

TIME-TRACKING APPS

1. [Toggl](#)

Platforms: Web-based, with optional apps for: 

Cost: [Subscription based, \\$0-\\$49/user/month](#)

Should you want to use an app that will sync back to the rest of your team, Toggl is one option. Toggle syncs between your desktop and your tablet, and even plays nicely with Asana. The time can also be shared with multiple team members. It tracks by client with no limits to the number of clients, and can let you track other worker's productivity on your team should you be so inclined. Unfortunately, Toggl doesn't link directly to QuickBooks (although it does link directly with Xero), so you'll have to use a third-party app to get the two talking. For this reason, it may not be a solution for small businesses needing as much integration as possible.

2. [Harvest](#)

Platforms: Web-based, with optional apps for: 

Cost: [Subscription-Based, \\$10-\\$12/user/month](#)

More feature-rich than Toggl, Harvest is probably the simplest, cleanest-looking time-tracking available that still provides full syncing, team management, QuickBooks integration, and invoicing capabilities. With Harvest, tracking your time is as simple as clicking a button and assigning a client file. To create a client file, Harvest provides a simple-to-follow, but also simple-to-customize, wizard that walks even the most technophobic of attorneys through Harvest's simple steps. Invoicing is also a simple button-click with Harvest. However, one of Harvest's best features for profit-conscious partners and billable time-conscious associates alike is Harvest's simple yet detailed report feature, which allows users to view time and profitability of staff, client files, and other metrics with just a few easy clicks. Harvest is a great do-it-all timesheet for firms of any size.

PROJECT MANAGEMENT / WORKFLOW APPS

1. [Asana](#)

Platform: Web-based, with optional apps for: 

Cost: [Free for fewer than 15 users; approximately \\$10/month/user for larger teams](#)

From one of the creators of Facebook, this project management app manages tasks and workflow magnificently, allowing you to delegate and coordinate with clients and associates from here to Timbuktu. With this app, you can create, manage, and track multiple projects to work on individually or with a team. Need a motion prepared? Create the task, then assign it to an

associate. When the associate has a question, she can simply ask within the app, keeping all conversations related to a single project in the same place. So, no more filing emails when a case is closed, because everything you need has been shared in Asana (instead of clogging up your inbox!). Asana also integrates with Gmail (among many other platforms) allowing for you to keep track of all important project information in one place.

2. [Slack](#)

Platform: Web-based with apps for: 

Cost: Free

Slack is a team communication tool which collects and organizes communications and documents related to a project or a team. NASA's Jet Propulsion Laboratory uses Slack. So it should pretty much be okay for everyone else. The Executive Committee of the WSBA Solo and Small Practice Section is now using Slack (almost) exclusively to communicate and coordinate on projects.

3. [TrialPad](#)

Platform: 

Cost: \$109.99

TrialPad is an Apple iPad app that allows attorneys to organize and present evidence more efficiently. The app contains simple and effective presentation tools, including callouts, side-by-side comparisons, and highlights. It also allows you to manage evidence as it comes in at trial, tracking which exhibits have been admitted and which have not. TrialPad supports not only documentary evidence, but also audio and video files. TrialPad makes adding files easy, as files may be added through Dropbox, iCloud, Wifi, Bluetooth, and iTunes through connection to a computer. The app supports numerous file formats, including: PDF, JPG, PNG, TIF, Multi-Page TIF, TXT, and all audio and video file formats supported by iPad. The app is a command center for any litigation attorney and makes it easy to display necessary information to the court when an iPad is connected to a larger monitor/projector or wirelessly with AppleTV.

This app has two primary use cases, both for a litigator. First, it's excellent in depositions to keep exhibits organized. This is particularly true in a large case with serial depositions, as you can easily search past exhibits to question the witness on when they come up, and its search functionality also helps avoid the same document getting marked as an exhibit several times over. Second, it's indispensable at trial for presenting documentary, photographic, video, and audio evidence in a streamlined manner. The app gives the user control over when and what to display, and it allows markups that help focus the jury's attention where you want them to focus. It's an excellent tool for managing evidence on the fly.

For the transactional attorney, this app is useful as a digital folio for bringing important documents to client meetings for discussion and strategy.

4. [Workflow](#)

Platform: 

Cost: \$2.99

A time management app that helps you prioritize and automate your tasks, so you can take up important ones and bypass others. This is particularly useful for routine activities. While you can use it to set reminders for all tasks, it is mainly effective in tasks that can be performed through the smartphone like booking a Uber through the app or downloading a pdf file from your mail. You can create any task and assign it a position and execution method. It also works with iCloud Drives.

5. [Workflowy](#)

Platform:  

Cost: Free

Basically, it's an notebook of lists. And a busy professional's life is about lists. You can share your lists with team members or lock them as private. You can use it to make to-do lists, plan and brainstorm projects, and take bulleted notes during a meeting.

BOOKKEEPING AND EXPENSE TRACKING APPS

1. [You Need A Budget](#)

Platform: Web-based with mobile apps for:  

Cost: \$5 a month

This personal budgeting app helps you set and manage budgets for a fixed period. It doesn't integrate with financial institutions however, but it does allow you to upload and save receipts and invoices for reference purposes. And the inbuilt modules let you categorize your expenses. It provides a summary report of the previous month to keep you updated about your account status. Read the description on their website and you'll be impressed.

2. [Moveo Expense Manager](#)

Platform:    
IOS Android Windows Amazon

Cost: Free

You can manage your finances with this single app. Create and set budget milestones, pay all your bills, and track your account status. You can also schedule transactions and mark a

recurring transaction to save time. In addition, you can set payment reminder notifications. And most importantly, it's a secure platform keeping all your invaluable account details safe.

3. [Xero](#)

Platforms: Web-based, with optional apps for: 

Cost: [\\$3-\\$180/month](#) (Discounts available through a Xero Certified Partner; contact Devon Thurtle Anderson for details)

Xero is far and away the best alternative to QuickBooks out there, and for most small and medium practices, the author (Devon Thurtle Anderson) recommends Xero over QuickBooks. Where most QuickBooks alternatives over-simplify accounting to the point where accounting can barely be accomplished, Xero uses and presents dual-ledger accounting in a way that bookkeepers and accountants appreciate, but business owners can easily navigate and understand. Invoicing is simple (and Xero integrates with most of the time-tracking software mentioned in this paper), and Xero's audit trail feature allows staff and accountants to pinpoint discrepancies with significantly less time and headache than other bookkeeping applications. Xero also includes additional payroll features, and the options for clients to view and pay their invoices online.

PAYMENT APPS

1. [Square](#)

Platforms: 

Cost: [\\$2.75%](#) (Invoicing Option)

Square is a simple, easy-to-use credit card system that will get you up and accepting credit card payments from clients in no time. Because Square takes its fee from the customer's funds before depositing them in your account, it's not appropriate for use with client trust accounts, but for taking client payments into the operating account, Square is a great way to get started. Square integrates with Xero and many other online apps to create an online workflow suite for your firm.

2. [Venmo](#):

Platform: 

Cost: Receiving money is free. Paying with bank accounts and some debit cards also free. Paying with credit cards and some debit cards incur a 3% charge.

Venmo is similar to (and is a subsidiary service of) PayPal where you can link your account and debit card details and process payments quickly at any time. You can also move funds from and

to your bank account. The service provides bank grade security wherein you need to confirm your identity.

CUSTOMER RELATIONSHIP MANAGEMENT (CRM) APPS

1. [Humin](#)

Platform: 

Cost: Free

This app merges your phone, Facebook, and LinkedIn contacts with a calendar and registered email. The app also provides a contact relationship tree as to how you are connected and also shows the next possible meeting time using travel plans for the people involved.

2. [Mailchimp](#)

Platform:  

Cost: Free up to 2,000 subscribers. Click [here](#) for other pricing plans.

With a simple interface, you can create and send ad campaigns, add and maintain subscriber lists, and view reports in Mailchimp. It allows you to configure multiple accounts simultaneously without confusing the system.

3. [SugarCRM Mobile](#)

Platform:

Cost:

With this app you build good customer relationships by managing quick access to CRM information, accounts, leads, and other sales modules. You can organize meetings, attach details to accounts, share references, and most importantly, do all of this anytime regardless of your location.

ELECTRONIC SIGNATURE APPS

1. [SignMyPad](#)

Platform:   

Cost: \$3.99; \$19.99 for the Pro version

SignMyPad is a PDF signature app that allows users to fill out, sign and send PDF documents. Lawyers can give clients the opportunity to fill out return documents electronically. No more printing!

2. [HelloSign](#)

Platform:  

Cost: Free

With this app you can scan, edit and sign documents on your phone. Great app for when you are not near a computer and need to get documents sent and signed. This app is free for your mobile device and HelloSign has free and paid plans.

3. [DocUSign](#)

Platform:  

Cost: Free

Another app that lets you and clients sign documents electronically. The mobile app is free. This app is the most costly of the bunch offering a monthly subscription and no free plans.

REMOTE ACCESS APPS

1. [LogMeIn](#)

Platform:  

Cost: Free

LogMeIn allows users to remotely access their computer from their mobile devices. The mobile app is free but you will need a paid yearly subscription to use this.

2. [Microsoft Remote Desktop](#)

Platforms:   

Cost: Free

This app allows you to connect to a remote computer from almost anywhere using a mobile device. Gives you access to all of your apps, files, and network resources.

RESEARCH APPS

1. [dLaw](#)

Platforms: 

Cost: Free

dLaw formally known as droid Law is a legal reference tool. dLaw Includes: Federal Rules of: Civil Procedure, Evidence, Bankruptcy Procedure, Appellate Procedure and more. You can add states codes, UCC, and more for additional fee.

2. [Fastcase](#)

Platform:  

Cost: Free

Fastcase is a free legal research app giving you access to cases and statutes from all 50 states and from the federal government.

3. [Google Scholar](#)

Platform:  

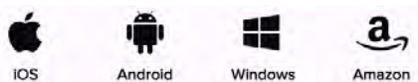
Cost: Free

Google Scholar is a free search engine that allows you to browse scholarly literature. While Google Scholar does not have it's own app there are apps that will allow you access Google Scholar results. Scholar Droid for android and GoScholar for Google Scholar App for iPhone.

e-READING APPS

Arguably, one of the main job functions of an attorney is reading. And most attorneys enjoy reading for pleasure as well. Using a tablet for reading is not for everyone, but the Mobile Warrior reads on a device. Most devices come with an app to read stuff, but the better option is an organizing tool like OfficeSuite Pro or OneNote, which allow for editing tools. Putting your deposition transcripts, case documents or briefs on your mobile device can be quite handy, and lighter than carrying all those papers.

1. [Kindle App](#) works on:



Cost: Free

2. [iBooks](#) for (duh) 

Cost: Free

3. [GoodReader](#) for 

Cost: Free

4. [GoodReads](#) for 

STRESS RELIEF & JUST FOR FUN APPS

1. [Colorfy](#):

Platform:  iOS  Android  Windows  Amazon

Cost: Free

Coloring therapy for adults. It's free and it's cool.

2. [Relax Rain](#)

Platform: 

Cost: Free

If you're from the Northwest (the wetside), you know how easy it is to fall asleep to the sound of rain. Well, maybe not the rain we've had lately...

3. [AngryBirds](#)

Platform:  

Cost: Free

Your kids played this game when they were little and (admit it) now you do too. Just don't forget to turn the sound off in a meeting.

NEED MORE APPS?

There are some fantastic blogs out there that discuss and review mobile apps for the legal profession.

1. [The Droid Lawyer](#)
2. [iPhone J.D.](#)
3. The Law Librarians at the University of Wisconsin - Madison Law Library have collected apps for both Android and Apple mobile users and created two guides:
 - a. [iPad Apps for Lawyers](#)
 - b. [Android Apps for Lawyers](#)

CHEAP LEGAL ADVICE APPS

You can read about what these el cheapo legal advice services do by clicking on the hyperlinks. We'd like them all to go away, but we don't think they will.

[LegalZoom](#)

[Rocket Lawyer](#)

[GetDismissed](#)

[Winit](#)

[LegalTap](#)

[Fixed](#)



Lookout

Malware definition list updated over the air. You are protected against the latest threats.
1 min ago

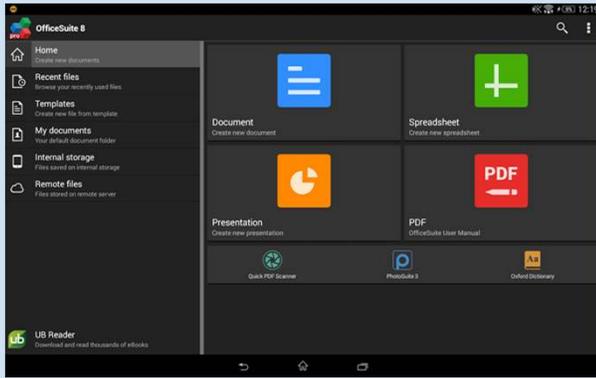
Lock and Wipe Enabled
Device Admin Successfully Activated

- Security ✓
- Backup ✓
- Missing Device ✓
- Theft Alerts ✓
- Safe Browsing ✓
- Privacy Advisor ✓

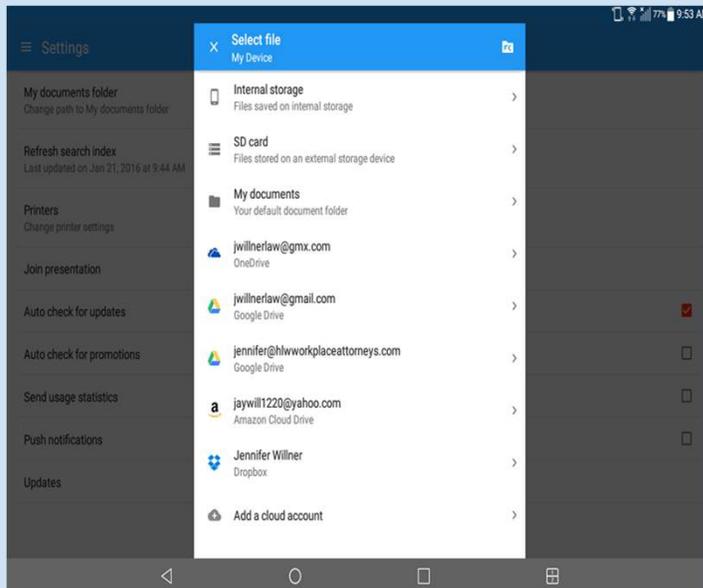
LOOKOUT!!!!

Everything is OK

OFFICESUITE PRO



OFFICESUITE PRO

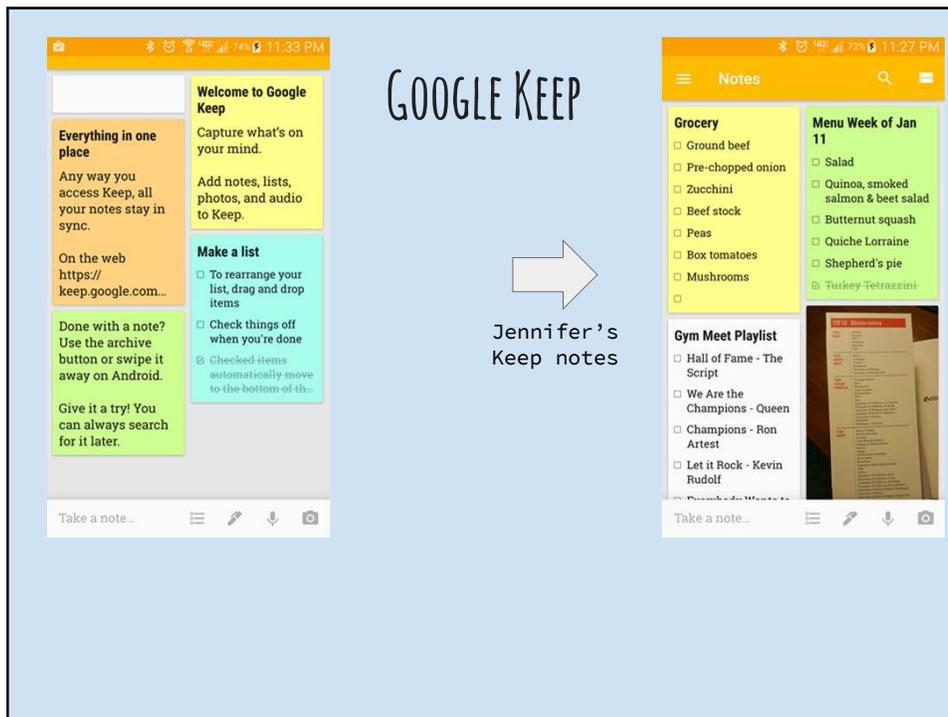




EVERNOTE



- Save pictures
- Attach things
- Set reminders
- Make handwritten notes
- Type out text notes
- Clip things from Web





Cheap
Bellingham
parking

TINY SCANNER

Share via WiFi or email

Upload PDFs to:

- ★ Drive
- ★ Dropbox
- ★ Box
- ★ Evernote

COLORFY

Non-billable



COLORFY APP



COLORFY APP

Coloring isn't just for kids anymore.

RESEARCH



dLAW (FORMALLY DROID LAW)

Multiple Apps under the dLaw name

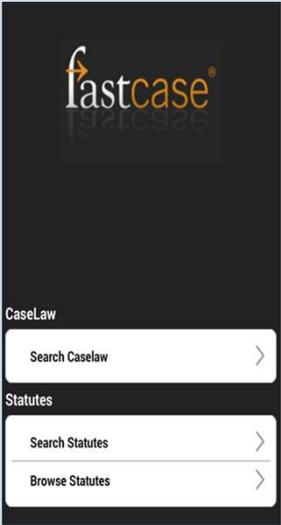
- ★ Legal Dictionary
- ★ UCC (\$14.99)
- ★ US Supreme Court Cases
- ★ US Constitution
- ★ US Tax Court Cases



State and Federal Laws



FASTCASE



The home screen features the Fastcase logo at the top. Below it, there are two main sections: 'CaseLaw' and 'Statutes'. Under 'CaseLaw', there is a 'Search Caselaw' button with a right-pointing arrow. Under 'Statutes', there are two buttons: 'Search Statutes' and 'Browse Statutes', both with right-pointing arrows.

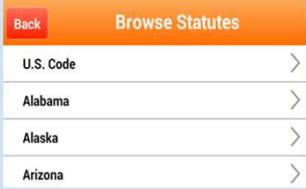
- All 50 states
- Search by citation, keyword, browse statute collections



The 'Saved Documents' screen has an orange header with 'Edit' on the left and a refresh icon on the right. It lists two saved documents: 'Wash. Rev. Code 26.09.050' and 'Wash. Rev. Code 23B.15.100'. Each entry has a 'Statutes' label and a right-pointing arrow.



The 'Search Type' screen has an orange header with 'Back' on the left and an information icon on the right. It has two options: 'Keyword' (which is selected with a checkmark) and 'Citation'.



The 'Browse Statutes' screen has an orange header with 'Back' on the left. It lists several states: 'U.S. Code', 'Alabama', 'Alaska', and 'Arizona'. Each entry has a right-pointing arrow.

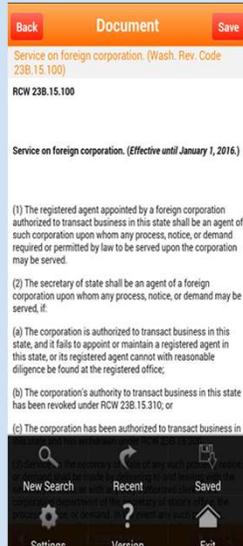
FASTCASE (CONT)



The 'Search Caselaw' screen has an orange header with 'Back' on the left and 'Clear' on the right. It features a search bar with a magnifying glass icon and the placeholder text 'Enter search phrase or citation'. Below the search bar are several filter options: 'Jurisdiction' (set to ALL), 'Date Range' (set to ALL), 'Authority Check' (set to Both), 'Results' (set to 100), and 'Sort By' (set to Relevance). A green 'Search' button is at the bottom.



The 'Washington' screen has an orange header with 'Back' on the left. It lists various editions of the Revised Code of Washington and HeinOnline Revised Code of Washington, each with a right-pointing arrow. The list includes editions from 2008 to 2015, as well as historical versions from 1922 to 1923.

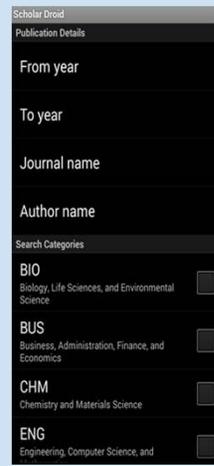
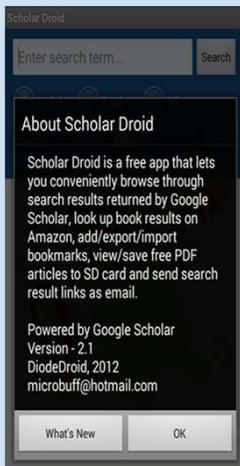


The 'Document' screen has an orange header with 'Back' on the left and 'Save' on the right. It displays the text of a statute: 'Service on foreign corporation. (Wash. Rev. Code 23B.15.100)'. Below the text are several numbered annotations (1), (2), (a), (b), and (c) providing further details. At the bottom, there is a navigation bar with icons for 'New Search', 'Recent', 'Saved', 'Settings', 'Version', and 'Exit'.

GOOGLE SCHOLAR APPS DLAW



GOOGLE SCHOLAR APPS SCHOLAR DROID





DEMONSTRATION



asana

DEMONSTRATION



DEMONSTRATION



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CHAPTER TWO - A

**COMPETING WITH THE FORMS SELLERS:
HOW TO POSITION YOURSELF AS THE SMARTER CHOICE**

January 2016

Brett T. Sullivan
Lucent Law PLLC

Phone: (509) 413-1004
Email: brett@lucentlaw.com

BRETT T. SULLIVAN is a member of Lucent Law, PLLC, a Spokane law firm representing individuals and firms in the areas of real estate; business formation, transactions and debtor/creditor transactions; and estate planning. Lucent Law provides traditional legal services as well as online sales and delivery of legal services in Washington and Idaho through its Forms & Essentials platform.

Brett maintains a particular focus on real estate transactions (including purchases and sales, financing, easements and related matters); common ownership entities; and business transactions and counseling (including entity formation, governance, purchase/sale transactions and succession planning). Brett graduated from the University of Washington in 1991 with a BA in Business Administration (emphasis in accounting) and from Gonzaga University School of Law, *cum laude*, in 1994. He has practiced both privately and as in-house counsel for businesses in the Spokane area and brings a unique perspective to his client counseling. He was admitted to the Washington State Bar Association in 1994, and most recently served as a Web Editor for the Real Property, Probate and Trust Section of the WSBA. He enjoys sailing, snow skiing and continually finding ways to improve the delivery of legal services to his firm's clients through technology and project management.

1. Introduction and Background

My law partner and I completed the initial phase of a “re-envisioning” of our Spokane-based law firm on July 15, 2015, after having spent the prior 18 months imagining an improved process of providing access to and delivery of quality legal services to clients. As described below, what started as a desire to deliver a few legal services through an online platform ultimately resulted in the renaming of our firm and the launch of a new online platform featuring over 180 standalone legal services and legal service packages, all offered on a transparent fixed-price basis. Our website does not provide legal forms for download; rather, the site serves as an engagement and educational platform for potential and returning clients.

What drove our efforts to make changes to a successful business, real estate, estate planning and insolvency practice? Two key drivers: 1) the continuous external forces that are changing the legal industry and 2) our desire to use that change to better meet the needs of the changing demands of our clients.

A preliminary note: my partner I spent countless hours and many weekends to create our online platform. We are very accepting of new technologies and systems for our practice. We like to tinker with our systems and we have enough basic IT knowledge that we’ve been able to do so without spending significant funds on outside professional assistance. We are also inherently entrepreneurial in nature.

I’ve practice law since 1994, both in private practice and as in-house counsel. My practice has been focused primarily on real estate and business transactions during that time, as well as insolvency and estate planning. While in-house, I focused solely on real estate transactions and general business law. After leaving my in-house position, I developed additional experience in representing debtors and creditors in insolvency proceedings.

My partner and I formed Sullivan Stromberg, PLLC in the fall of 2010. Around early 2014, we had a bit of an epiphany regarding our practice and how we can improve the method and manner in which we deliver legal services. This epiphany was driven, in part by the advent and growth of the “form sellers” (Legal Zoom, RocketLawyer, and similar services). However, this wasn’t the only driver; in addition to the equity-capital driven non-lawyer sellers of forms, we perceived a dislike among our business, real estate and estate planning clients (and among the legal service consuming population in large) for the lack of transparency with the traditional hourly fee model.

Several years ago, a general contractor client came to me after getting sued over a construction project. The primary factor in the lawsuit was a single page construction contract, with a mishmash of terms borrowed from the internet. My sense of frustration must have been palpable when I discussed the fact that had my client come to see me for a simple construction contract, I would have been able to save him tens of thousands of dollars in damages. My client, of course, told me over and over again how he should have seen me earlier, but he thought it would be too expensive to have a construction contract prepared. This is obviously a typical situation that small business and general practice lawyers see quite often; however, it served as one of the catalysts for the launching of Lucent Law’s fixed-fee online services platform (*Forms & Essentials*).

This situation and others like it represented an opportunity for my firm to reengineer the methods and means by which we deliver services, in an effort to be more proactive rather than defensive. I’m a firm believer that both attorney and client benefit when the attorney’s relationship with the client is built on a goal to delivery cost-effect proactive advice with regard to transactional matters.

So, my partner and I have put in a significant amount of effort to develop Lucent Law, our re-imagined firm. In the course of developing Lucent Law, we focused on

these three primary goals in our effort to harness the change in the legal services delivery model:

A. Identify and Remove Client Engagement Friction Points. Find every point in the client engagement process where “friction” exists; that is, where an opportunity exists for a client to balk or become frustrated with the onboarding and engagement process. We developed Forms & EssentialsSM to remove as many of these friction points as possible and to make the process of selecting and hiring an attorney as painless as possible.

B. Transparent Pricing. This means describing the services offered by the law firm in a clear and simple manner while providing fixed visible pricing so the client always knows the fee for the service.

C. Always Deliver Value. Find those services which are relatively routine in nature, offer few variables, lend themselves to significant automation and then focus on delivering value. Typically, for us these services are either i) proactive in nature (e.g., forming an LLC to help shield a business client’s personal risk) or ii) enable the completion of a transaction (e.g., the review of a residential real estate purchase and sale agreement).

2. The Old Way of Delivering Services

A typical scenario for the engagement process with a potential client ran something like this: the potential client (PC) would call in and ask us for assistance with regard to a relatively routine matter, such as the review of a commercial real estate purchase and sale agreement. Due to our schedules, sometimes it would take a day or two to connect with the PC. We would have a phone conversation with the PC, which would typically result in her asking us for an idea of the fees to perform the review (to which we’d provide a wide range, recognizing that we had not yet seen the document). We would then typically ask for the basic matter information (hoping that we’d collect all of the necessary information), then perform a conflict check and finally, we’d ask our staff to work up a legal services agreement. We’d have to make a determination if the matter required an advance fee deposit. Ultimately, the fee agreement would be sent out, the client would consider it and

then would (hopefully) sign and send it in by mail or fax, and sometimes by email after scanning the same.

We would then perform the requested work, always mindful of the fact that the type of work we were performing had a maximum top limit in regard to the number of hours that we could devote to the effort and also keeping in mind that the PC had received a range of fees for the work. We would then send out an invoice for the work by the 10th of the following month and wait for payment (unless we had received an advance fee deposit).

What was the timeline from initial contact to an executed legal services agreement and deposit of advance fee deposit, if required? Sometimes 7 to 10 days. Amount of attorney time spent in this portion of the process? Typically somewhere between 30 minutes to 1.5 hours.

The staff and the attorneys involved in the matter consume a large amount of non-billable time with the upfront intake and engagement process, even with our best efforts at automating and simplifying the engagement process.

Additionally, the client would typically see the fee for the work at the time that she received the invoice. Sometimes, this would result in a mismatch between expectation and reality. While we always try to avoid such a mismatch, it is an inherent part of the hourly billing system and it can lead to the client either trying to negotiate the bill or simply failing to pay, either in whole or in part.

3. The New Way of Delivering Services

The scenario for our new system of delivering legal services goes like this: Our prospective client wishes to form a new single member Washington limited liability company. She goes to lucentlaw.com, enters our "[Forms & Essentials](#)" page, navigates to "[Start Your Business](#)" and then "[Form Your LLC.](#)" After reading the detailed product description and our relevant knowledge base articles, and perhaps

taking advantage of our client service chat platform to ask any other initial questions, the client buys a fixed price Premium Package by clicking “Buy Now.” The order is added to her shopping cart. She then reviews our detailed terms of sale, provides her payment information through PayPal as part of the checkout process, and provides basic intake information in a questionnaire. After we perform a conflict check, we approve the order and her credit card is charged. Our staff is notified of the new order and then sets up the client and matter in our Customer Relationship Management (CRM) software. Meanwhile, a more detailed LLC formation questionnaire and consent is sent to the client by email through our CRM software. My paralegal then reviews the answers, prepares the necessary documents using automated document assembly software and forwards them to me for review. I review, revise as necessary, approve, and the documents are then sent for signature to the client through an electronic signature service.

Timeline from initial contact to charging of credit card and commencement of work? Sometimes same day, but usually no more than two. Amount of attorney time spent in this portion of the process? Typically none.

Apart from significant reducing the initial intake time, why do we think that this a better system? And, more importantly, why do we think it helps us to compete against the form sellers (for those legal services where we directly compete)? Because our new model achieves the following goals:

A. Transparency. By browsing our website and selecting services online, the potential client knows exactly what they are receiving. There is no “mismatch” between their expectation as to the number of hours the attorney will work on the project and the actual fee. Our fees for our Forms & EssentialsSM services are published right on our website.

B. Intake Filtering. Sometimes potential clients really just want to get a general idea of the answer to an issue and have no intention of hiring an attorney. Our Forms & EssentialsSM platform helps to minimize these occurrences by pairing robust product descriptions prepared in a “plain English” format with a knowledge base and FAQ tool.

C. Ease of Engagement. On the other hand, sometimes potential clients are reluctant to ask questions of an attorney to avoid sounding ignorant as to an issue, or may be intimidated by attorneys, which can result in the potential client not hiring the attorney, with the attendant legal risk. Lucent Law attempts to solve this issue by providing an easily accessible online “shopping experience” coupled with helpful knowledge base and FAQ articles.

D. Assurance of Payment. All Forms & EssentialsSM services are offered on a fixed price basis and the work does not start until payment in full is made. Our terms of services clearly state that the fee for the service is earned in full and is not refundable except for our failure to perform the work.

Summary

Lucent Law now has six months of operations using its Forms & Essentials platform. We are seeing nearly all of our initial goals met, and our clients who purchase services through Forms & Essentials have expressed appreciation for the quick turnaround and transparent pricing. We still deliver services on an hourly fee basis, using our traditional tools, and we anticipate doing so going forward. However, our fixed-fee online services are becoming a larger part of our business and we expect to see continued growth.

Competing with the Forms Sellers: How to Position Yourself as the Smarter Choice

Brett T. Sullivan



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Poll Questions:

1. How many members of the audience offer fixed-price services?
2. How many members offer fixed-price service for purchase and payment through your law firm's website?
3. How many members are considering offering fixed-price services for purchase and payment through your website in the next 12 months?

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Initial Questions:

1. Who are the “form sellers”?
2. What do they do?
3. Why should I care about competing against them?
4. How can I compete?

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1. Who are the “form sellers?”

LegalZoom
LegalNolo
Zoom
Rocket Lawyer
MyCorporation

Copyright 2015 Lucent Law, PLLC

2. What do they do?

The traditional “form seller” model is to sell downloadable “legal” forms through a website for a fee (either on a fee per form basis or on a monthly membership model)

Claim not to provide legal advice

Copyright 2015 Lucent Law, PLLC

3. Why should I care?

- Meeting “unmet” legal needs
- Always available
- Upending traditional lawyer-client model
- Low cost (but are they really?)

Copyright 2015 Lucent Law, PLLC

3. Why should I care?

LegalZoom

- Founded 2001
- 200,000 legal plan “attorney consultations” (3/24/15)
- Commenced operations in UK in 2016
- Partnership with Sam’s Club to provide legal solutions to small businesses (10/23/14)
- \$200MM equity sale in Feb 2014
- Not a law firm; not subject to RPCs or other ethical obligations
- Access to venture capital

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4. How can I compete and make myself the “smarter choice?”

- Accessibility
- Be that trusted resource
- Remove friction points
- Understand and adapt to changing consumer models

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My Account | Office Hours: 8:30 am-5:00 pm PST, Monday-Friday | Telephone: (509) 413-1004

LucentLaw

Comprehensive Legal Services - Forms & Essentials - News - Knowledge Base - About Us -

The Lucent Law Story

We developed Forms & Essentials™ to complement our full-service law practice. We've leveraged technology to make it easier for you to access our knowledge and experience.

[Learn More](#)

Full Service

We are a full-service law firm, offering a comprehensive range of services to individuals and small businesses in the areas of real estate, business law, and trusts and estates in addition to our online offerings.

[Learn More](#)

Forms & Essentials

We offer a range of services online. Get started anytime for help with your business, real estate, personal, and estate planning needs with our convenient online Forms & Essentials™ site.

[Learn More](#)

Copyright 2015 Lucent Law, PLLC

Lucent Law has rethought the practice of law. Forms & Essentials is a convenient and secure platform to easily find and order the right legal service, delivered by experienced lawyers, for real estate, business, estate planning and personal legal needs. All at a clear, fixed fee—so the only surprise is how painless we've made hiring a lawyer!

Schedule a free 15 minute consultation to help you choose the right service

The Lucent Law Forms & Essentials Process

Step 1

You choose and order the package or service that best fits your needs.

Step 2

We review your information and conduct an optional consultation with you.

Step 3

We carefully prepare your documents and deliver them to you electronically.

Step 4

You sign your new legal documents - usually with a simple e-signature.

Forms & Essentials Services

For more information about Forms & Essentials services, please select a box below

Start Your Business

[Go](#)

Manage Your Business

[Go](#)

Real Estate

[Go](#)

Wills & Trusts

[Go](#)

Family & Personal

[Go](#)

Help & FAQs

[Go](#)

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Single Member LLC Formation Packages

Essentials Single Member	Plus Single Member	Premium Single Member
\$399	\$499	\$699
MORE INFO & ORDER	MORE INFO & ORDER	MORE INFO & ORDER
<p>This package includes:</p> <ul style="list-style-type: none"> Confirmation of LLC name availability Certificate of Formation Single Member Operating Agreement Initial Annual Report Organizational Minutes and Resolutions Owner's Manual for Your New LLC <p>Note: filing fees are in addition to package price</p>	<p>This package includes:</p> <ul style="list-style-type: none"> Confirmation of LLC name availability Certificate of Formation Single Member Operating Agreement Initial Annual Report Organizational Minutes and Resolutions Owner's Manual for Your New LLC Application for Federal EIN 25% discount on attorney consult <p>Note: filing fees are in addition to package price</p>	<p>This package includes:</p> <ul style="list-style-type: none"> Confirmation of LLC name availability Certificate of Formation Single Member Operating Agreement Initial Annual Report Organizational Minutes and Resolutions Owner's Manual for Your New LLC Application for Federal EIN 30% discount on attorney consult Washington Master Business License <p>Note: filing fees are in addition to package price</p>
See all LLC packages		

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Washington Wills

wa-wills.com

Forrest Carlson

Washington Wills wa-wills.com

What we do (for free)

Simple
Will-Drafting
Forms

Simple
Will-Drafting
Instructions

Lots of
Detailed
Information

Washington Wills

wa-wills.com

Washington Wills [Legal Library](#) [Ask a Lawyer](#) [Blog](#)

Free Model Forms

Each of the model forms below is free to download. Be sure to select the appropriate file type for the word processing software you plan to use.

Simple Will Template

[Simple Will Template for Microsoft Word \(.docx\)](#)
[Simple Will Template for Open Office \(.odt\)](#)

Writing Disposing of Tangible Personal Property Template

[Writing Disposing of Tangible Personal Property Template \(.pdf\)](#)
Note: You will only adjust this template by printing its final page and adding to it in your own handwriting, which is why this template is only available in .pdf format.

Legal Library

- [Get Started](#)
- [FAQ](#)
- [Glossary](#)
- [Free Model Forms](#)**

Washington Wills

- [About](#)
- [FAQ](#)
- [Terms of Use](#)
- [Privacy Policy](#)

Legal Resources

- [Legal Library](#)
- [Draft a Document](#)
- [Free Model Forms](#)
- [Glossary](#)

Connect with Us

- [Contact Us](#)
- [Pricing](#)
- [Blog](#)
- [Get Updates](#)

Washington Wills wa-wills.com

Putting Conditions on Gifts

In the definition of a [simple will](#), we explain that a simple will can include [unrestricted gifts](#), but cannot include any [restricted gifts](#). This does not mean that you cannot put any conditions whatsoever on gifts in a simple will. On the contrary, some conditions are perfectly acceptable in a simple will. A condition on a gift is allowed in a simple will if the condition will necessarily have been satisfied or not satisfied by the time shortly after the testator dies. Perhaps the most common condition on gifts in a simple will, and one you have seen several times already, is requiring that the beneficiary survive the testator for the gift to be valid.

Gifts: Survival, a common condition on a gift in a simple will

I give all of the rest, residue, and remainder of my estate to my wife, Jane Doe, if she survives me.

Requiring a beneficiary to have survived as a condition on a gift is acceptable because the condition will necessarily have been satisfied or not satisfied by the time shortly after the testator dies. In other words, using the above example, Jane Doe will either have survived or failed to survive the testator as soon as the testator has died.

If you want to place a condition on a gift in your will and have any doubt about whether the condition is

Definition: Intestacy

Intestacy is the state of having died without a valid [will](#). A person who has died without a will is said to have died "intestate," and the [probate assets](#) of such a person will be distributed according to the laws of descent and distribution in intestacy, which is determined by a state statute.¹

An intestate [decedent's](#) remaining probate assets, after payment of [creditor claims](#) and other expenses of the [estate](#), are distributed to his or her [heirs](#) instead of to [beneficiaries](#) that he or she has chosen. The decedent's heirs, and the share of assets that each of them will receive, are determined according to strict statutory rules. One may think of the laws of descent and distribution in intestacy as a sort of default will that the State of Washington automatically provides for free to its residents who do not make a will of their own.

Under the laws of descent and distribution in intestacy, the following rules apply for determining a decedent's heirs and the share of the decedent's probate assets that each heir will receive:

- If the decedent has a surviving spouse or state registered domestic partner, he or she will receive all of the decedent's [community property](#), plus:
 - one-half of the decedent's [separate property](#) if the decedent has surviving [issue](#); OR
 - three-fourths of the decedent's separate property if the decedent has no surviving issue, but does have at least one surviving parent or surviving issue of a parent; OR
 - all of the decedent's separate property if the decedent has no surviving issue, nor surviving parent, nor surviving issue of a parent.
- All of the decedent's probate assets that are not distributed to the decedent's surviving spouse or domestic partner are distributed as follows:

Legal Library

[Get Started](#)

[FAQ](#)

[Glossary](#)

[Free Model Forms](#)

Why it works

Builds trust by
empowering the
consumer

Builds confidence
in us through
demonstrated
expertise

Debunks form
sellers' myths
about ease and
simplicity

CHAPTER TWO - B

**COMPETING WITH THE FORMS SELLERS:
HOW TO POSITION YOURSELF AS THE SMARTER CHOICE**

January 2016

**Forrest J. Carlson
Law Office of Forrest Carlson**

Phone: (206) 631-9575
Email: forrest@forrestcarlson.com

FORREST J. CARLSON is a lifelong advocate for increasing access to legal services. He is one of the founding members of the Washington State Bar Association's Low Bono Section, and he is a panel attorney for Washington State's Moderate Means Program. Forrest is one of the founders and coauthors of Washington Wills, a free legal resource to help Washington residents draft their own wills, for free, using instructions and forms written by licensed attorneys.

In his free time, Forrest is a technology and startup enthusiast and a web design hobbyist. Forrest often promotes and speaks publicly about law and entrepreneurship, law-related technology, and increasing access to legal services through technology. He has been practicing law since 2008.

LEGALZOOM & TODAY’S LANDSCAPE OF LEGAL FORMS SELLERS

In December 2015, John Suh, CEO at LegalZoom, gave an interview on the Lawyerist Podcast. If you haven’t heard it, it’s worth a listen.¹ Suh said that LegalZoom has become a “focal point of the imagination of lawyers,” but that the attention is inordinate. To put matters in perspective, Suh claimed that LegalZoom is “the nation’s largest brand name in the legal sector,” yet its revenue (a few hundred million dollars) comprises less than 1% of legal spending in the United States.

Suh also claimed that LegalZoom is not in competition with lawyers as much as it is supplementing the work that lawyers do. He said that LegalZoom has moved on from its business model from five years ago — back when it primarily sold legal forms — to a new model of working closely with “technology-enabled lawyers” who can serve their clients using LegalZoom’s technology tools. In any case, Suh claims that to the extent LegalZoom is competing with lawyers, its revenue still only adds up to about \$10 per solo and small firm lawyer in the United States, which is not a serious dent in lawyers’ revenues.

Though you and I may quibble with Suh on his math and how he envisions the size and apportionment of legal spending in the United States, his statements still lead to important questions:

- What does LegalZoom’s move away from purely selling forms tell lawyers about the forms market? Is the forms market saturated, or has LegalZoom hit some other barrier in expanding its forms-selling business?
- Does LegalZoom’s failure to capture more than 1% of legal spending in the United States demonstrate it lacks a critical advantage that only lawyers can provide? Does it demonstrate that the consuming public is aware of the important difference between buying a form and hiring a lawyer?
- Even if a lawyer thinks of a creative way to sell forms in competition with LegalZoom, is there enough of a market to make it worth the lawyer’s time?

ETHICAL AND MALPRACTICE CONSIDERATIONS IN SELLING LEGAL FORMS

Whether or not they sell legal forms online, lawyers are bound by the Rules of Professional Conduct. Since legal forms may be distributed online under a variety of business models (many of which are still untested in the Washington State market), a lawyer distributing legal forms

¹ Episode #45: CEO John Suh on Why Lawyers Should Love Legal Zoom.
<https://lawyerist.com/95241/episode-45-ceo-john-suh-lawyers-love-legalzoom/>

under any business model ought to give careful consideration to which RPCs may apply to them in the context of their particular method of distributing the forms. Note, in particular, RPC 5.7 (and its comments), which directly addresses lawyers' responsibilities when providing law-related services, which the rule defines as "services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer."

As with any website for a lawyer or law firm, lawyers who provide legal forms and general legal information on a website also run the risk of inadvertently forming lawyer-client relationships with anonymous website visitors, which in turn brings about risks of professional negligence and failure to recognize and avoid conflicts of interest. Lawyers should, of course, take reasonable steps to prevent this from happening.

A LAWYER'S ADVANTAGES AND DISADVANTAGES IN SELLING LEGAL FORMS

Ethical and malpractice considerations aside, lawyers have several distinct advantages and at least one major disadvantage in the legal forms-selling market.

First Advantage: a License to Practice Law

Lawyers have the obvious advantage of having a license to practice law. Practicing law without a license in Washington State is a crime. RCW 2.48.180. For lawyers who want to compete with unlicensed forms sellers, this is a huge advantage. To understand why, let's first take a look at what does *not* count as practicing law.

The Washington State Supreme Court has defined the practice of law in GR 24. Selling legal forms in any format is specifically excluded from the definition. GR 24(b)(8). Similarly, providing information of a general nature about the law and legal procedures to members of the public is not part of the definition of practicing law. GR 24(d). These are activities that are not illegal for an unlicensed legal forms seller to do. Unlicensed forms sellers can (and do) sell forms and provide general legal information.

On the other hand, practicing law *does* include giving advice or counsel to others as to their legal rights; it also includes the selection, drafting, and completion of legal documents. GR 24(a).

Practice of Law

- Giving advice or counsel to others as to their legal rights
- Selection, drafting, and completion of legal documents

Not Practice of Law

- Selling legal forms in any format
- Providing information of a general nature about the law and legal procedures to members of the public

Unlicensed legal forms sellers cannot give legal advice, and they cannot select, draft, or complete legal documents for members of the public. Why is this an advantage for lawyers? A lawyer who sells forms can lawfully provide a lot more value to a client in connection with selling a form than an unlicensed forms seller can. A lawyer can provide guidance. A lawyer can give an opinion. A lawyer can select, draft, and complete a legal document.

Given this advantage, it should be no surprise that John Suh and LegalZoom are eager to team up with lawyers and law firms.

Second Advantage: No Barrier to Practicing Technology

Technology companies that sell legal forms are prohibited from practicing law, but lawyers are not prohibited from practicing technology. Yes, LegalZoom has sophisticated technology in place to sell legal forms online, but there is no legal barrier stopping any lawyer or law firm from adopting or building its own technology systems to do the exact same thing.

The world of website and app design is completely open to lawyers. In contrast, LegalZoom has had to pay over \$16 million to defend itself in litigation for unlicensed practice of law.² Just imagine if lawyers had to have multimillion dollar litigation defense funds to protect their right to build law firm websites and mobile phone apps.

Third Advantage: Deep and Robust Legal Expertise

The third advantage lawyers have is their understanding of the nuances of the law and its systems and procedures. Many lawyers have enough experience in their practice areas of choice that they could talk ceaselessly about the contours of what they practice every day. Lawyers know that there is really no such thing as a truly “simple will” or a truly “simple divorce” because lawyers have the training to recognize there are many layers of complexity that underlie the preparation of even the simplest legal documents.

In contrast, most online legal forms sellers provide superficial information in scant quantity on their websites about the law as it relates to the forms they sell. This is true even though the forms sellers could lawfully provide copious general information about the law under GR 24(d). A likely reason for the lack of depth of information is that most major online forms sellers sell a massive variety of forms, and it would be cost-prohibitive to provide and maintain comprehensive and accurate legal explanations in connection with each of those forms.

A lawyer with a great depth of knowledge about a practice area has a huge advantage because the lawyer can provide a much greater depth of information in explaining legal forms to

² *Ibid.*

consumers than online forms sellers whose knowledgebase has to span a massive variety of forms.

Disadvantage: Difficulty Obtaining Investment Capital

Lawyers' monopoly on the right to practice law in Washington State is a double-edged sword. While it prevents unlicensed forms sellers from practicing law, it also prevents unlicensed investors from investing in legal innovation. The same statute that criminalizes unlicensed practice of law also prohibits an unlicensed person from holding an investment or an ownership interest in a business primarily engaged in the practice of law. RCW 2.48.180(2)(c). This means that traditional methods of obtaining investment capital for a startup (angel and venture capital investments) are not available to lawyers and law firms who attempt to develop new business models for practicing law.

In other words, entrepreneurial lawyers who need funding to develop sophisticated technology for selling legal forms online will likely have to foot the bill themselves, obtain loans, or seek out lawyers as investors. A lawyer who gives an ownership interest in an online forms-selling business to an unlicensed investor will be limited to activities that do not amount to practicing law. Such a lawyer would face the same limits under RCW 2.48.180 as LegalZoom faces.

MY OWN EXPERIMENT: WASHINGTON WILLS

In October 2015, working with another lawyer, John H. Varga, I published a do-it-yourself website to help Washington residents draft their own wills and other basic estate plan documents for free. The website is called Washington Wills.³ Our website is, in part, an experiment in inbound marketing to help us determine:

- whether demonstrating expertise through free legal information on the web will translate into direct contacts by potential clients;
- whether demonstrating the actual depth and breadth of knowledge needed to draft a proper “simple will” will lead to website visitors electing to hire a lawyer instead of using a forms seller;
- whether consumers who need something more than just a basic estate plan will contact lawyers who demonstrate comprehensive expertise in basic estate planning for their legal needs;

³ Washington Wills. <http://wa-wills.com/>

- whether providing a large volume of comprehensive legal information through a website will lead to the website appearing in better positions on Google, Bing, and other search engine results pages than more traditional law firm websites; and
- whether providing genuinely helpful free legal information that is otherwise difficult to find will encourage the public, bloggers, lawyers, content aggregators, and media outlets to put forth more effort to raise awareness of a website resource.

The Washington Wills experiment is still in progress.

CHAPTER TWO - C

**COMPETING WITH THE FORMS SELLERS:
HOW TO POSITION YOURSELF AS THE SMARTER CHOICE**

January 2016

Virginia A. Leen
VL Law and Mediation Office PS

Phone: (425) 576-4071
Email: virginialeen@gmail.com

VIRGINIA A. LEEN has been a sole-practitioner in the area of family law for 19 years. She is licensed in California and Washington, with her primary office in Kirkland, Washington. She is also a mediator and Title 26 Guardian Ad Litem for King County Superior Court. She is a founding partner of FasTrack Divorce, LLC, a business designed to create maximum uniformity and streamlining of the attorney-involved dissolution process.

NOTES

CHAPTER THREE

SOCIAL MEDIA MARKETING FOR THE SMALL FIRM

January 2016

Kevin O’Keefe
LexBlog, Inc.

Phone: (206) 321-3627
Email: kevin@lexblog.com

KEVIN O’KEEFE is CEO and Founder of LexBlog, a legal network comprised of over 1,100 legal sites, which are published by lawyers and law firms around the world. LexBlog supports these publishers with digital media, blog and social media solutions and services.

O’Keefe was a trial lawyer for 17 years, successfully marketing his law firm on the Internet in such a positive way that USA Today said “If he isn't careful, he may wind up giving lawyers a good name.” As an attorney, he was a sustaining member of the Association of Trial Lawyers of America and a board member of his state's trial lawyers association.

O’Keefe’s blog, Real Lawyers Have Blogs is a leading source of information on the use of digital media, blogs and social media for professional and business development.

Nuts and bolts of social networking and social media

Professional and business development in the law is all about relationships and a word of mouth reputation. Never before have lawyers been presented the opportunity to build relationships and word of mouth the way the Internet allows lawyers to do so today.

The key for lawyers is learning how to use social networks and social media effectively. Learning here comes from trial and error.

Adapting to the cultures each social media present is like traveling to a foreign country. You get comfortable over time and keep the faux pas to a minimum as you start.

Listening

Social media and social networking is a means of engaging others in a real and authentic fashion. Just as engaging others in person at a networking event requires you to listen first and talk second, listening is more important than producing content when it comes to networking online.

Listening online requires you to use listening tools that are easy to use and free. The first type of listening tool, and the most effective tool, is a news aggregator (RSS reader). A news aggregator enables you to follow relevant sources (blogs and mainstream media) as well as keywords and key phrases relevant to your work.

A news aggregator allows you to network with your target audience of clients, prospective clients, and the influencers of these two – bloggers, association leaders, reporters, and publishers.

By sharing items from your news aggregator on social networks you'll pick up a following from all three of these groups in your target audience. Engagement will ensue with prospective clients and influencers by virtue of what you share.

A news aggregator is also key for blogging in that you will be able to engage in the existing “conversation” that is being reported and blogged upon.

[Feedly](#) is the most popular news aggregator. It’s an application for various non-mobile web browsers as well as mobile devices running on iOS and Android. Feedly compiles news feeds from a variety of online sources for you to customize and share with others. Feedly also allows you to monitor key words and key phrases from Google News.

[Flipboard](#) is a social network and news aggregator providing stories in an eloquent magazine-style format that users “flip through” on mobile devices, including the iPhone and iPad. Flipboard has proven popular among lawyers because of its intuitive interface that reads like a magazine with heavy imagery. In addition to aggregating items from sources and subjects you have chosen, Flipboard pulls news and information that has been shared by those you are following on social networks such as Twitter and Facebook.

Flipboard recently added a feature where you may select topics and Flipboard will gather the best content from the most influential sources. The more you use this feature, the “smarter” Flipboard gets in delivering you the news and information you’d like to see. Think “Pandora for content.”

Both Flipboard and Feedly allow you to share items from the respective applications directly to social networks, including LinkedIn, Twitter, Facebook, and Google+.

Twitter, LinkedIn’s Pulse, and Facebook can also be used to listen to relevant discussion.

Blogging

Nothing equals a blog for enabling a lawyer to showcase their passion, experience, and care. Rather than publishing at third-party sites, lawyers have a home base they own forever. A law blog’s content will be reached on searches from Google and can be strategically shared by a lawyer with clients and prospective clients.

Niche blogs tend to bring greater success than general topic blogs. Niche blogs become must-have content for certain people and identify the lawyer publisher as a “go to” lawyer in an area of the law and/or locale.

Niche blogs do not pigeonhole a lawyer into one type of work, though many lawyers have welcomed this development. Niche blogs open doors.

Clients seeking referrals to other lawyers will lead to networking opportunities. Other clients, because of the trusted relationship you have established, will look to you to do legal work related to your niche.

Discovering your passion, pinpointing your skills, identifying with your audience, solving a problem, and establishing your goals are the five steps to follow in defining your blog niche. Here’s a [post from my blog](#) which details these five steps.

Seven keys in building a law blog

- **Independent site and domain.** A blog should live on a separate site from a law firm website. This enables the blog and the blogging lawyer(s) to achieve a level of authority that could not be achieved through marketing, which is what you have with a blog in a website. Blogs separate from websites will be cited and shared much more. Such a blog also opens up the door to guest posts from and interviews with influencers who may shy from opportunities to participate in your website marketing.
- **Brand with blog title first.** Your blog is a publication published by the law firm or lawyer. Think Nevada Water Lawyer on the spine of a treatise – subtly saying it’s published by the law firm of Smith and Jones. Claim that mantle of expertise a blog can give you.
- **Value of design.** First impressions matter. Like it or not, people judge lawyers by their dress and their offices. Bad design is second to only bad content in turning off potential readers. Good design adds to your credibility.

- **Authenticating information.** Share information about you, your firm, what you do (especially as it pertains to your blog niche), and your office location on interior pages of your blog. This information separates you from those who may be blogging in their mom's basement.
- **Comments.** Enable comments. It shows you listen. Not to worry, you will get few, if any comments. The only people more afraid of comments on a law blog than you and your firm are the people who may leave them. Those left tend to be academic and all comments should be moderated before they go live. Note that much law blog commentary today takes place on social networks – Twitter, LinkedIn, and Facebook.
- **Viewable on social readers.** Content moves socially. Your blog must be easy to read and navigate for users on Facebook, LinkedIn, and Twitter.
- **Mobile first.** Forget non-mobile devices. Good mobile design and development, preferably responsive design, will render well on non-mobile devices. Upwards of 50% of your blog readers will soon be reading their content on mobile devices. Mobile users are also more apt to share blog content, something critical for your blog's distribution.

Four keys to blogging success

- **Write to the medium.** A blog post is not an article, alert, or email newsletter. A blog should be written in a conversational tone. Being real and authentic is key; no one else writes a lawyer's blog posts. Link liberally, blogging is a conversation where you are referencing what others are saying (writing). Make your posts "scannable" with bullets, block quotes, and brief paragraphs.
- **Be strategic.** Rather than just sharing information, think about who you can engage through a blog post. Referencing people and organizations in your posts will draw their attention to you and what you said. Offer the ability to do guest posts to referral sources, business leaders, and experts in the field. Email interview those same people with four questions – the answers can be turned into a post. These people will share word of their interview, their guest, of you and your blog.

- **Be time relevant.** When legal, business, and consumer news relevant to your niche is breaking, the news will be reported and commented upon by bloggers and reporters. These bloggers will include other lawyers nationally and in your community. Blog then, not a week from then, so you are relevant and get seen by those in the discussion.
- **Be socially relevant.** Tap into what is being discussed in your “community.” Listen to what is being written and engage those bloggers and reporters. You’ll be blogging on items people are most interested in and find more people sharing your blog posts on social media.

Elements of a post

- **Title of post.** Keep titles brief and descriptive of your post. Four to six words and sixty to seventy characters is optimal. Such a title will properly display in Google’s search results, be easy to view by email and news aggregator subscribers, and be readable on mobile.
- **Image.** A clean image at the top of a post draws readers’ eyes. Your post will be more attractive in news aggregators and on mobile devices. Look at popular news sites a la The New York Times or Mashable. Images are everywhere.
- **One point.** When you get to the second and third point, think of doing a second post. Blogs tend to cover a point and conclude.
- **Brevity.** There is no perfect word count for a blog, but a good blog post may be 350 to 500 words. We’re not talking articles 1,200 words long. People, especially the influencers, consume a lot of blog content. They won’t return to blogs with posts that are always long.
- **Keywords and SEO?** Do not blog thinking of keywords and SEO. Clear titles and valuable content that people can not get elsewhere, combined with sound technology, will get your posts at the top of Google search results.
- **Meta description.** Blog software enables you to insert a brief description of your post. Include a sound bite and it will appear below the title of your post in Google and attract readers.

LinkedIn

- **Personally crafted profile.** Take the time, maybe five or six hours to personally write your profile. Do not copy and paste from your law firm bio. Put in information for each position you've held and what schools you've attended. Why you worked here, what you learned, why you left etc. Your title next to your name should describe what you do, not list your title. "Patent Lawyer" is much better than "Partner." Get all of your contact info in – email, phone, cell phone, website, blog, Twitter, Facebook etc. Help people who are looking for you. Seek out recommendations, not endorsements, even from peers and mentors.
- **Build your network.** Connect with those people you meet in person and online. Send a personalized request to connect, it says a lot about you. Accept connections from people who work in areas relevant to what you do, don't limit connecting to those people you have met before. Dig your well before you get thirsty.
- **Share items in news update.** Feedly and Flipboard enable you to share blog posts and news on LinkedIn with an accompanying comment from you. By doing so LinkedIn will learn about your interests and suggest to others with similar interests that they connect with you.
- **Network with people you engage on LinkedIn.** People will share, comment upon, and like items you share. Take the opportunity to engage those people, as appropriate with an inMail on LinkedIn.
- **Take contacts face to face.** LinkedIn is a perfect stepping stone to meeting in person. Ask to meet with connections when traveling to their communities. Same for reporters, bloggers, and other influencers.

Twitter

- **Start by following and listening.** If Twitter is new to you, it is much easier to listen than to open your mouth. Look for people you know and trust who are using Twitter. Follow them. This may include lawyers from coast to coast, reporters, authors, and leaders in your local community. Do a Google search on best people to follow on "X" subject. Look at who Twitter suggests you may want to follow.

- **Retweet and reply.** Start to get seen by favoriting a tweet, replying to a tweet with a comment, or retweeting items you believe your followers would find of value.
- **Create lists.** Following everything everyone you follow tweets can be like watching all 500 channels on DirecTV all at once. By creating lists of people sharing relevant people and people who you would love to get to know, you can manage what can feel like noise.
- **Share items with a Twitter attribute.** Feedly and Flipboard allow you to share items on Twitter directly. Attribute the item you are sharing to its author by including the author's Twitter handle. The author will see your Tweet leading to possible engagement.
- **Meet people in the wake.** Engage those people you'd like to get to know who are following you, favoriting your tweets and retweeting items you've shared. You can do this via Twitter, LinkedIn, or even and email.

Facebook

- **Get comfortable with privacy.** The concept of a company monitoring your digital behavior for the benefit of advertisers leaves many lawyers uncomfortable. However your web behavior has been monitored by Google and other companies for years. Your buying behavior has been monitored by grocers, drug stores, catalogues and credit card companies for decades. The benefits of relationships and word of mouth outweigh privacy concerns. Lawyers, of course, need to be discriminate in what they post.
- **Social is personal.** Relationships are built on a person to person basis. It is difficult, or impossible, to separate your personal and business life, especially on Facebook. Law firm pages do not work as well as Facebook personal accounts in building word of mouth and relationships.
- **Share personal and business items.** As you Facebook more, its algorithms will display your posts to those friends interested in the item you shared. Not every "Friend" sees everything you post. Get comfortable sharing those items you are passionate about, whether it be personal or business.

- **Add “Facebook Friends.”** Do not limit your “Friends” to just personal friends. Look also for people whose Facebook posts may add value to your life. Think of Facebook as the front page of your news brought to you by people you have come to trust. “Friends” may include people you meet in person and online. Overtime Facebook will suggest people you may wish to befriend. Consider reaching high to befriend people in business, the law, and the media when you have a fair amount of mutual friends.
- **Short form posting.** Though a blog will always be a lawyer’s home base, Facebook is an excellent place to share a blog post or news story accompanied by a short post by you. Three to five paragraphs can work to generate “Likes” and “Comments.” Share your blog posts with an introductory comment or question.

Other Resources

- [Real Lawyers Have Blogs](#) – thousands of posts archived in sections covering social media, blogging, Facebook, Twitter, LinkedIn, and more.
- [LinkedIn in an hour for lawyers](#) – ABA
- [Blogging in an hour for lawyers](#) – ABA
- [Twitter in an hour for lawyers](#) – ABA
- [Facebook in an hour for lawyers](#) – ABA
- [Social media for lawyers: The next frontier](#) – ABA

Kevin O’Keefe

Kevin O’Keefe is CEO and Founder of [LexBlog](#), the leading provider of professional blog solutions to the legal profession. The LexBlog network comprised of over 1,100 legal sites and 9,000 legal bloggers is the largest professional blog network in the world.

O’Keefe was a trial lawyer for 17 years, successfully marketing his law firm on the Internet in such a positive way that USA Today said “If he isn’t careful, he may wind up giving lawyers a good name.” As an attorney, he was a sustaining member of the Association of Trial Lawyers of America and a board member of his state’s trial lawyers association.

O’Keefe’s blog, [Real Lawyers Have Blogs](#) is a leading source of information on the use of digital media, blogs and social media for professional and business development.

LEXBLOG™



Social Media for the Small Firm

Kevin O'Keefe
CEO and Founder, LexBlog, Inc.

Placeholder text lines

Why am I here?

- Raised in rural Wisconsin
- Practiced law in rural Wisconsin for 17 years
- Helped people online while practicing
- Seattle based online law community
- VP of Business Development at LexisNexis
- Blogging and social media built LexBlog



Aim high



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Why not you?

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Why care about social media?

- 73% of online adults use social networking sites
- 30% of their time online is using social networks
- 71% use Facebook
- 18% use Twitter
- 22% use LinkedIn
- 43% of businesses using LinkedIn brought in clients last year
- 36% businesses using Twitter brought in clients last year
- 46% rely on social when making buying decisions
- 67% likely to buy from business they follow on Twitter

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Relationships

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Word of Mouth Reputation



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Listening



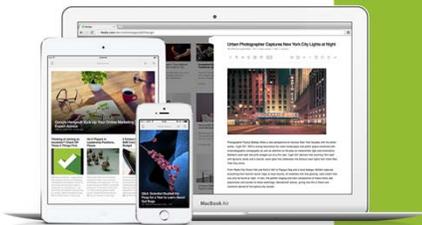
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Feedly: The sites that matter in one place



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Flipboard: social news magazine



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LinkedIn

- Personally crafted profile
- Build network
- Share items in status updates
- Network with people engage in LinkedIn
- Take contacts to face to face

11

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Blogging



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Define your niche

- Discover your passion
- Pinpoint your skills
- Identify with your audience
- Solve a problem
- Establish your goals



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Building a blog

- Independent publication and site
- Brand with blog title first
- Value of design
- Authenticating information
- Comments
- Viewable on social and reader
- Mobile first



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Keys to success

- Write to the medium
- Blog strategically
- Be relevant
- Be socially relevant



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Elements of a post

- Title
- Image
- One point
- Brevity
- Keywords and SEO?



Twitter



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How to use

- Start following/listening
- Retweet and reply
- Create lists
- Share items with Twitter attribute
- Meet people in the wake



Facebook



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How do I use it?

- Get comfortable with privacy
- Social is personal
- Share personal and business items
- Add "Facebook Friends"
- Short form posting
- Engage



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[Email: kevin@lexblog.com](mailto:kevin@lexblog.com)

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CHAPTER FOUR

ATTORNEY UNDER-EARNING: THE SIGNS, SYMPTOMS AND SOLUTIONS

January 2016

Ann M. Guinn
G&P Associates

Phone: (253) 946-1896
Email: anngp15@aol.com

ANN M. GUINN, practice management consultant to solo and small law firms, helps her clients build and maintain profitable, client-focused, and satisfying practices by reinforcing what's working and fixing what's not working in their businesses. Ann particularly enjoys helping attorneys earn what they are worth by showing them how to replace the behaviors that result in underearning with positive behaviors that honor their value to their clients. She regularly shares her knowledge through webinars, CLEs, private membership groups, and one-on-one consulting. Ann has served 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 and Small Firm Conference. She is a member of the advisory board for the LexisNexis Firm Manager program, and is a regular contributor to the LexisNexis "Business of Law" blog.

Ann has been a featured speaker at ABA meetings, NY Legal Tech, 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 bookstore. To receive her free management tips newsletter, please e-mail her at ann@annguinnconsulting.com.

Self-Limiting Behaviors: How Attorneys Underearn

by
Ann M. Guinn
G&P Associates
(253) 946-1896 ann@anguinnconsulting.com

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SELF-LIMITING BEHAVIORS: HOW ATTORNEYS UNDEREARN

As a consultant to small law firms, I have discovered an unsettling phenomenon amongst the attorneys I meet. So many of these practitioners are struggling with chronic underearning, and I am at a complete loss to explain why. Simply put, *underearning is earning below your potential*. Some of the symptoms of underearning include:

- not living the life you want;
- not being able to provide the lifestyle you would like for your family;
- not making enough money to cover your basic needs;
- not having enough money each month to be able to save for emergencies or retirement;
- not being able to give your staff the raises or bonuses they deserve;
- living in deprivation;
- not being able to do the things with the business that you would like; and
- constant stress about money.

Underearning is about making the choices that keep you earning below your potential. In his book, *Earn What You Deserve*, Jerrold Mundis tells us that underearning may take an active form or a passive form. *Passive* underearning is about choosing not to do something, or failing to do something that would have resulted in you making more money. Failing to raise your fees, refusing to spend money on software or equipment that would make you more efficient and productive, or not tending to your marketing are examples of passive underearning. *Active* underearning involves knowingly doing something that will cause you to underearn. Examples include: accepting a client whom you believe will not be able to pay your bills, providing excessive pro bono services, discounting your fees, writing off

time, handling certain administrative (nonbillable) tasks yourself that could be outsourced (e.g., payroll and bookkeeping responsibilities, etc.).

Either consciously or unconsciously, too many attorneys are making the choices that cause them to underearn.

You are responsible for you.

Consider the stories of several solo practitioners. Each has a different set of issues, a different set of circumstances. You be the judge—who's an underearner and who isn't?

For the past 15 years, Sarah has been a solo practitioner with a lovely office suite in a wealthy community. With the help of her loyal, but frustrated, assistant, Sarah handles family law matters and does a few wills here and there. She is thousands of dollars in debt with credit cards and a line of credit. Sarah gives away hours of time each week because she “can't be bothered” making time entries for reading and responding to e-mails or chatting on the phone with clients. She offers free 30-minute initial consultations, but then loses control of the time and ends up spending one to two hours with each potential client. Sarah hates the idea of marketing, so her marketing plan consists of a small ad in the Yellow Pages and a one-page website. She much prefers to wait for her clients to refer others to her. She has never seen a profit and loss statement for her business, and has no interest in doing so. Sarah isn't overly worried about her financial problems because she knows she's the lone beneficiary of her 76-year-old Auntie Carole's estate and that money will more than settle her debts and get her back on her feet (providing Auntie Carole doesn't go into skilled nursing for the last few years of her life).

Is Sarah an underearner? Big time. Can you spot the self-limiting behaviors? How about these, for starters:

- fails to record all time worked (passive);
- consistently spends more time than planned in her free initial consultations (active);
- sends out client bills only 3-4 times per year (passive);
- writes off time (active);
- pays little to no attention to her firm's financial statements (passive);
- puts little effort into marketing to increase business (passive); and
- lives in hopes that someone else will get her out of her financial mess (passive).

Now, let's take a look at Roger's situation. While his issues differ from Sarah's, the end result is the same—underearning.

Roger has been in a small firm for most of his 23 years as an attorney. With a focus on business litigation, his practice is a nice complement to the practices of his two partners. Roger records all of his time meticulously every day. In fact, his time records are monuments to the art of timekeeping:

8:07-8:09	Read e-mail from client Jordan re settlement offer
8:09-8:14	Respond to client's e-mail
8:14-8:27	Coffee run
8:27-8:43	Review and sign motion in Smith case
8:43-8:48	Photocopy motion for forms file

If anyone could bill accurately and fairly for work performed, it would be Roger. He captures every minute of every day, so his billings should be maximized, right? One would think; however, Roger routinely writes down every client bill by about one-third of his time. It is apparently without conscious design (as far as the percentage of write down goes), but that's how it works out. Nearly every time entry on every bill shows some amount of "N/C" (no charge) time – usually 30-35 percent of each entry. In fact, his client bills look a lot like this:

2/9/09	Preparation for and meeting with opposing counsel to discuss the proposed sale of the laundromat to settle the debts of the parties to this matter; follow-up telephone conversation with client to provide an update on the status of her case; follow-up letter to opposing counsel confirming the agreement reached today during our meeting.	3.4 hrs (N/C 1.2 hrs)
--------	--	--------------------------

Bill after bill after bill reflects this strange practice, an automatic write-down of each time entry, but always showing the client the actual time recorded, as well as the write-down. When asked the reasoning behind this, Roger replies, "I guess I just don't see the value of my work." With a stellar reputation in the local legal community, it is hard to understand why Roger doesn't have more self-confidence. His work is good, it is correct, it is timely, and it is responsive to his client's needs. He records every minute of his day, yet Roger is a chronic underearner. His self-limiting behaviors are crystal clear:

- not billing for all time worked;
- writing down time; and
- undervaluing his work.

Both Sarah and Roger are on the verge of destroying their practices. Sarah continues to complain about her financial woes, but thus far has been unwilling or unable to change her behavior to stop her pattern of underearning. She much prefers to wait for something or someone to save her (her clients to refer business, her boyfriend to marry and support her, a winning lottery ticket, Auntie Carole to catch a bad cold). Roger is more amenable to change, although at times he is merely going through the motions for the sake of the other partners in his firm. He still has difficulty believing he is worth his fee. Both attorneys are still hanging on by a thread. What a sacrifice! Their careers could have been quite different for both of them.

Don't be fooled by your income.

Now, let's look at Allan. His underearning isn't so easy to spot because he's making a decent living. Allan is a bankruptcy attorney with a good practice based on lots of referrals from past clients. He has three full-time employees to help him provide a superior level of customer service. Allan is well-thought-of in the local legal community, and he donates time to a legal clinic. Last year, Allan's firm grossed \$425,000 and Allan took home about \$115,000.

With a personal income of \$115,000, how can Allan be classified as an underearner?

First, you need to remember the definition of an underearner: someone who is not earning at his/her potential.

Second, a peek at his aged accounts report will explain Allan's underearning. To attract clients, Allan advertises "payment plans available," and virtually every client accepts his offer. (I would, too!) He suggests a small amount each month, ranging anywhere from \$25 to \$100, depending on the client's general prospects. The problem is that these are bankruptcy clients, and all of their debts are about to be discharged. Allan doesn't exempt his fees because he claims, "My clients always honor their obligation to me."

With all due respect, they don't. Allan has more than 300 clients on his books who haven't made a payment in more than a year—many haven't sent money in several years. This means that although Allan charges \$895 for a Chapter 7 bankruptcy, the clients who are delinquent have paid far less than that to achieve their freedom from debt.

Allan is guilty of both passive and active underearning. His passive underearning (not doing something which, in turn, causes him to underearn) is seen in his failure to collect his fee in full before beginning work, and failure to exempt his fees from his client's discharge of debts. Passive underearning also appears in his failure to pursue past-due accounts. Along with not getting paid in full, carrying excessively aged accounts on his books is costing him money in administrative expenses. Allan's active underearning is seen in his payment plan

offer to people who are consulting with him because they have serious money issues. He is choosing to do something that has a high probability of causing him to underearn.

There are at least four steps Allan can take to stop the underearning:

1. He needs to accept only the clients who can pay his full fee up front. If they can't do it all at once, he might allow the client to divide the fee into several smaller payments over one or two months (all due before Allan will file the case with the court).
2. He must actively pursue his past-due accounts. He's got about \$250,000 on the books in accounts receivable. Given his revenues, he shouldn't be carrying more than about \$70,000-\$75,000 in aged accounts. He's either got to get more aggressive with his collections policy, or he needs to write off the very old accounts, vow never to get into this situation again, and move on.
3. He must stop offering payment plans. Period. Think about it for a minute. If you needed to file for bankruptcy and had to come up with \$895 for attorney's fees, I'm sure you could figure out a way to get the money. You could go to your parents for a loan, ask four friends to loan you \$225 each, ask nine friends to loan you \$100 each, sell back vacation or sick time to your employer, have a garage sale, sell some of the stuff you bought on credit on eBay, etc. Putting clients on payment plans isn't working for Allan, so he needs a different policy.
4. Allan needs to respect and care for his business. If he doesn't, who will?

Allan has made the choices that cause him to underearn. Now, it's time for Allan to choose to earn at his potential.

Sometimes it's okay to earn less.

Our last solo practitioner is Kay, an estate planning attorney. Kay gave birth to her first child early in the year and took two months off on maternity leave. Since then, she has been working only about 3.5 days a week to spend more time with the baby. Last year, Kay's practice grossed about \$89,000, and she pocketed about \$45,000.

From her numbers, you might assume that Kay is an underearner. Indeed, some might say that she isn't earning at her potential because she works part-time; however, let's take a closer look at Kay and her money.

Kay pays by the hour to share a legal assistant's time with another attorney on her floor. Her downtown office is located in a large suite, which is leased by her husband's employer. The boss cut her a terrific deal because he likes the idea of having an attorney handy, especially one who is also a notary public. Kay's overhead averages about 35 percent of revenues, so she runs a pretty tight ship. Probate is a small part of her practice, and she does bill hourly for that work (using an evergreen deposit account); however, most of her

work (estate planning) is paid on a flat fee basis, and she never starts work until she's been paid in full. She's able to pay all of her office expenses, contribute to the family pot, fund her retirement plan to the maximum each year, save for the unforeseen, enjoy the lifestyle she wants, and spend precious time with her baby. Does Kay have the potential to make more money? Sure, but it would be at the expense of her preferred lifestyle. So, given her personalized business model, minimal overhead expenses, and all the circumstances of her life right now, Kay isn't underearning. She's meeting her needs at all levels.

Over the years, I have encountered a variety of behaviors that lead to underearning. Some are personal issues, while others are poor management strategies. Do any ring a bell with you?

- Failure to tend to the business side of the practice
- Giving away time
- Discounting fees
- Irregular billing
- Failure to market or relying on ineffective marketing strategies
- Accepting bad clients/cases
- Accepting clients who can't pay
- Lack of self-motivation
- Undervaluing your work
- Underbilling for work performed
- Write-offs
- Self-limiting beliefs
- A continuing expectation that someone or something will save you
- Rationalizing low income
- Lousy negotiating skills
- Reverse snobbery ("People with money aren't nice")
- Subtle self-sabotage
- Co-dependency (putting other people's needs ahead of your own)
- Living in financial chaos
- Lack of self-discipline
- Not working enough hours
- Filling free time with non-business activities and tasks (Internet surfing, computer games, endless chores, personal e-mails, shopping, and gazing out the window for long periods of time).

If you are an underearner, unless you understand how your behavior is taking money out of your pocket and those of your partners, you're going to have a hard time changing your behavior. Unless you see underearning as depriving your family of a better lifestyle, you aren't going to change. Unless you see underearning as earning below your potential—and recognize that you could be earning more—you will never believe that it doesn't have to be this way. Unless you get angry about it, you are not going to stop underearning.

Recognizing the signs of underearning.

Okay, so do you think you might be an underearner? Take a moment to answer the following questions and decide for yourself.

Circle the statements that apply to you, as well as those that might apply but you just aren't sure if they accurately describe you or not.

1. I often give away my services (pro bono work, not billing for all of the time worked, volunteering, answering questions for free on the telephone, free initial consultations, etc.)
2. My initial consultations almost always run over the time allotted, but I don't charge more for the extra time.
3. Raising my fees causes me such stress and fear that I only do it every few years.
4. I regularly discount my fees to encourage prompt payment.
5. Sometimes I feel that I'm not worth what I charge, so I write off part of my time.
6. I don't record my time contemporaneously for either hourly or flat fee work.
7. I let my accounts receivable become 90 days or more past due before I take action.
8. I continue working for clients who aren't paying me.
9. Talking with clients about money is uncomfortable for me.
10. I waive my advance fee deposit if a potential client can't afford it.
11. I have time management issues.
12. I am good at self-sabotage (accepting clients who are unable or unlikely to pay my fees, not setting goals and developing action plans to reach them, taking cases I'm not qualified to handle, billing irregularly, not doing focused marketing to attract my ideal client, etc.)
13. My debt level is high, I have very little in savings, my retirement account is underfunded, and I'm not clear on where my money goes.
14. I don't really know how much I actually earn until I see it on my tax return.
15. I continually put others' needs before my own.

16. I am often worried about money.
17. I fear for my financial future.
18. I believe that I can make money.
19. I am confident in the value of my services to my clients.
20. My expenses are always below my income.
21. Money is my friend and I appreciate what it does for me.
22. I believe I have a rosy financial future.
23. I experience very little fear or insecurity around money.
24. I am committed to getting paid what I am worth.
25. I love my work.
26. I am blessed with a supportive fan base (including spouse/partner, other family members, close friends, etc.)
27. I admire wealthy people.
28. I have little or no credit card debt.
29. I get myself in situations beyond my ability and then rise to them.
30. I am resilient and able to bounce back when I fail.
31. I am filled with gratitude for the success I've achieved.
32. I work very hard, but I know I don't have to do everything myself. I know how to delegate and set limits.
33. I am tenacious in achieving my goals.
34. I take action on past-due accounts as soon as they become delinquent.
35. I fire clients who don't pay me.

The dividing point in these questions is pretty obvious. If you answered “yes” to any of the first 17 questions, you probably are an underearner. A “yes” to questions 18-35 demonstrates that, even if you are underearning, you have a healthy relationship with money and a great chance of breaking that self-defeating pattern.

So, are you an underearner? Do you see that your underearning is a result of choices you make or actions you take or don't take?

Underearning — what’s in it for you?

Why do you set yourself up to underearn? Any psychologist will tell you that we get something out of negative behavior, as well as positive. Underearning issues are frequently rooted in a lack of self-worth or a feeling of helplessness or hopelessness. What’s behind your underearning?

When considering this issue, it’s important to ***remember the insidious damage caused by a long-term pattern of underearning.*** It robs you of the peace that comes from knowing you are financially secure. Underearning seldom impacts only the underearner. Your pattern of underearning can:

- keep your practice partners from earning more;
- deprive you and your family of a lifestyle that could offer the activities, opportunities, and level of comfort you would all like to enjoy;
- restrict the growth of your practice;
- affect your ability to represent your clients to the best of your ability because you don’t have the money to invest in the resources that would aid in representation;
- undermine your self-esteem and may even make you question your career choice;
- saddle you with constant worry about money that can distract you from your work; and
- cause you stress which can endanger your health by causing depression, anxiety, stress, sleeplessness, and over- or undereating.

In addition, underearners frequently feel guilty about not making as much money as they could.

Several years ago, I met an attorney who was the biggest underearner I had ever encountered. He prided himself on the fact that he drives a 40-year-old car. His home has no electricity. He works only about 1-2 hours a day and gives the rest of his time over to pro bono work. He has a wonderfully kind and caring heart, and pro bono work is his passion and his motivator. What he came to realize, though, is that this hippie-like lifestyle is ***his*** choice, not the choice of his eight-year-old daughter. She wants the things her friends have, and she wants to participate in the activities enjoyed by other eight-year-olds. His underearning no longer affects only he and his wife; now, they have a child growing up in a life of deprivation. The problem is that his lifestyle is so ingrained in his psyche that he is terrified at the thought of giving it up and putting more emphasis on earning money. He has eschewed what he called the “superficial trappings” of mainstream America in favor of just getting by. It remains to be seen if he can make the change from chronic underearning to earning a sufficient amount to provide his family with some of the niceties of life—like an electric lamp.

How do you want to live out the rest of your career? What are you willing to do to achieve that?

If you suspect your pattern of underearning is rooted somewhere deep inside, search out a therapist who deals specifically with money and/or esteem issues, or a certified financial recovery coach to help you break out of your self-limiting practices. It may not be easy to change the behaviors that are keeping you from earning at your potential, but the end result will be well worth the effort. You've worked hard to get where you are, and being able to make enough money to take care of yourself and your family is one of your rewards. You deserve it!

Tip: If your choices have caused you to earn below your potential, make the choice to change that behavior and start earning what you are worth!

PRODUCTIVITY DASHBOARD FOR DECEMBER 2014

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%
TOTALS	330	272.5	264.7				

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
\$ 82,000.00	\$ 61,067.50	\$ 874,364.99	(\$ 17,597.00)	(\$ 87,078.57)	\$108,691.13		

ACTIONS TO TAKE

ACTION PLAN TO STOP UNDEREARNING

1. ***Some of my choices and behaviors are causing me to underearn. Now, I'm choosing to earn what I deserve and what I'm worth.***

2. The choices that cause me to underearn include: _____

3. Underearning causes me (and my family/partners) problems in these ways: _____

4. The first underearning behavior that I will modify is: _____

5. I will modify this behavior by doing: _____

6. I will ask _____ to be my accountability partner, and will report my progress and discuss any problems I'm encountering in modifying my underearning behaviors _____ (daily or weekly).

7. My new positive behavior will improve my business in the following ways: _____

8. I believe that I am a good attorney, I provide real value to my clients, and I am deserving of getting paid fully for my services. I choose to feel good about myself because of that. The message of truth I will tell myself if I falter is: _____

PERSONAL WORK

1. Symptoms of my underearning are:
2. How does underearning benefit me?
3. What are my fears around earning more money?
4. My biggest underearning issues are:
5. What's behind these issues? Where did they come from?
6. Are my clients' needs more important than mine? My family's? Why, or why not?

ATTORNEY UNDEREARNING: THE SIGNS, CAUSES AND SOLUTIONS

Presented by:

Ann M. Guinn
G&P Associates

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What is Underearning?

Simply put, it's --

Earning below your potential or
less than you need

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Underearning is About the Choices You Make

Passive Underearning

Choosing not to do something, or
failing to do something, that would
have resulted in you making more
money

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Active Underearning

Knowingly doing something that will cause you to underearn

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Underearning Begins Here



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Living in a Money Fog



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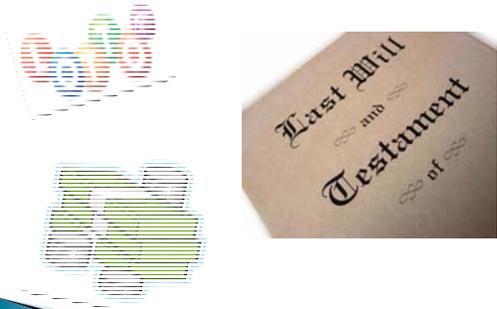
Low Self-Esteem

Sometimes we don't see ourselves as others do.



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"Prince Charming" Will Save Me



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To Punish Someone

Does a name spring quickly to mind?



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Fear of:

- Giving something up
- Losing friends
- Raised expectations of one's self
- Not being able to handle the money
- The money will be taken away from you

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What is Your Fear Around Earning More Money?



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How Does Underearning Benefit You?



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Some Behaviors That Cause Attorneys to Underearn

- Failure to tend to the business side of the practice
- Accepting bad clients/cases
- Accepting clients who can't pay
- Undervaluing your work
- Giving away time
- Failure to market effectively

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- Discounting fees
- Not taking an adequate advance fee deposit
- Co-dependency
- Poor time management skills
- Procrastination
- Disorganization
- Not working enough hours

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What are your biggest issues?

What's behind them?

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Your Underearning Affects Others

- Partners
- Clients
- Family
- Staff
- Pets
- Creditors/lendors

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Whose Needs Are More Important?

Your Client's Needs?

OR

Your Needs?

Your Family's Needs?

Your Partners' or Employees' Needs?

Your Other Clients' Needs?

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How Much is Enough?

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Smart Financial Management Tools

- Realization rate
- Hourly rate calculation
- Revenues goals
- Profit and loss statement
- Aged accounts report
- Productivity Dashboard
- Liquidity ratios

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The 7 Secrets to Increased Earnings

1. Acknowledge and commit to change
2. Identify and analyze your troublespots
3. Set personal achievement goals and develop a plan to reach them
4. Set a daily goal
5. Pay attention to your practice
6. Spend time every day on marketing
7. Delegate

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Secret #8 to Jumpstart Your New Earning Behaviors

Make it a goal to bill 15 minutes more per day!

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QUESTIONS?

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Thank you!

Ann M. Guinn
G&P Associates
(253) 946-1896

ann@anguinnconsulting.com

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CHAPTER FIVE

ENCRYPTION FOR ATTORNEYS – WHAT YOU WANT TO KNOW

January 2016

Nicholas A. Gillard-Byers
Brookland Legal Services

Phone: (206) 395-3535
Email: nick@brooklandlegal.com

NICHOLAS A. GILLARD-BYERS is a solo practitioner in Seattle with a decade of patent litigation experience specializing in computer science, electrical engineering, and software. A graduate of Georgetown Law, he began his legal career in the “other Washington,” working in large firms and clerking at the International Trade Commission for two years. Since 2012, he has been a solo practitioner in Seattle, occasionally consulting with other firms on patent matters.

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II. INTRODUCTION

As attorneys, we have an obligation of confidentiality that protects our clients' files and our communications with them. This may include communications with third parties, opposing counsel, or the court, whenever confidential information is involved. An attorney must use *reasonable* methods to safeguard a client's information, but there is little guidance in terms of what constitutes "reasonable." As technology changes, and in light of the duty to remain competent, many attorneys have begun to incorporate encryption into their practices to maintain confidentiality.

In the 2008, the WSBA Committee on Professional Ethics issued its first and only opinion (Op. 2175) on the matter of encryption, finding that unencrypted e-mail was acceptable, but that there may be a need for higher security based on the client's concerns or the particular circumstances.

Opinion 2175 makes special note of comment 17 to RPC 1.6, which provides:

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.

Three years later, the ABA issued formal opinion 11-459, which repeated an earlier opinion that:

in general, a lawyer may transmit information relating to the representation of a client by unencrypted e-mail sent over the Internet without violating Model Rule 1.6(a) because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint.

Nonetheless, the opinion noted that there are exceptions to this general rule, including an employee who accesses their email at a shared or public computer, or a work computer that possibly screened by their employer. The ABA went as far as stating that the attorney has an obligation to advise the client about the security risks inherent in those situations:

Of course, if the lawyer becomes aware that a client is receiving personal e-mail on a workplace computer or other device owned or controlled by the employer, then a duty arises to caution the client not to do so, and if that caution is not heeded, to cease sending messages even to personal e-mail addresses.

Unfortunately, if faced with a situation that might require more stringent security methods, many attorneys are unprepared for the task. The best approach is to prepare for that eventuality now.

III. WHY DO I NEED TO WORRY ABOUT ENCRYPTION?

To understand why your data is insecure on the internet, you must first understand how information gets passed between computers. It's useful to think of the data as a letter, for purposes of illustration.

Step 1: Your computer takes the data you are sending, in this case a letter. If the letter is too big, the computer breaks it into smaller chunks. For example, if you're sending a 20-page document, each page may get sent separately.

Step 2: Your computer then puts each letter into an envelope with your personal address and the address of the computer you're sending the letter(s) to. If you're sending multiple letters, each of those envelopes might get numbered so they can be reassembled correctly.

Step 3: Your computer then puts each of those envelopes in bigger envelopes, addressed to your local post office.

Step 4: The mail man takes your bigger envelopes, sees that they're addressed to the local post office, and drops it off there.

Step 5: The local post office opens the bigger envelopes and throws it away. They then look at the address on the smaller envelope and decide which post office to forward them to. The smaller envelopes are then put into new larger envelopes addressed to the new post office.

Step 6: Step 5 is going to be repeated over and over until it reaches a post office that can deliver your envelopes to the right place.

Step 7: The final post office takes your smaller envelopes to the place they are supposed to go, where they are put back into order and opened.

There are two very important things to note about this process. First, there is no guarantee that multiple envelopes will take the same route, even if they are part of the same larger package. Second, every other person in the chain described above may surreptitiously copy your envelope for themselves before forwarding it.

This means that your data should always be considered at a high risk for interception by someone, but not necessarily someone who cares about your data. If a document contains your client's social security number, then sending it over the internet unprotected involves a chance

that someone could steal that information and cause problems, but a memo that deals with your litigation strategy is probably going to be ignored.

Data on the internet is a moving target, and it is very hard for an opposing party to find it unless they already know where it's at. Thus, when you are sending an email through the "ether," your major concern should be information that would be harmful if intercepted by a random party. When you are instead posting information in a fixed place, you need to also be concerned with opposing parties.

Best practice: Always encrypt confidential or private data that is posted in a fixed place (such as an FTP server or cloud storage service). When sending email, always encrypt information that could be used for identify theft or similar.

IV. ENCRYPTION 101

Encryption refers to any process of taking an unencoded text (the plaintext) and putting it into a coded form (a ciphertext).

Encryption algorithms can be very simple or very complex. Generally, a simple encryption algorithm is very fast but is also very easy to break. A very complex algorithm is harder to break and offers a number of other features, but it's also very slow.

In choosing an encryption algorithm, one typically worries about:

- The sensitivity of the information
- The size of the information
- The likelihood that the information will slip into the "wrong hands"
- The technological sophistication of the "wrong hands"

In a typical law practice, you are dealing with:

- Information that is sensitive but not necessarily national security related
- Information of a relatively small size (less than a few gigabytes)
- Low likelihood that opposing counsel will get the wrong materials
- Opposing counsel that is probably just as mystified by encryption

For this reason, the major factor in choosing encryption solutions is not the strength of the encryption but rather how easy it is to incorporate it into your existing systems. If a particular matter is more sensitive than usual, of course, an attorney should take whatever steps are reasonable to accommodate that extra risk.

V. WHERE ENCRYPTION COMES INTO PLAY

There are essentially three layers where encryption can be deployed: your connection to the Internet, your traffic with the receiving computer, and your transmitted data. Depending on the particular applications you are using, one or all layers may be prudent.

Layer 1 – Underlying Data: To protect the underlying data, you would encrypt it separately. If you are sending an email, for example, this layer would include encrypting your attachments separately before attaching them to the email. Your email would still be vulnerable to snooping, though the attachments would need to be separately decrypted.

Layer 2 – Your traffic with the receiving computer: This layer protects your communications at a higher level, essentially encrypting all the data you send to the other end. If you are sending an email, this would encrypt the entire message until it got to your mail server, including the identities of the sender and recipient and any attachments. A snooper could still intercept the traffic and determine that you were sending an email and your mail server's address. Additionally, the email may be sent unencrypted from the mail server to the recipient if the recipient isn't also using a secure connection.

Layer 3 – Your connection to the Internet: This layer will provide a layer of encryption over your entire connection from endpoint to endpoint. It won't protect you from snoopers who are listening at an endpoint, and it will be much slower than a normal connection. In our email example, this would protect your traffic only as far as your email server but not past it.

VI. WHAT LEVEL DO I NEED TO USE?

As attorneys, we have a tendency to take extreme approaches where security is concerned, even if the standard doesn't require it. We are a risk-averse profession, generally avoiding all but necessary risks. The question then becomes "Why don't we use encryption all the time?"

The short answer is that encryption comes with a number of costs and trade-offs. The financial costs are negligible; most encryption programs follow an open-source and free model. Nonetheless, there are several reasons to avoid it.

Client Compliance

Any encryption that requires decryption at the remote end requires the client (or opposing counsel) to understand how to do so. When I've worked on patent cases, I usually have a technologically sophisticated client who may already have an encryption protocol in place for me to follow. On the other hand, when I handle a family law case, sometimes my clients have trouble with something as simple as attaching a file to email. These clients would have extreme difficulties with any kind of encryption. This is the primary reason I may not use encryption on any given matter; if the rules don't require it, the risks of not using it are negligible, and it makes my client's life harder, why insist on it?

Implementation/Setup Costs

Using any new technology requires you to spend time learning it, and encryption software is no exception. You first have to choose a solution, which often requires trying out different options. You then have to install the software on your computer, which may include unusual steps such as creating an encryption certificate or finding compatible plug ins to integrate the solution into your workflow.

If you have anything more than a solo practitioner office, or if you have staff/support, then that will require additional training and implementation. As a reminder, RPC 5.3 requires a lawyer with managerial authority to ensure that a paralegal or other staff member maintains the same professional responsibilities that a lawyer must. When dealing with multiple people within a firm, careful consideration must be given to access and individual needs. For example, each person in the firm will need their own email and thus will need to set their own email security separately, but it is unlikely that each person would have their own encryption certificates. After all, would a client want to maintain 5 different keys and have to differentiate between them every time they receive an email?

Costs of Use

Once you have the software, you need to incorporate into your workflow, which comes with its own costs of time. Encrypting attachments means that each of those files will be duplicated on your file system, so a naming convention must be created to track which files are plaintext and which encrypted version corresponds to them. Encryption takes time, and each encrypted file represents more lost time for an attorney. Moreover, some encryption will more or less compatible with your other software, requiring you to take roundabout measures whenever encryption is involved.

VII. OTHER CONCEPTS

A. ASYMMETRIC V. SYMMETRIC

If you only know one or two kinds of encryption, it's almost certain that those methods are symmetric. That is to say, the key you use to encrypt the data is the same as the key used to decrypt the data. If you enter the same password at both ends of the process, your method is symmetric. Symmetric methods are by far the easiest methods to use, but they suffer from a huge flaw: you need to swap that key. If you email your encryption key to a client, then every other encrypted email is only as secure as that first plaintext missive.

The opposite of symmetric encryption is asymmetric encryption, where one key is used to encrypt data and another key is used to decrypt it. You are then free to post the first key, known as the public key, for all to see. All it does is allow a person to encrypt data, never to decrypt it. The other key is your private key, which you don't give out to anyone. The two keys are independent of each other, so no one can derive your private key from the public.

Going the other direction, you can encrypt a document with your private key, and anyone with the public key can decrypt it. This is useless for protecting the data, as your public key is

obviously public, so why do it? The answer is that only you have the private key, so this allows you to essentially sign a document. If your public key decrypts the message, then it had to have been signed by your private key.

B. ONE WAY ENCRYPTION (HASHES AND CHECKSUMS)

There are some methods of “encrypting” data that only work in one direction, or “hashing” algorithms. Generating a hash from a message is very simple, but you can never recreate the message from the hash? Hashes are used generally to verify the integrity of a message; if you make the hash public, then any alteration to your encrypted message are easily detectable, even if the malfeasor has been able to steal your keys and encrypt as you would.

VIII. ENCRYPTION TOOLS – FILE TRANSFERS

The second major area of your practice where encryption will when sending files to your client, the court, or opposing counsel. In this area you have several options, most of which are probably already familiar to you.

C. BEST PRACTICE: FTP SERVERS

An ftp server is a computer system that exists solely to allow users to upload or download files. An administrator may set up folders and users with varying permissions. For example, there may be a user with permissions to view all the folders on the server, and another user who may only download files from a single folder. Ideally, a firm will set their FTP server with many different accounts:

- 1) One account for each matter, managed by a firm user, allowing that user to post files in a folder dedicated to that matter. This ensures that the user cannot accidentally post files in a folder that is visible to parties that are unrelated to that matter (for example, opposing counsel on another case).
- 2) One account for each opposing party, allowing that party to only download files from some folders (where you place your document production sets, for example) and only upload files elsewhere (their document production sets).
- 3) One or more accounts for your client, allowing them to upload files for your review.

This follows the general best practice that each user should have only the access they absolutely need. Additionally, because an FTP user cannot access the file system outside of their permitted folders, there is no way for them to access unauthorized files. FTP does require some special software to use, that software is free and easy to learn.

D. GOOD PRACTICE: CLOUD STORAGE TOOLS

Many attorneys already use cloud storage tools such as Dropbox, OneDrive, or Box. Detailing the relative merits of each solution would, in itself, take an entire chapter, but there are a number of general things to look out for:

- 1) Make sure your cloud storage passwords are unique and strong
- 2) Use two-factor authentication whenever possible. Two factor authentication usually requires you to check your phone or a keyfob for a valid number (constantly changing) to enter with your password. (This is the long-standing principle of requiring “Something you know” and “Something you have”)
- 3) Review the provider’s privacy policy
- 4) Do a search for “security breach” and the provider’s name to make sure there haven’t been notable breaches before.
- 5) For especially sensitive documents, encrypt them on your own computer separately before uploading them.

E. ALTERNATIVE: WEB FOLDERS

A firm could post files to a secure section of their websites and provide the locations to opposing counsel. For example, if your web site is <http://www.lawfirm.com>, you might make a document production set available at <http://www.lawfirm.com/Documents/17-02324-1-4/> for opposing counsel.

The advantage of this solution is that it only requires opposing counsel to use a web browser to get the files. This approach, however, has several disadvantages:

- 1) Unless you have a special third party package added to your web server, this does not allow you to receive files from anyone else (opposing counsel or clients)
- 2) Web servers aren’t designed around security

F. ALTERNATIVE: EMAIL

Sending files by email is still relatively secure, though it is rarely a feasible solution for large documents or large numbers of documents. To secure your email transfers, encrypt your attachments and your email connection as described below.

IX. ENCRYPTION TOOLS – ENCRYPTING FILES

A. 7-ZIP OR WINZIP

In the older days, many people would compress their files with Winzip or a similar program and add a password for security. The password implementation in Winzip was relatively weak, however, and could be broken by a household computer in less than an hour with the right tools.

Any recent version of Winzip or 7-Zip includes the far better AES-256 algorithm, making them viable tools. The encryption is symmetric, meaning you will have to find a way to share your encryption key securely.

Once you’ve installed either program, the process to encrypt is simple. Open the program, drag the files you want to encrypt into it, and select the correct options.

In 7-Zip

To encrypt:

- 1) Select the files you wish to encrypt, right-click, and select “Add to archive” under the 7-Zip menu
- 2) In the options menu that appears, in the lower right, choose “AES-256” for “Encryption Method”
- 3) Enter a password in the appropriate fields and click “OK”

To decrypt:

Simply open the file, and you will be prompted for the password.

In Winzip

To encrypt:

- 1) Select the files you wish to encrypt, right-click, and select “Add to Zip File” under the Winzip menu
- 2) In the options menu that appears, on the left side, check “Encrypt Files” and select “AES-256” from the dialog box
- 3) Enter a password in the dialog box that appears

To decrypt:

Simply open the file, and you will be prompted for the password.

B. GPG

GPG, and its predecessor PGP, are incredibly strong encryption and also assymmetric, meaning that you never have to give your password to anyone (but requiring a bit more setup for everyone involved). There are a number of alternatives, but we will focus on GPGWin as an example.

Setting GPGWin up:

- 1) After you have downloaded the GPGWin program from the internet, run the program to install the software. You will likely have to reboot your computer at the end
- 2) Run “Kleopatra” from the newly created application group
- 3) Choose to create either an OpenPGP or X.509 certificate pair and follow the instructions provided.
- 4) At some point, you will be asked to type random keys or move your mouse around. This provides random data to ensure your certificates are unique and unpredictable.
- 5) After your certificates are finished, save them to a trusted location

At this point, you can publish your public key wherever you would like. In the olden days (10-15 years ago), many people would include their public key in their email signature or post it on their website. Remember, you can publish your public key wherever you want, that’s the whole point!

To encrypt files, right-click the file you wish to encrypt and select “Sign and encrypt” from the menu that appears. The program will generate an encrypted and signed archive for you. To decrypt a file, simply right click the encrypted file and select “Decrypt.”

The major downside of this form of encryption is the overhead: you need to have your own private certificate (to sign messages and decrypt messages from others) and your recipient also needs a public certificate (so you can encrypt the message to them).

X. ENCRYPTION TOOLS – EMAIL

Locate your email program below and follow the instructions to enable TLS, which provides encryption between you and your own mail server (but not beyond).

A. OUTLOOK (WINDOWS)

- 1) In your outlook program, select “Tools” and then account settings.
- 2) Select the account you use and select “Change”
- 3) Select “More settings”
- 4) In the new dialog box that appears, there should be a setting labeled “Use the following type of encrypted connection”. Choose “TLS” from the drop down menu next to it. You should do this twice, once for outgoing and once for incoming.
- 5) Click OK

Some email servers may use nonstandard ports for TLS, though this is rare. If you encounter a problem, consult your service provider.

This setting will need to be changed on each computer or phone that you use to connect to email.

Additionally, if you are using GPGWin (described above), you can also install a plug-in such as GPGOL to let Outlook manage your GPG encryption. This allows you to encrypt messages and attachments within Outlook. Unfortunately, these plug-ins vary in quality and usually have many glitches, making them unreliable in a professional setting.

B. OUTLOOK (APPLE)

- 1) In your outlook program, select the Outlook menu and then “Preferences”
- 2) Select “Accounts”
- 3) Select the account you use
- 4) Under incoming server and outgoing server, check the “SSL” options

C. THUNDERBIRD

- 1) In your thunderbird program, select “Tools” and “Account Settings”
- 2) Select “Server Settings”
- 3) In the new menu that appears, choose either “TLS” or “TLS if available”
- 4) Click OK

If you select “TLS where available,” Thunderbird will attempt to use a secure TLS connection if the server responds, or else it will send email over a less secure normal connection. If you want to ensure a secure connection, select “TLS” only.

- 5) Select “Outgoing server” in the same dialog box
- 6) Select “Edit”
- 7) In the new dialog that displays, change the port to “587.” Under security and authentication, select TLS.

D. GMAIL, YAHOO MAIL, OR OTHER WEB-BASED INTERFACES

Use the instructions in section XI for encrypted web browsing, and the instructions in section IX for encrypting your attachments separately.

XI. ENCRYPTION TOOLS – WEB BROWSING

In general, when browsing the web, your traffic is vulnerable to snooping. This includes the sites you visit, the data you input (such as queries in Lexis-Nexis or a posting on a message board), and anything else going between you and the web.

Web browsers can encrypt your connection with a web site automatically for the most part if the web site offers “HTTPS” support. When you connect to a web site via HTTPS, all of your traffic is protected by SSL/TLS, offering you much more protection than a normal connection. HTTPS doesn’t encrypt everything, and an eavesdropper could still determine some information about your session, but it’s vastly superior to using an open connection.

The most important rule to remember when browsing the web is that the network will always know something about what you’re doing, because it has to be able to connect you to the place you want to go. If you are connecting to your bank’s website and transferring funds, the network doesn’t need to see your balances, account numbers, or passwords, but it won’t be able to connect you to the bank at all if it doesn’t know which bank site you’re trying to get to.

Consider Alice, an unhappy attorney in a large firm, and her search for employment. She spends her lunch hour looking for a new job on Craigslist, unaware that her firm is tracking employee web browsing habits. Alice looks around in the jobs section for a while, answering a few job postings, and maybe even posts a personal ad. If she is connecting to Craigslist over a normal

web session, her employer will have access to every page she looked at, everything she entered into a form, etc.

But if Alice is connecting to the web site using HTTPS, her employer will likely only know that she went to “seattle.craigslist.org” and that she spent 45 minutes on the site, nothing more. Perhaps they will know how many pages she clicked on, but not the specific pages and not any of the data she submitted.

Additionally, your web traffic is normally subject to diversion by a so-called man-in-the-middle attacker, who intercepts your web browsing requests and serves you fraudulent web pages (for example, a fake bank web page to steal your login credentials). When you use “HTTPS” to browse, the server provides your web browser with security credentials to prove that you are truly connected with the correct site.

Best practice: Whenever you are browsing the web, try using “https” instead of “http”. For example, instead of typing “google.com” and then searching for “possible causes of action against google”, try typing “https://www.google.com” instead. It’s still not perfect, but it’s much better than nothing.

Best Practice: To be safest, use an extension such as “HTTPS Everywhere” (available from <https://www.eff.org/Https-everywhere>) . This extension will always attempt to use HTTPS when you are browsing the web.

In cases where your web browsing is so sensitive that you can’t risk even revealing the website you are using (for example, if you’re at opposing counsel’s offices, on their wifi network, and are in full paranoia mode), you can use various other options to afford yourself more protection, such as Tor.

XII. WHAT TO TELL YOUR CLIENT

A. ENGAGEMENT LETTERS

Practitioners disagree wildly about how much technical detail to tell their clients. Some attorneys believe that their internal practices are a matter of firm management; as long as they aren’t taking unreasonable risks then their clients don’t need to know anything more. Other attorneys believe that we have an obligation to explain to clients what methods we take to safeguard their materials.

Ethically, both sides are on safe ground; the bar does not require us to disclose what data security we use any more than they require us to explain whether we keep our files in locked cabinets or whether we have a door alarm on our office. The issue of how much to tell a client is best left to the individual practice based on their clientele.

That said, there are three strong motivations for disclosure that should be considered. First, if any of your data security methods leave data more vulnerable in any way, disclosure to the client is

important to ensure that they permit it. Some attorneys put “cloud storage” under that category; others might consider FTP sites vulnerable enough to mention. If you are putting data in a place where it may be stolen with more likelihood than someone breaking into your office, then it certainly should be disclosed.

Second, it may be a valuable selling point for many clients who appreciate an attorney taking modern efforts to safeguard their information. This is offset by the risk that an unsophisticated client may see a paragraph of jargon and be put off by the fact that they can’t even understand the risks involved. Thus, it’s always a good idea to put in some language to “dumb it down a shade,” even if it’s as simple as “Your data will always remain secure, and we take all reasonable measures to keep it safer on our servers than it ever could be in a file cabinet.”

Third, there seems to be a growing problem of data retention policies, especially where a client seeks a copy of an old file that the attorney no longer has. Talking about your data security gives you a natural segue into your retention policy, and the overhead it entails serves as justification for why you don’t retain files past a certain point.

Best Practice: Determine the right level of disclosure for your client base and incorporate that disclosure into your engagement letters. Include some explanation of which layers of protection you employ and your retention policies.

B. TEACHING THE TECH

Once your data security is in place within your practice, you should draft a “How To” for clients explaining all the tools they need to learn. Some forms of encryption won’t matter to them; for example, using TLS on your email is invisible to a client. On the other hand, if you’re encrypting attachments to the client, they need to learn how to decrypt the information as well.

Best Practice: Draft a document to give out to clients explaining all the necessary steps on their end. If possible, include opt-out provisions for each item allowing the client to decline certain protections if they do not feel they are necessary.

C. KEEPING YOUR CLIENT FROM BLOWING IT

A potential client has walked into your office, seen your well-explained data security policy, and signed at the dotted line. You take their client file, scan it in for your case management system, and post a digital copy on a secured folder for their convenience. You send them the link over your TLS-secured e-mail connection, and pat yourself on the back for a job well done.

Two weeks later, the client tells you that the client file had included their tax returns, and they needed to send a copy to their ex (whom you are suing for dissolution), and somehow they accidentally gave them permission to the entire shared folder.

Granted, you can always rely on clawbacks to some extent, and most attorneys would do their best to honor such a request, but you can't unring the bell, so to speak.

While it would be hard for a client to blame you for such a mishap, it's important to include some guidelines for the client to follow with respect to data security:

- “Never forward a link to a file or folder. Instead, always download the file and forward it separately. Even better, don't ever forward any of these things yourself, have your attorney send you the file separately.”
- “Never, ever, share a password with anyone. If a file is encrypted, ask your attorney to send you an unencrypted version.”
- “Don't discuss the servers or web sites that your information is stored on with anyone.”
- “Never access emails from me, and never send me emails, from a work email account, a work computer, or even a personal device connected to a work network.”

This will ensure that the data stays secure even when it is no longer within your direct control.

Best Practice: Your security document should explain to the client that you are not responsible for the absolute security of the client's data, and that the client should never share any information you send them without your approval.

XIII. ENCRYPTING YOUR OWN COMPUTER

Everything to this point has dealt with encrypting your data while it is being transferred, but what if your entire laptop or USB drive is stolen? Obviously it's impractical to encrypt every sensitive file you receive, and your email client will likely crash if it finds your mailbox file is encrypted.

Fortunately, most modern operating systems offer whole disk encryption, which allows you to keep your hard disk secure in case of theft. The advantage of whole disk encryption is that the protection is invisible while you are logged into the machine while protecting the entire device in the hands of an intruder.

A. WINDOWS

The native solution for whole disk encryption in modern versions of Windows is called Bitlocker. Most versions of Windows above the baseline “Home” versions include Bitlocker automatically. To enable Bitlocker:

- 1) Open your control panel.
- 2) In the search box, type “BitLocker”
- 3) Select “Manage Bitlocker” or “Turn on Bitlocker”, whichever is presented
- 4) Follow the instructions on-screen

You should plan on doing this overnight, or preferably over a weekend, as the process can take a very long time. Once it starts, you will want to leave the computer alone until it's done, as the process is slow, intensive, and may lock up all the free space on your drive.

Other alternatives are “BestCrypt” or “True Crypt”.

B. APPLE

- 1) Open your system preferences
- 2) Open the “Security and Privacy” pane
- 3) Select the tab labeled “FileVault”
- 4) Click the lock icon in the bottom left to enable changes
- 5) You may need to enter an administrator username and password
- 6) Select the option to “Turn on FileVault”

Encryption for attorneys
What you want to know

Rules and Obligations

RPC 1.6

Comment 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.

ABA Ann. Rule 1.6 (2003)

“The ABA Ethics Committee has concluded that a lawyer may communicate with a client via electronic mail without encryption; the expectation of privacy for electronic mail is the same as that for ordinary telephone calls, it reasons, and the unauthorized interception of an electronic message is illegal.”

ABA Ann. Rule 1.6 (2003)
(continued)

“The ABA Ethics Committee has concluded that a lawyer may communicate with a client via electronic mail without encryption; the expectation of privacy for electronic mail is the same as that for ordinary telephone calls, it reasons, and the unauthorized interception of an electronic message is illegal.”

ABA Ann. Rule 1.6 (2003)
(continued)

“Unusual circumstances involving extraordinarily sensitive information might warrant enhanced security measures like encryption, just as ordinary telephones and other normal means of communication would be deemed inadequate to protect confidentiality in some situations”

WSBA Ethics Opinion 2175 (2008)

“The recommended practice is to discuss with the client if the client perceives a need for any additional security precautions. Normally, as with telephone calls, there is a reasonable expectation of privacy in the transmittal of e-mails.”

“Any additional level of security would be for determination by the attorney, based on the circumstances and presumably after consultation with the client.”

ABA Opinion 11-459 (2011)

“[A] lawyer may transmit information relating to the representation of a client by unencrypted e-mail sent over the Internet without violating Model Rule 1.6(a) because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint.”

ABA Opinion 11-459 (2011) (continued)

“Of course, if the lawyer becomes aware that a client is receiving personal e-mail on a workplace computer or other device owned or controlled by the employer, then a duty arises to caution the client not to do so, and if that caution is not heeded, to cease sending messages even to personal e-mail addresses.”

Treat E-mail Like A Phone Call

In general, e-mail is considered “safe enough” for legal communications, just like a phone call. If you believe that there is a likelihood of e-mail being compromised, just like a recorded call, you should take other measures.

Examples:

Accessing e-mail on a work computer or a public place

Sharing e-mail accounts with others

Not changing old or known passwords

How does an attack happen?

Social engineering

One of the biggest threats to security is social engineering, where a person simply manipulates an IT person or customer service representative to get access.

“I locked myself out of my files, can you reset my password and send it to this email address?”

Think Ocean’s 11 – Most of the work is social manipulation and “conning”

Stealing the keys

The easiest way to break encryption is by stealing the password.

If you're using symmetric passwords:

- Never send the password over email
- Never re-use a password
- Use computer-generated strong passwords
- Change them regularly if possible

Whenever you have any sign that a password is compromised, change it.

Breaking the code

The easiest way to break encryption is by stealing the password.

If you're using symmetric passwords:

- Never send the password over email
- Never re-use a password
- Use computer-generated strong passwords
- Change them regularly if possible

Whenever you have any sign that a password is compromised, change it

Breaking the code (continued)

An adversary can only break a code if they have the encrypted file

This is much more likely when the file is stored in a publicly available location (such as an FTP site or web folder)

Passwords

Password strength

- 4 characters, all lowercase: 456,976 combinations
- 4 characters, mixed case: 7,311,616 combinations
- 4 characters, alphanumeric: 14,776,336 combinations

But adding a single character dramatically increases the search space:

- 5 characters, all lowercase: 11,881,376 combinations

Longer passwords are safer than complex passwords, in general

Checking Your Password Strength

If you're curious about how strong your common passwords are, test it against a password checker.

For example:
"WSBA45707"



<https://www.HowSecureIsMyPassword.net>

Checking Your Password Strength

Common passwords are always checked first, and you'd be surprised by some of them:

For example: "pokemon"



<https://www.HowSecureIsMyPassword.net>

Checking Your Password Strength

Some people think that it's easier to simply replace a vowel with a symbol, such as "\$" for S or "@" for A.

"Sophisticated" hacker tools now try all these combinations second, after the dictionary words themselves, so this no longer provides additional security.

HowSecureIsMyPassword does NOT try dictionary words or symbol substitution, so it will give an artificially high rating to some passwords that are, in reality, quite weak.

Attributes of a password

Length: How many characters in the password?

Character set: How many options for each character? (a-z, A-Z, 0-9, special)

Duration: How long before you change the password?

Source: Did you make it up, or did you generate it somehow?

Password attributes

Length
Character set
Duration
Source

A longer password is, generally, harder to crack and harder to guess.

Generally, a password should have at least 12 characters to be acceptable.

Password attributes

Length
Character set
Duration
Source

The character set refers to the kinds of characters used in the password.

Alpha: "password"
Alphanumeric: "trustno1"
A/N + special: "Trustn01!"

A larger character set expands the search space for cracking the password drastically.

Password attributes

Length
Character set
Duration
Source

You can, in theory, use special characters in your passwords.

For example:
"Pass word"
and
"Pass word"
are different, the latter uses a non-breaking space

<p>Password attributes</p> <p>Length</p> <p>Character set</p> <p>Duration</p> <p>Source</p>	<p>The number of possible passwords using n characters from a set of size S is given by:</p> S^n <p>Because n is exponential, increasing the number of characters makes this larger faster than increasing the character set size.</p> <p>Bigger=harder to crack</p>
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<p>Password attributes</p> <p>Length</p> <p>Character set</p> <p>Duration</p> <p>Source</p>	<p>Password duration refers to how long a password stays "good." If you choose passwords that can't be cracked within a week, and you change the password each week, you won't be hackable!</p> <p>On the other hand, this means memorizing a new, hard password weekly. Few people are willing to do that.</p>
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<p>Password attributes</p> <p>Length</p> <p>Character set</p> <p>Duration</p> <p>Source</p>	<p>The "source" of a password refers to where the password comes from. There are generally only two sources: a human or a computer.</p> <p>Computer-generated codes are inherently harder to crack because they do not include any risk of including personal biases.</p> <p>If a hacker knows you're from Seattle, for example, you can bet every variation of "12th Man" and "Beast mode" will be checked early.</p>
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Two factor authentication

Whenever possible, use two factor authentication

TFA means you need two different keys to login, such as a password and a code from a keyfob or text message

The general idea is that the two things are "something you know", such as a password, and "something you have", such as a keyfob or phone

An eavesdropper or mugger will get one, but not the other

Types of encryption

Symmetric and Asymmetric

Symmetric Encryption:

- Same password used to encrypt and decrypt
- Pro: Simple and easily understood
- Con: Requires transmitting the password somehow

Asymmetric Encryption:

- One password used to encrypt, a different password to decrypt
- Pro: You never have to share your "password"
- Con: Much more complicated, only allows for one-way encryption

Secure web browsing

Web browsing basics

- Always use HTTPS
 - If you use Chrome, Opera, or Firefox, use “HTTP Everywhere” from EFF
- Pay attention to security warnings
 - Many people ignore “certificate warnings” because they’re relatively common, but they can indicate MITM attacks
- Use a password manager when appropriate

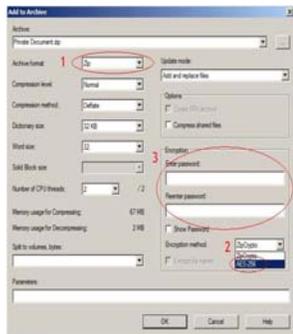
Tor

If you have to really browse anonymously, consider Tor

Tor allows you to browse while relaying all the data through a roundabout network of anonymizing nodes

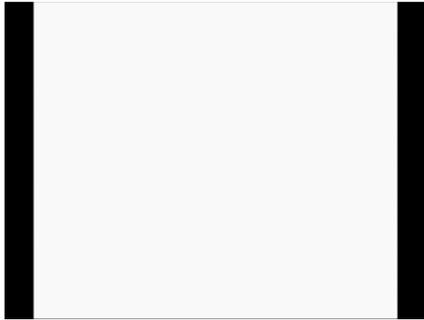
Tor will give you almost perfect anonymity, at the expense of speed

Winzip



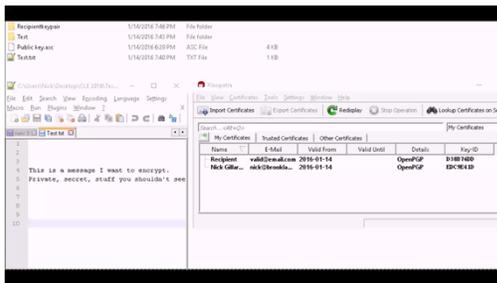
GPGWin and Kleopatra

Kleopatra – Generating a key



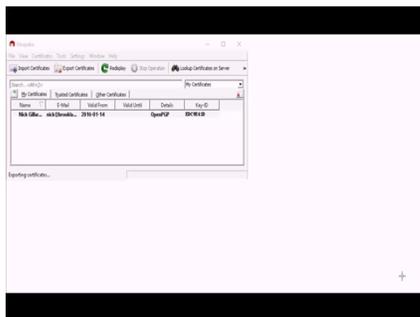
<https://youtu.be/BWX0ukCSJM4>

Kleopatra – Decrypt



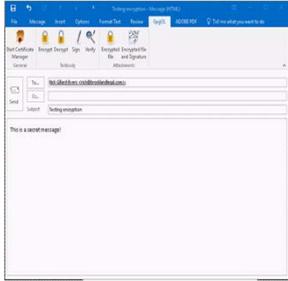
<https://www.youtube.com/watch?v=UORzIVS9gZU>

Kleopatra – Exporting your public key



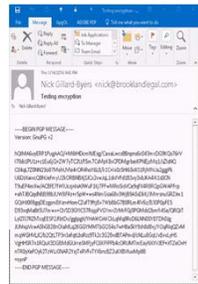
<https://youtu.be/jig4tC-vRSw>

Encrypting Your Outlook Messages



<https://youtu.be/fGsO04gbMbo>

Decrypting Your Outlook Messages



<https://youtu.be/42KEEsY1gk4>

Client obligations

What to tell the client

- Never share your password
- Never access sensitive emails or documents on a public computer
- Never access sensitive emails or documents on a work computer
- Never tell someone else where the documents are located
 - "My lawyer lets me download files from their web site"
- Never forward a link to a document

Teaching the tech

The hardest part of all this is teaching the client to use it

If you are using symmetric passwords, such as winzip, make sure you have a conversation with the client about practices

If you are using asymmetric passwords, such as GPG, make sure the client knows how to make their own keys and how to access files

When in doubt, ask the client about security and tailor to their needs

Further questions?

Contact me at:

Nick Gillard-Byers
nick@brooklandlegal.com

CHAPTER SIX - A

**WHAT EVERY ATTORNEY NEEDS TO KNOW ABOUT E-SIGNATURES AND
SUBMISSION OF ON-LINE FORMS**

January 2016

Greg McLawsen
Puget Sound Legal PC

Phone: (425) 998-7046
Email: greg@pugetsoundlegal.net

GREG MCLAWSEN is the managing attorney of Puget Sound Legal, an immigration law firm that uses convenient technology to collaborate with clients locally and worldwide. Selected a Super Lawyer Rising Star in immigration, Greg looks for innovative ways to approach law. His niche practice area is representing green card holders seeking immigration financial support from their sponsors. See www.i-864.net. Greg chairs the Solo & Small Practice Section of the Washington State Bar Association, serves on the WSBA's Future of the Legal Profession task force, and chairs the Law Practice Management and Technology Committee for the Washington Chapter of the American Immigration Lawyers Association.

I. Digital form tools can be really useful for lawyers

Let's stop doing data entry whenever possible. That's the basic idea. If anyone at your firm is routinely inputting lots of information, you might want to explore whether you could automate that system. How? Fundamentally it's by letting the person who originally has the information – often your client – input it into your system without human intervention.

Here are a few examples of how you might use a form tool in your practice. If you're one of the many attorneys who feel their clients "don't use computers," start looking at your clients' phones. Chances are that the phone *is* a computer. The tools discussed here will work nicely on web-enabled mobile devices.

- **Prospective clients.** Sales professionals religiously collect data on any "lead" that enters their "intake funnel." Whether we like that language or not, it's common for lawyers not to memorialize the contact information, etc., of a prospective client before s/he sets up an initial appointment. Form tools can channel prospect data into with whatever contact database or Customer Relations Management (CRM) tool a firm is using.
- **Intake.** Do you make your client sit in your lobby and fill out a doctor's office-style questionnaire before you meet with them? Worse yet, does a staff person – or even you – spend time filling in a questionnaire while the client talks? What if this form could be shared with the client before the initial meeting, and the answers saved in whatever format it is that you ultimately need them?
- **Routine case information.** I'm an immigration lawyer and need the same information for most clients in a given legal scenario. Becoming a citizen? There's a standard 15-pages worth of information I'll need for any such case. Even litigators with highly fact-specific matters often have standardized information that they collect on each case. That could come straight from the client.
- **Customer satisfaction surveys.** What do our clients actually think about us? We could always ask them. The easiest way is with the so-called *net promoter score* – a one question survey that assesses whether they'd actually recommend us.¹ Note that unlike other tasks described here, this one does not necessarily capture data protected by client confidence rules, so your choice of (free) tools may be broader.

II. The duty of tech competence

An attorney has an ethical responsibility to competently use technology that she chooses to deploy in practice.² Why? As a derivative responsibility with respect to her many fiduciary duties to a client. For present purposes the primary duty is that of safeguarding client information.³ When using technology to handle client information, an attorney has the responsibility to ensure that the technology offers

¹ Sam Glover, *Net Promoter Score: the One Number You Need to Grow Your Law Practice*, Lawyerist, Oct. 28, 2015, <http://bit.ly/1m6OW3M>.

² Cf. Megan Zavieh, *Luddite Lawyers Are Ethical Violations Waiting To Happen*, Lawyerist, July 10, 2015, <http://bit.ly/1S9AdBc>.

³ See RPC 1.6.

appropriate safeguards.⁴ This is no different than saying that if an attorney elects to store client files in a warehouse, she needs to take appropriate steps to ensure the files are safe. Well, what steps count as appropriate in this context?

In 2012 the Washington State Bar Association's former Committee on Professional Ethics issued Advisory Opinion 2215 concerning the use of online data storage by third parties (i.e., "cloud computing").⁵ Recognizing that it was "impossible" to give "specific guidelines" about appropriate security measures given the changing nature of technology, the Opinion sets forth seven considerations to be taken:

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.⁶

Deploying this seemingly extensive test is supposed to require less sophistication than complete mastery of the technology at issue.⁷ But the decision is clear that this due diligence inquiry should be made of any

⁴ RPC 1.6, Cmt. 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.")

⁵ Washington Bar Association Advis. Op. 2215 (2012), available at <http://bit.ly/1zdnBBu> (last visited Dec. 22, 2015).

⁶ *Id.*

⁷ *Id.* ("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.")

technology that handles client information. The crude bottom line is that client information almost certainly needs to be *encrypted* when it is stored “online.”

The duty to safeguard client data follows also from the attorney’s duty of competence.⁸ The now-famous Comment 8 to Model Rule 1.1 states:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.⁹

At last count 18 states have adopted Comment 8, though Washington is not yet one of them.¹⁰ It is almost certainly a safe bet that ours will soon be among the jurisdictions adopting this generalized duty of competence. In the meantime, a Washington attorney still has a duty to competently deploy any technology that she chooses, pursuant to Advisory Opinion 2215. If adopted, Comment 8 would entail that an attorney might be blameworthy, not only for incompetently deploying technology, but for incompetently *failing* to use technology when doing so presents a benefit to her clients.

III. How encryption works, in 95 words

By default your data is stored online in the same format in which you access it. This means that if bad people can access the data, they can use the data as you can. Data encrypted while at rest is scrambled and requires a cipher to be used. So if bad guys get the data, it’s as much use as the Washington Reporters without a law degree. Allowing access to unencrypted data would be like a magic Washington Reporters series that beamed a law degree and 40 years of practice experience into the reader’s head.

IV. Possible form solutions

Here are a half-dozen tools that I’ve personally experimented with for building forms. There are many more out there, but these are some of the biggest players. Other factors being equal, you’ll want to gravitate to popular tools, since industry reputation is one of the seven factors endorsed by Advisory Opinion 2215. As a bonus, support tends to be better for these established tools.

As is ever the case with technology, before starting to shop, first decide what problem you are trying to solve. Consider:

⁸ *Id.* (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’”) (*quoting* RPC 1.1).

⁹ Model Rule 1.1, Cmt. 8.

¹⁰ Robert Ambrogi, ~~13-15-17~~ 18 States Have Adopted Ethical Duty of Technology Competence, LawSites, Dec. 17, 2015, <http://bit.ly/1MGgSS1>.

- **How are you going to be using this data?** Is this background information about a client that you want to be able to reference later for context? Is this data that you want to be able to import into some form of document automation tool (Word can be such a tool)?
- **What type of data is being collected?** Will you be capturing sensitive financial data, social security numbers, etc.? Or do you need to store only the client's name and email address... or just a 1-10 rating of an interaction they had with your office staff?
- **What are the dividends you stand to gain?** Are you collecting data for a use that's core to your practice, used in daily client work? Or is this a small amount of information used for an isolated purpose? Some tools are cheaper and easier to implement than others.

a. Google Forms (Free)

Google offers an excellent, free forms tool that seamlessly integrates with Google Drive (also free). I use this tool often for various *non-client* scenarios. In the screenshot below, for example, I was creating a form to collect information about colleagues who expressed interested in collaborating with my firm.

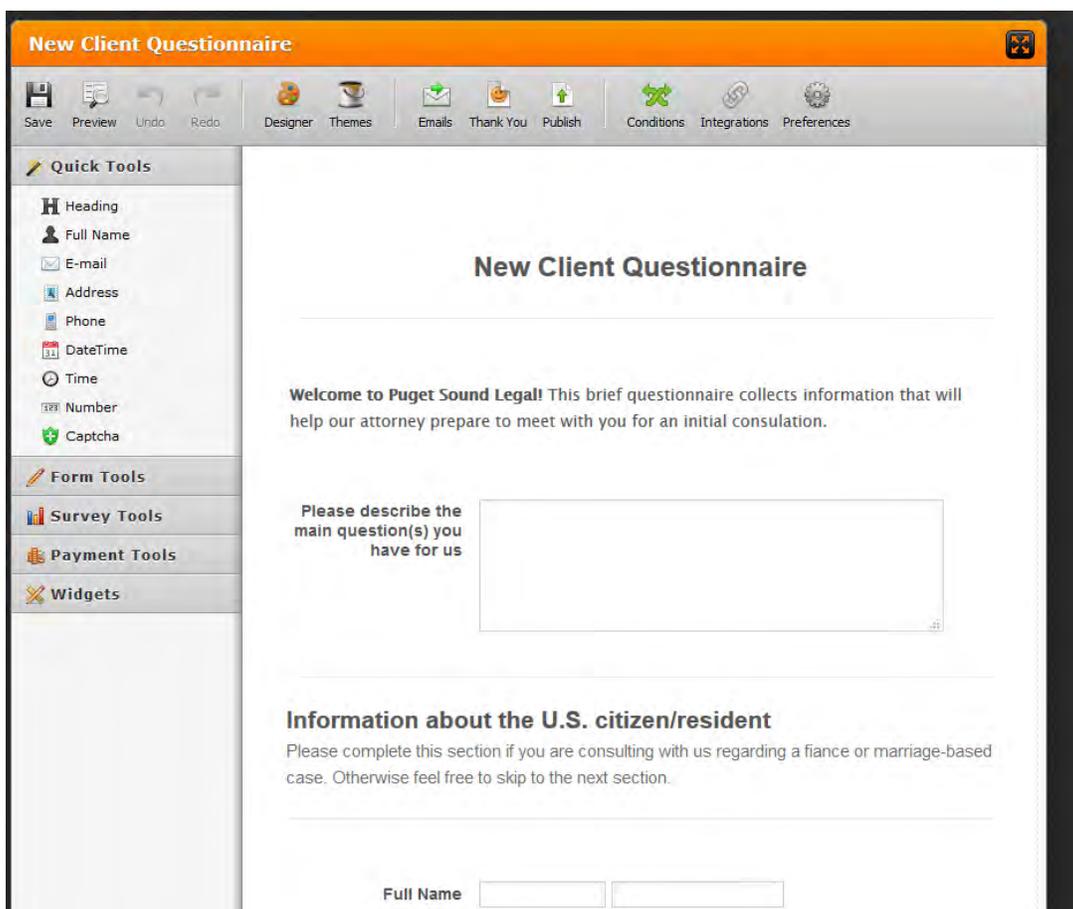
The screenshot shows a Google Form titled "Let's talk about Sound Immigration". The form is in the "QUESTIONS" view. It features a header with the title and a "SEND" button. Below the title is a "Form description" field. There is an "Image title" field with a logo for "SOUND IMMIGRATION" which includes a stylized blue bird icon. The form contains two short-answer text questions: "What's your name?" and "Email?". A right-hand sidebar contains various editing and sharing icons.

Google recently revamped Forms, and its drag-and-drop interface is now even better than it was. The catch? Google Forms does not presently support encryption. There are, however, third-party services that

can encrypt data on Google Drive, which is where information from Forms is stored.¹¹ A second limitation of Forms, however, is that it does not support “save and continue” functionality, which you need for anything beyond a very brief form. Imagine the anguish of spending ten minutes filling out a form, getting interrupted, shutting down your computer, and then realizing you need to start back at square one! Note also that Google’s terms of service reserve the right for its staff to access your data. The implications of that clause are debated, but it’s somewhat of a moot point in present context since the fact Drive data is unencrypted makes it problematic for many law firm uses.

b. JotForm (free for up to 100 submissions)

JotForm is a drag-and-drop form builder which is probably a great fit for many attorney uses. The user interface of the forms-builder is intuitive, if not beautiful. (See screen shot below). Happily, JotForm – as of pretty recently – supports encryption and also has a save/continue feature. The encryption tool is potentially clunky depending on how you plan to manipulate the data once a form is submitted.



¹¹ Dennis O’Reilly, Two free ways to encrypt Google Drive files, CNet, July 2, 2013, <http://www.cnet.com/how-to/two-free-ways-to-encrypt-google-drive-files/>.

c. WuFoo (\$29.95/mo for “bona fide” plan)

WuFoo is another drag-and-drop form builder that works basically like JotForm. Personally, I feel their interface is easier to use, and that it’s easier to customize a great-looking end product. Like JotForm, WuFoo offers encryption. The rub – you have to pay for it.

The screenshot displays the WuFoo form builder interface. At the top, there is a navigation bar with 'WuFoo' logo and menu items: Forms, Reports, Themes, Users, Account, Help, and Logout. Below the navigation bar, there are tabs for 'Add a Field', 'Field Settings', and 'Form Settings'. The main area is divided into two columns. The left column contains a 'Click or Drag to Add a Field' button and two categories of field options: 'Standard' and 'Fancy Pants'. The 'Standard' category includes Single Line Text, Paragraph Text, Multiple Choice, Section Break, Number, Drop Down, and Page Break. The 'Fancy Pants' category includes Name, Address, Email, Phone, Price, File Upload, Date, Time, Web Site, and Likert. A 'Checkboxes' field is highlighted with a mouse cursor. The right column shows a 'Workshop Registration' form template with the following fields: Name (Title, First, Last, Suffix), Address (Street Address, Address Line 2, City, State / Province / Region, Postal / Zip Code, Country), Email, Phone Number (### - ### - ####), and Badge Upgrade. At the bottom, there are 'Save Form' and 'Add Field' buttons.

d. Intake 123 (\$9-\$79/mo)

This tool was specially crafted for lawyers with security issues in mind. For this reason, it’s designed around lawyer “use cases,” meaning its templates and interface point you towards common law scenarios such as client intake. When I tried it, I didn’t enjoy my user experience. Their customer service was responsive, however, and the fact that they designed their tool for lawyers means that you could get (for example) an intake questionnaire set up more quickly than with other tools.

e. Gravity Forms (\$39/license, *not* per month)

One last tool that I’ve experimented with is Gravity Forms. This tool is a plugin for your Wordpress site; if you don’t know what that means, probably stop reading. As of pretty recently, Gravity Forms allows for encryption and save/continue functionality. A major appeal is that you pay for the one-time license

and are set to go. Easy to use, this tool can build a form that's nicely integrated into your Wordpress site (though the other tools mentioned above can be embedded by a script). The fact that it's hosted on your site's host, though, means that if you bungle something, your data will be lost. This may or may not have happened to your author at the time he was experimenting with using this for a client intake tool (though if it did happen to your author, your author assures you that no actual client data was lost or compromised).

f. Pdf + Clio Hack (free)

The cheapest technology is always the technology you already have.¹² Consider the following scenario.

What I wanted to do was populate official immigration forms with information pulled from a database. I created customized pdf versions of the immigration forms, with unique identifiers for each field. Armed with that, I could pull data from any spreadsheet to populate the document. The trick was getting information from my client into the spreadsheet.

At first I tried using a JotForm, but it was cumbersome to do this with the encryption they offered. Decrypting and manipulating a particular set of client data was just a bit of a hassle. What to do?

We've long been users of WSBA-endorsed Clio,¹³ a cloud-based practice management system I heartily recommend. Clio includes the feature of a secure client portal for the exchange of documents. So, we created a questionnaire (first in Word, then converted to pdf) with data fields whose names matched the immigration form we wanted to populate. The client simply completes the pdf on her computer or mobile device, then uploads it to her secure file on Clio. In two quick steps we extract the data from the questionnaire pdf (in .txt format) and import it into the immigration form. Mission accomplished.

What's nice about this approach is that it keeps all client data isolated in that client's secure case file. Instead of a master spreadsheet with lots of different client data, there just a single .pdf in the client's folder, from which we can easily pull and manipulate data. Also, there wasn't a dime of expense, time aside.

¹² Actually, not *always*, since your time is valuable, and wasting time on ineffective tools can be very costly.

¹³ Cf. www.goclio.com.

CHAPTER SIX - B

**WHAT EVERY ATTORNEY NEEDS TO KNOW ABOUT E-SIGNATURES AND
SUBMISSION OF ON-LINE FORMS**

January 2016

**Vitaliy Kertchen
Kertchen Law + CPA**

Phone: (253) 905-8415
Email: vitaliy@klawcpa.com

VITALIY KERTCHEN is an attorney and certified public accountant in solo practice in the Tacoma area. He focuses on business, tax, CPA ethics and malpractice, and criminal cases. Vitaliy graduated from Gonzaga University School of Law in 2012.

“Signature includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.” WPIC 2.23 (criminal).

Electronic signature vs digital signature

An electronic signature is any mark placed on an electronic document with the intent for that mark to act as a signature of the person placing the mark. This can be anything such as “/s/,” “/s/ name,” or a digital image (such as a scan of an ink signature).

A digital signature creates an electronic “fingerprint.” This “fingerprint” is a coded message that requires encryption and data integrity. Every individual has a unique “fingerprint” that identifies him or her as the person who actually signed the document. This is accomplished by the use of the Public Key Infrastructure (PKI) technology that compares two “keys,” one private and one public. The sender attached the “key” to the signed document, the document is encrypted, and the recipient uses the “key” to decrypt the document and verify the identity of the signor and that the document has not been tampered with since it was signed.

State of the law

Washington state

Digital signatures. RCW 19.34, the Washington Electronic Authentication Act, controls digital signatures. The legislature enacted it in 1997. It requires the Secretary of State to license and monitor “certification authorities.” Certification authorities are companies who issue digital certificates to end-users for signature purposes. A certification authority may only issue a certificate after verifying the recipient’s identity. A digital signature is as legal as a written signature. It is as valid, enforceable, and effective as if it had been written on paper. A digitally signed document is the original of the document. There are no KeyCited cases in Westlaw for any section in RCW 19.34.

As of now, there is only one company licensed by the SOS to act as a certification authority in Washington. The company is Image X Enterprises, Inc. None of the mainstream e-signature platforms are certified to provide digital signatures under RCW 19.34 (DocuSign, HelloSign, RightSignature, CudaSign, etc.).

Further resources on digital signatures:

<http://www.sos.wa.gov/ea/>

<http://www.co.kittitas.wa.us/about/signatures/>

<http://apps.leg.wa.gov/rcw/default.aspx?cite=19.34>

Electronic signatures. There is no one body of law that governs electronic signatures like there for digital signatures.

RCW 9A.72.085 states that a person may subscribe to a written statement, declaration, verification, or certificate by “attaching or logically associating his or her digital signature *or* electronic signature as defined by RCW 19.34. By using the word “or,” this appears to provide

statutory authority for signing a statement under penalty of perjury with a simple electronic signature, without requiring the added compliance and overhead of a digital signature.

GR 30 is a court rule that governs electronic filing and service. GR 30(d)(2) discusses signatures on e-filed documents. Specifically, it acknowledges the digital signatures recognized by RCW 19.34, but also allows a simpler method of signing documents. An attorney may sign a document for e-filing by indicating “s/name,” along with the attorney’s bar number and contact information. A non-attorney signing a document not under penalty of perjury can do so in the same manner as an attorney. The standards for a non-attorney signature on a document signed under penalty of perjury are more stringent; the document must be signed on paper and scanned, and the filer must retain the original signed paper document for the duration of the case (including period of appeal) plus sixty days.

GR 30 only applies to e-filed documents. Presumably, RCW 9A.72.085 controls if the document is paper filed. In that case, the signer could sign a declaration electronically by marking “/s/” and the filer could then print the document and paper file it.

Federal

The Electronic Signatures in Global and National Commerce Act (ESIGN) was enacted in 2000. It states that “with respect to any transaction in or affecting interstate or foreign commerce— (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.” 15 U.S.C. § 7001(a).

ESIGN does not require any of the encryption or identification protocols of a digital signature, making it purely an electronic signature law. It also significantly limits the states’ ability to preempt. However, it does state that its provisions do not apply to “court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings.”

Administrative

Each administrative agency may have its own rules and regulations pertaining to signatures on a case by case basis. By way of example, historically the IRS required paid preparers to collect traditional paper signatures on the taxpayer’s form 8879 (e-file authorization). In 2014, the IRS issued new guidance on collection of e-signatures on form 8879. It does not specify any specific platform, but rather lists the different options a paid preparer can employ and the parameters of each option (what data to retain, how to verify identity, etc.). Check with your administrative agency for specifics.

Uniform Electronic Transactions Act (UETA)

The UETA is a project by the Uniform Law Commission to bring the same laws pertaining to electronic records and signatures to all fifty states, much like the Uniform Commercial Code, etc. Forty-seven states have passed the UETA; three states have not. Washington is one of the states that has not passed the UETA.

Ethical implications

RPC 1.1 states that a lawyer shall provide competent representation to a client. Knowledge of e-signature rules is increasingly a requirement for a competent practitioner. Digital documents and signatures are no longer on the fringes of the practice, but are front and center. Even entire court systems are relying more and more on technology. King and Pierce Counties now have mandatory e-filing; other counties have e-filing as a (nonmandatory) option. King County even has mandatory e-service now. Imagine filing a lawsuit the day before the statute of limitations expires, only to find out that one or more of the signatures in the filing are not legally valid. Losing your client's claim because of unfamiliarity with e-signatures would certainly trigger RPC 1.1 as an act that follows below the standards of competence.

RPC 1.6 governs confidentiality of information. Confidentiality of information applies when using a third party e-signatures platform, such as DocuSign, HelloSign, RightSignature, CudaSign, etc. These platforms require you to upload the document to be signed to their servers. The platform then presents that information in a web browser (or mobile device app) to your client for their review and signature. Once signed, the platform retains copy of the signed document on its own servers, and emails a copy to both you and your client. You have now shared what could otherwise be confidential information with a third party.

RPCs 5.1, 5.2, 5.3, 5.10 govern a lawyer's responsibility for another's conduct. This means proper supervision and training of subordinate staff, whether it's associate attorneys, paralegals/support staff, or limited license legal technicians.

CHAPTER SEVEN - A

ALTERNATIVE LAW FIRM MODELS FOR THE SMALL PRACTICE

January 2016

Brandon S. Gillin
Genesis Law Firm, PLLC

Phone: (425) 212-1789
Email: brandon@genesislawfirm.com

BRANDON S. GILLIN practices immigration law at Genesis Law Firm in Everett. He was admitted to practice in 2012.

Non-traditional Law Firm Practices

Genesis Law Firm operates under a business model that is not typical of law firms. We don't have secretaries or receptionists. We don't have large offices. We don't have a basement filled with old paper files. We don't pay for advertising. We don't offer salaried associate positions. We don't offer health insurance.

The business model is largely based on cutting recurring costs so that we can charge less than other law firms (which clients like) and also bring home more of what we bill.

We don't have "associate" attorneys. All of our non-partner attorneys are designated "of counsel." We feel the term "associate" isn't fitting in our model since associates are usually behind the scenes. Our attorneys handle their own cases and call the shots.

Remuneration to our attorneys is commission-based. Of counsel attorneys keep two-thirds of what they bill. These "two-thirds attorneys" are normal employees of the firm, not independent contractors. The firm pays for the attorney's expenses (rent, computer, scanner, printer, shredder, internet/phone, bar dues, etc.). It costs the firm approximately \$2,000 to set up a new two-thirds attorney with her infrastructure and another \$1,500 in monthly expenses. If a two-thirds attorney bills \$10,000 in a month (a fairly easy task), their set-up cost is paid for in one month and she can pay for her expenses. In that scenario the attorney's gross income is \$6,670. If the firm had large recurring monthly expenses, the attorney's gross monthly income would be much less and it would become more difficult for the attorney to bring home a livable wage. There is no monthly billing requirement; as long as the attorney can meet her expenses (about \$1,500) each month then she won't be a drag on the firm. In practice, our attorneys make much more than their baseline expense requires.

Each attorney focuses her practice in one or two areas. If an attorney tries to handle many practice areas more unbillable time is spent. When an attorney focuses her practice she can bill virtually all of her time.

When an attorney is paid on commission with no billable hour requirement it benefits both the firm and the attorney. The firm benefits by not having to pick up the slack on an under-performing salaried attorney. The attorney benefits by knowing she can work as much or as little as she wants to allow for other life events.

Each attorney is required to help in the firm's marketing efforts. The firm requires that each attorney contribute in this way at least once per quarter. Presenting at CLEs or writing articles satisfies this requirement.

Not everyone is interested in working for a law firm like ours. All of our attorneys have experience working for traditional law firms, but have grown tired of that model. Targeting this type of attorney has helped keep our retention rate high.

CHAPTER SEVEN - B

ALTERNATIVE LAW FIRM MODELS FOR THE SMALL PRACTICE

January 2016

Gerald J. Moberg
Jerry Moberg & Associates PS

Phone: (509) 754-2356
Email: jmoberg@jmlawps.com

GERALD J. MOBERG, an honors graduate from Gonzaga University Law School, has been practicing law in Washington since 1973 and has substantial experience in various areas of civil litigation.

He has practiced law in Grant County, Washington as a trial lawyer and was elected to the Superior Court bench in 1989, where he served one term as a Superior Court judge. After he retired from the Superior Court, he resumed an active trial practice representing clients in a variety of areas such as personal injury, civil rights, and employment issues. He has tried over 100 civil jury trials to verdict.

Throughout this experience he has had the opportunity to argue cases at every level of the judicial system, including the United States Supreme Court, the Washington State Supreme Court, the Federal Court of Appeals, the State Court of Appeals, the United States District Courts and the Superior Court in nearly every county in Washington. His expertise spans from contracts to education and municipal law, as he has represented school districts, cities, police departments, and counties.

In 2014, he started his own firm, Jerry Moberg & Associates, P.S., which has allowed him to bring his considerable litigation experience to a broader clientele, including individuals and small business owners in the local community. He is also currently serving his final year as Washington State Bar Association Governor for the 4th District. He is the Board of Governors liaison to the Law Clerk Board, the Solo & Small Practice Section, and the Superior Court Judges Association Trustees, and furthermore serves on the board of Washington Council of School Attorneys and Samaritan Hospital Ethics Committee.

LLLTs IN TODAY'S PRACTICE

BY JERRY J. MOBERG¹

I currently have two paralegals in the Limited Legal Licensed Technicians (LLLTs) training program. I am often asked, "Why?" This is a fair question without a simple answer. The law practice in the 21st century is changing rapidly. The client base is shifting. We have a large unserved or underserved clientele of middle class and lower middle class clients that cannot afford attorneys under the traditional model of service. The model of charging at my pre-determined hourly rate to serve the client until they cannot afford to pay anymore and then turning them out on their own is simply not working. It creates issues with the client and reflects poorly on the profession. Lawyers need to think more creatively on how best to meet the needs of the clients of the 21st century.

I must confess that I am blessed with a cadre of clients that can afford my hourly rates. Yet, even these clients are asking me to consider strategies that can streamline their legal costs. Therefore, I have started to give more serious thought to how we can best deliver legal services in the modern era. We are exploring ideas like flat fee billings with corporate clients to avoid potential cost overruns. We are employing limited representation agreements (a/k/a unbundled legal services) with clients who need very specific assistance but do not want to sign on for complete representation. We are constantly looking for ways to streamline the work we do to make it more cost effective. When consulting with new clients about fees we often ask them how they would like the fee agreement structured. Surprisingly many of our clients will come up with fee proposals that are fair, make good sense and allow us to provide services that the client can afford.

However, the bottom line to all of the innovative fee arrangements is that we need to be able to deliver more effective legal services for less money. To do that we need to streamline our internal costs and delegate as much work as practicable to support staff. Which brings me back to the question, "Why LLLTs?" Under the current WSBA required training program, LLLTs are very well trained in the mundane and daily tasks of a domestic relations practice. They can answer a client's

¹ Jerry Moberg is a "country lawyer" and operates a modest sized law firm in Grant County representing individuals and municipalities in a variety of areas. The firm primarily focuses on litigation but has an expanding cadre of individual clients with a variety of legal needs.

basic questions about the process and can draft the basis pleadings. They can do this independently and at an hourly rate lower than the attorney's rate. If you couple this with an interactive website, streamlined procedures, and an effective document engine, a solo or small sized law firm can handle an increased volume of domestic relations cases at a profit. These are cases that you are not presently interested in because they are cost prohibitive.

And where do you find these clients? They are right in front of you. The statistics are clear. Approximately 80% of clients who have legal needs are currently unable to afford attorneys in our current model of service delivery. However, this is also a multi-billion dollar untapped market. These same potential clients who cannot afford to pay rates of \$200-\$300 an hour or higher can afford rates at \$75-\$100 an hour. In my community, I can charge out my paralegals at \$75 per hour and cover all of their salary and overhead and still make a modest profit. I can do the same with LLLTs. With LLLTs, my office can serve middle class clients who can afford and are willing to pay \$750-\$1,000 to have an LLLT assist them in filling out the forms and assist them in completing a simple dissolution proceeding. It is a win-win proposition. We can provide the service at an affordable rate and the client has the peace of mind of being represented by a professional. .

I often hear the argument that LLLTs are "moving in" on the lawyer's turf. A careful analysis of this argument demonstrates its fallacy. This is turf upon which most lawyers refuse to tread. The work simply does not pay enough for their effort. It is turf that LLLTs know well and upon which they are happy to walk. The work of LLLTs is not taking away work from lawyers. Frankly, if an attorney is willing to do this work at the same rates charged by LLLTs I am sure the client would prefer to be represented by the attorney. I just don't see many attorneys campaigning for this work.

LLLTs provide other advantages to the firm. In addition to the direct benefit gained from the efficient use of LLLTs there is a secondary gain as well. Working with these clients often will result in referrals of other work from their family and friends. These clients may need an attorney to assist them in the probate of an estate or may need assistance on a personal injury claim. It is very likely that they will come back you your firm to handle these other legal problems in the future.

In addition, it is the right thing to do. As lawyers we are called upon to assist citizens in resolving their social disputes. We owe it to the public we serve to make available to them affordable

legal representation. There are successful “low bono” law firms starting up all over the country. Many of them are non-profit firms but many are for-profit. They are able to provide legal services at reduce rates, some as low as \$50 per hour and still make a decent living as a lawyer. There is no reason why existing “established” firms cannot provide the same legal services for these clients at an affordable rate.

Do the math. If an LLLT can handle 10 or 20 uncontested dissolutions (a modest number) he or she will likely generate between \$10,000 and \$20,000 of additional revenue for the firm. Assuming that each case takes 10 hours (which is our best current estimate) the paralegal will spend 100 to 200 hours of time generating the revenue. If you are paying your paralegal at the rate of \$20-\$25 an hour and assume overhead costs of another \$20-25 per hour the net return to the firm for this work is somewhere in the range of \$50-\$60 per hour. The firm could well see profits of \$10,000 from an LLLT who handles 20 dissolutions a year. If an LLLT handles 50 or 60 cases (not an unreasonable expectation) the revenue stream will increase proportionately.

Our LLLTs are fully employed by my firm. Therefore, they are working under the direct supervision of the attorneys in the firm. If the uncontested dissolution runs into a roadblock that takes it outside of the authority of the LLLT, then the file can be referred to the attorney for assistance. This will likely require a modification of the fee agreement but it is also the source of additional reasonably profitable work for the attorney.

The WSBA is now looking at other practice areas for LLLTs. They are considering areas like probate and landlord tenant law. As these areas are opened up the opportunities for developing additional revenue in your firm and serving an underserved segment of the population is endless.

Admittedly, LLLTs are not for everybody. Many law firms are doing just fine under the current model. But we are facing increased competition from non-attorney businesses that are providing clients services that we once thought were traditionally provided by attorneys. Legal Zoom, Rocket Lawyer, and a number of other similar organizations are providing low cost legal forms to a vast number of clients. As lawyers, if we are not adaptive enough to meet the competition we will be left standing on the side of the road. I am convinced that most clients will pay some premium over the rates of non-attorney providers to be represented by a law firm and to have access to a representative

of the firm. However, to stay competitive we must streamline our procedures and lower our costs to meet the competition. LLLTs are, and will be, an important part of this strategy going forward. So in when you ask, "Why LLLTs?" my answer is because they are necessary for us to compete in the legal market in the 21st century.

MY JOURNEY TO BE A LLLT
by Dawn Severin

My name is Dawn Severin, I have been a paralegal with Jerry Moberg approaching eight years now. I graduated from Edmonds Community College, an ABA accredited paralegal program. Last year I was presented with the opportunity to advance my legal education and began my journey to become a Limited Legal License Technician (LLLT). Before I begin outlining my experience in the program, I must first recognize that without the support, both financial (employer paid tuition), and otherwise, of my supervising attorney, Jerry Moberg, the likelihood that I would have embraced this program on the outset, would not have been probable. In the beginning, I did not know much about the exact details of the program, other than there was a newly formed rule that would allow me to be licensed to deliver legal services, under limited circumstances, and that the first area of study was family law. Having worked for the past eight years in a completely different area of law, family law had been something I had not thought much about. Later, when I began to research the program and started to understand that there was a serious need for people to access legal services, I was shocked to learn later that some 80-90% of middle to low income persons would not have access to legal professional services. I felt compelled to be a part of this movement that would be able to help others access legal services and hope that someday I could make a difference in the lives of those who would otherwise have no other option but to go at it alone.

Legal Education: Because I had already graduated from an Accredited Paralegal Program, I had met the education requirements to enter into the LLLT education offerings at the UW School of Law; although, I had to simultaneously return to college and pick up a few extra classes that were part of the CORE curriculum¹ that I had not taken previously, and in entering the UW curriculum, knew that the remainder of my CORE credits would need to be completed prior to being allowed to sit for the Licensing Exam. Due to my geographical location, I was able to take some classes online, but for others, I travelled from East to West to complete these lingering credits at the community college. Small term sacrifice for a long term goal!

UW School of Law: To be accepted into the program, I had to apply to the WSBA and be pre-approved into the program through the UW School of Law continuing education section. Tuition per quarter comes in at \$1250.00 per quarter, and there is no financial aid or scholarships available. While I was fortunate to receive tuition assistance from my employer, I understand that others will have to pay this out-of-pocket.

The classes I attended were all provided online using adobe connect. The platform in which the curriculum was delivered worked well. There were three classes that were offered, FAMILY LAW I, II and III. Classes were held twice a week for ten weeks in each of these quarters and lasted about 2.5 hours per night, which included lectures and visual powerpoints. Like in all other classrooms, the curriculum included various reading assignments that had to be completed in advance of class and which supplemented the lecture materials. There was A LOT of reading. Each class series included a series of assignments, which included things like drafting parenting plans, child support orders, temporary orders and the like. We also spent a lot of time learning about the scope of practice and learning to identify the issues that were beyond the scope of a LLLT's abilities. I have enclosed a "Scope of Practice" table that

¹ The CORE curriculum and application process can be found on the WSBA webpage;
<http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Legal-Technician-Education-and-Application-Process>

was created by a student in the first class and which was provided to us and to subsequent classes, which nicely outlines the boundaries of what is allowed under the rules. A lot of time was spent on not only identifying the issues which were beyond the scope, but also the writing of informational letters to clients which explain the scope of practice, including the identification of those issues to which the LLLT could not assist and the proper ways and techniques to refer the client/potential client to seek the assistance of qualified legal counsel. The reality of it is, there are so many issues and areas that a LLLT cannot assist, that I was left with the feeling that most LLLTs will most definitely need to foster relationships with attorneys to be successful in their practices, if they are not already working for one. For example, a LLLT may NOT divide real property or handle matters of pension plans, 401k's and stock options. These are standard issues that are found in many dissolution cases. A LLLT without a fostered relationship with an attorney will not be able to serve a client with these issues present.

Overall, the curriculum presented was very informative, substantive, and challenging at times. One instructor said to us, and it stuck with me ... *"It was designed to be hard; it was designed so you will struggle through it; there is learning happening when you struggle through it..."* and I would be left to agree. I did learn, and I learned a great amount, and at times, that learning came with stress and tears as I was also a full time employee with a full case load. More importantly, I left knowing there is still more learning to be achieved in practice. I am left with the understanding that I will become only a small element in the overall delivery of legal services.

After completing the program, I did walk away with a few areas I believed could be improved, and chose to partake in the end of quarter evaluations. Everyone's experiences will be different with what they would take away from the program and the areas they felt they needed more. The actual completion of the program is the easy part, a prospective LLLT will then need to complete the application process, which includes a full background disclosure, complete with FBI fingerprinting, take the PCC CORE Curriculum Exam, the WSBA licensing exam, and then complete 3000 hours of substantive legal work. With respect to the 3000 hours, a LLLT must obtain a declaration from their supervising attorney indicating their completion of these hours. I have come to understand that, for some, not all, are having difficulty getting their supervising attorneys to sign off on this portion for various reasons, including the ambiguity of the term "substantive legal work," which to date, remains undefined and subject to the interpretation by each individual attorney.

Overall, this was my journey and it is still not complete. While I was fortunate to already have the completed most of the CORE curriculum education requirements which were part of my degree program, some are starting with zero. I have personally reached the point where I am now studying for my licensing exam, and that my friends, as you all know from your own experiences, is intimidating. 😊

<u>What LLLT can perform related to these areas:</u>	Provide General Information & services (see end of doc for details)	Advise/Assist clients to initiate & respond to actions re: motions, discovery, trial prep, temp & final orders, & modification of orders	Preclusions	Exceptions to Preclusions	RCWs
<ul style="list-style-type: none"> Major Parenting Plan Modifications 	X	Yes... but → App. APR 28 (2) (B) (1)(f)	Only if terms were agreed to by parties before onset of rep by LLLT App. APR 28 (2) (B) (3) (c)(vi)		RCW 26.09.002, .182, .184, .187, .191,
<ul style="list-style-type: none"> Minor Parenting Plan Modifications 	X	Yes App. APR 28 (2) (B) (1)(g)			26.09.002, .182, .184, .187, .191,
<ul style="list-style-type: none"> Child Support Modification Actions 	X	Yes App. APR 28 (2) (B) (1) (a)			26.19
<ul style="list-style-type: none"> Dissolution Actions (uncontested) 	X	Yes... Except → App. APR 28 (2) (B) (1) (b)	(1) division of (a) owned real estate, (b) formal business entities, or (c) retirement assets that require supplemental order to divide and award; (2) disposition of debts and assets if one party in bankruptcy or files during pendency of proceeding, unless App. APR 28 (2) (B) (3) (c)(i-iii)	...the LLLT's client has retained a lawyer to represent him/her in bankruptcy, or the client has consulted w/lawyer and lawyer provides LLLT w/written instructions on whether/how to proceed with division of assets, or bankruptcy has been discharged.	26.09 26.16 26.04 26.60
<ul style="list-style-type: none"> DV Actions 	X	Yes, Except → App. APR 28 (2) (B) (1) (c)	Anti-harassment orders, criminal no-contact orders, anti-stalking orders, and sexual assault protection orders App. APR 28 (2) (B) (3) (c)(iv)		26.50

<u>What LLLT can perform related to these areas:</u>	Provide General Information & services (see end of doc for details)	Advise/Assist clients to initiate & respond to actions re: motions, discovery, trial prep, temp & final orders, & modification of orders	Preclusions	Exceptions to Preclusions	RCWs
• CIRS	X	Only as they pertain to parenting and support issues App. APR 28 (2) (B) (1) (d)	LLLTs shall not advise or assist clients regarding pseudo=community property issues App. APR 28 (2) (B) (3) (c)(v)		26.60
• Legal Separation actions	X	Yes App. APR 28 (2) (B) (1) (e)			26.09
• Parenting and Support actions	X	Yes App. APR 28 (2) (B) (1) (h)	Except (1) de facto parentage actions; (2) non-parental custody actions; & (3) Indian Child Welfare Act actions App. APR 28 (2) (B) (3) (i-ii)		26.12
• Paternity actions	X	Yes App. APR 28 (2) (B) (1) (i)			26.26
• Relocation actions	X	Yes, Except → App. APR 28 (2) (B) (1) (j)	(1) Objections to relocation petitions, responses to objections to relocation petitions, or temp orders in relocation actions; or (2) final revised PPs in relocation actions..... App. APR 28 (2) (B) (3) (c)(viii) & (ix)	except in event of default or where terms have been agreed to by the parties	
• UCCJEA /UIFSA	X	Yes, Except → App. APR 28 (2) (B) (3) (c)(vii)	The determination of UCCJEA issues under RCW 26.27 or UIFSA issues under RCW 26.21A	Unless and until jurisdiction has been resolved	26.27; 26.21

PROVIDE GENERAL INFORMATION AND SERVICES as follows (APR 28 F):

- Obtain relevant facts and explain the relevancy of such information to client
- Inform client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of legal proceeding
- Inform client of applicable procedures for proper service of process and filing of legal documents
- Provide client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements
- Review documents or exhibits client has received from opposing side, and explain them to the client
- Select, complete, file, and effect service of forms that have been approved by the State of Washington specified by statute; federal forms or forms prepared by WA lawyer; forms approved by Board; and advise client of the significance of the selected forms to his/her case
- Perform legal research and draft legal letters and pleadings documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a WA lawyer
- Advise client as to other documents that may be necessary to client's case, and explain how such additional documents or pleadings may affect his/her case
- Assist client in obtaining necessary documents, such as birth, death, or marriage certificates

CHAPTER SEVEN - C

ALTERNATIVE LAW FIRM MODELS FOR THE SMALL PRACTICE

January 2016

Peter D. Roberts
Practice of Law Advisor

Phone: (425) 418-9771
Email: pete@practicelawadvisor.com

PETER D. ROBERTS is a private practice management consultant for lawyers. He is the former Practice Management Advisor in the Law Office Management Assistance Program (LOMAP) of the Washington State Bar Association for 13 years. Mr. Roberts has his MBA from The College of William & Mary and a Certificate as Small Business Webmaster from the University of Washington. He is active in the American Bar Association Law Practice Management Division Law Firm Finance Committee and Legal Technology Resource Center as well as GPSOLO Division and Section of Legal Education and Admissions to the Bar. He is a frequent speaker and has consulted with over 1,000 attorneys.

The civil legal market is as broad as society itself. Attorneys are fortunate with such a wide market and fortunate to be able to structure a practice according to a variety of models that can facilitate serving different types of clients. Indeed, the individual client hires the lawyer, not the firm, so it is in the lawyer's power to attract clients without having to adhere to a certain type of practice structure. Entity clients may look to a law firm for certain expertise, but the personal relationships remain important.

The word "model" in the title of this paper is a wide-meaning term because I am not speaking about legal entities.

A lawyer can be

Associate
Captive
Co-Counsel
Equity Partner
In House
Independent yet affiliated
Non-Equity Partner
Of Counsel
On Contract
Online
Sharing expenses only
Solo
Staff Attorney
Supervising Limited License Legal Technicians
Unbundled Limited Representation
Verein Arrangement

Here are brief descriptions of these models.

ASSOCIATE refers to an attorney on the payroll of a law firm. The firm provides office space, staff support and fringe benefits. There is also the expectation of an offer of partnership after five to eight years as an associate if the associate exhibits partnership potential. An associate is not permitted to have private clients on the side.

CAPTIVE refers to being an independent attorney, but providing services to only one client. An example is a labor union. Services may be billable by the hour or flat fee. Having private clients on the side is not normally the case.

CO-COUNSEL refers to being associated on a matter with another attorney and sharing in the fees. An example is an originating attorney who brings in the client and associates with another attorney outside of the firm to handle any litigation. This relationship may repeat itself for different client matters as long as no conflicts of interest arise.

EQUITY PARTNER refers to possessing an ownership stake in the law firm. Such a stake may

require a funded payment to the firm's capital either at the outset or derived over time through a diversion of a portion of annual compensation to the capital of the firm over a fixed number of years. The terms "shareholder" and owner" are also used. If there are only two equity partners, I recommend an uneven split such as 51% - 49% to avoid a future impasse.

IN HOUSE refers to being on the payroll of an entity. A corporation or insurance company is an example. The attorney performs legal tasks and perhaps supervises outside counsel. I heard recently at an ABA meeting the in house lawyers at British Telecom (BT) are allowed to perform legal services for the vendors of BT. If so, the practice is very unusual.

INDEPENDENT YET AFFILIATED refers to having a separate legal entity yet being part of an organized group of attorneys without a central office. A central agreement includes the financial commitment and compensation as well as other details. Having private clients on the side is possible. Staff are hired and paid by the individual attorneys, not by the organization. The term "VIRTUAL LAW FIRM" is also used. See *Clearspire's Technology Outlives 'Virtual' Law Firm* at <http://on.wsj.com/1NtTSs7>.

NON-EQUITY PARTNER refers to having a role in voting on major questions in the firm but whose compensation is not based on a holding of equity in the firm. Sometimes also described as an "income partner." A bonus structure may be a large factor in the compensation of a non-equity partner.

OF COUNSEL refers to being associated with a law firm under an of counsel agreement. ABA Formal Opinion 90-357 (1990) defines of counsel as a close, regular, personal relationship, which is neither that of "partner" nor "associate." The Opinion envisions

specifically the following circumstances: part-time practitioner; retired partner; probationary partner-to-be; permanent senior or tenured attorney. The agreement describes fringe benefits (if any), compensation, access to office and staff, expense reimbursement, professional liability insurance and can include duties such as business development and training of other attorneys in the

firm. The arrangement may also be called "senior counsel" or "special counsel." Having private clients on the side may be permitted as long as no conflicts of interest arise. An attorney who is of counsel may also be a potential candidate for joining the law firm as



an equity partner. Garvey Schubert Barer has used of counsel relationships for this purpose and the firm is a member of <http://www.globalaw.net> that enables connecting to an expanded or international practice. See also WSBA Advisory Opinion 178 for general guidance for avoiding misleading firm names.

ON CONTRACT refers to an independent attorney who offers legal services to other attorneys for specific projects. Examples are research and writing projects. Fees are usually by the hour but may include flat fees for well-defined projects. Having private clients on the side is possible. See also WSBA Advisory Opinion 911. But see, *Ethics Opinion 352 Stresses Risks Associated with Temporary Attorneys* at <http://bit.ly/1Pe0JbN> An attorney working in a law firm on contract for a long term may be called an associate in certain instances usually without an expectation of an offer of partnership. I recommend these arrangements be reduced to a writing.

ONLINE refers to offering limited legal services to clients through a website portal. The client logs on to the portal to access documents and to communicate with the attorney. The client may never meet the attorney in person. See www.directlaw.com and <http://virtuallawpractice.org/about/>.

SHARING EXPENSES ONLY refers to two or more attorneys physically in adjacent offices who share the expenses of the joint offices but retain 100% of the fees from their own clients. Proper signage is essential to avoid misleading the public into believing it is a traditional law firm. A written agreement is used to formalize the arrangement.

SOLO refers to an attorney who practices alone but may have staff. Solo practitioners comprise the largest grouping of attorneys in most jurisdictions. A solo may or may not have an office outside of the home. The use of listserves of practice area sections enables solo attorneys to feel connected to peers. There are also informal groups of attorneys who meet periodically to maintain professional contacts and foster referrals.

STAFF ATTORNEY refers to an attorney who is employed by a law firm in similar fashion to an associate and is paid only a salary. Attorneys who possess a deep knowledge of a particular niche area of the law sometimes are in this category. A bonus may also be a part of compensation.

SUPERVISING LIMITED LICENSE LEGAL TECHNICIANS (LLLT) refers to an emerging area in Washington wherein an attorney hires and supervises these credentialed professionals and also may render legal services as well. Existing law firms are considering hiring LLLTs. For general background about LLLTs, see Admission to Practice Rule (APR) 28.

UNBUNDLED LIMITED REPRESENTATION refers to an attorney who does not directly represent the client, but assists the client with research, writing, document preparation, and limited scope appearances in court in accordance with the relevant limited scope of representation rules of the attorney's jurisdiction. Having

 WSBA
Advisory Opinion: 1763
Year Issued: 1997
RPC(s): RPC 1.2; 1.5; 1.8(a)
Subject: Unbundled legal services; limited representation; subsequent representation of former client
<p>"Unbundled legal services" [in the family law context] refers to the concept of a party engaging an attorney to take limited measures, such as helping to prepare initial pleadings and perform child-support calculations, without either the lawyer or the client being obligated to the other for the duration of the dissolution or modification proceedings. This measure would enable the attorney to charge a reasonable flat fee for defined services, and the client to control and budget for expenses. The Committee advises that assuming that both the original and subsequent representation agreements comply with RPC 1.2 and 1.5, RPC 1.8(a) does not apply to a separate, subsequent, limited engagement of the same attorney by the same former client.</p>

private clients on the side is possible. See <http://virtuallawpractice.org/about/>.

VEREIN ARRANGEMENT refers to an association or associations of large law firms.

“At least some of the difficulties of expansion have been ameliorated by the vehicle that Dentons, Baker & McKenzie, DLA Piper, Hogan Lovells, Norton Rose Fulbright and some other very large firms have chosen to carry their ambitions forward: the Swiss “verein,” which is German for the word *association*.

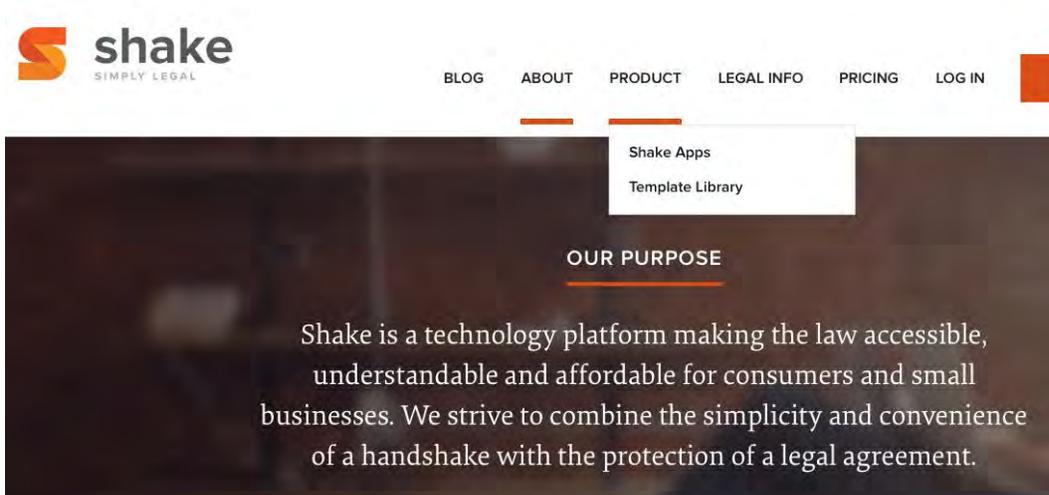
Normally, when two law firms merge, they combine their separate partnerships into one. This can be a challenge, especially if there are large financial disparities between partners at the different firms. In recent years, rapid expansion via merger has been a factor in firm collapses like those of Dewey & LeBoeuf and Bingham McCutchen.

Vereins can avoid these issues to a large degree because they include multiple partnerships that, though they adopt a common brand and some management functions, remain legally and financially distinct. With separate profit pools, these entities simply don’t face the kinds of sticky economic integration issues that traditionally merged firms do. For instance, Dentons and Norton Rose each have five such entities, while DLA Piper has three.”

See *The Rise of the Megafirm* at <http://bit.ly/1O7UNA5>

THE FUTURE?

Entrepreneurial lawyers are seeking ways to reach the broader unrepresented public and small businesses using technology. Shake is an example. And beyond Shake is Neota Logic and others.



- ✓ Our visual environments aid non-programmers to rapidly build applications
- ✓ Create engaging and beautiful UIs that use your logo, out of the box layouts, or create your own styles or themes
- ✓ Your applications can combine the power of rules/logic, workflow and document automation
- ✓ Test, verify, validate, and document the design and operation of your applications with automated tools
- ✓ Maintain and update your applications for rule, logic, or policy changes with quick and simple adjustments
- ✓ Generate outputs that support your business objective

Today's career for attorneys may include two or more of these models as attorneys strive to offer affordable legal services to an underrepresented public at large. Structuring meaningful representation at an affordable cost is a continuing challenge, but your own lean "model" contributes to this goal of broadening access to justice while earning a fair living.

CHAPTER SEVEN - D

ALTERNATIVE LAW FIRM MODELS FOR THE SMALL PRACTICE

January 2016

George O. Tamblyn
Advocates Law Group PLLC

Phone: (206) 236-2769
Email: gtamblyn@advocateslg.com

GEORGE O. TAMBLYN began practicing law in 1964 after graduating from Cornell Law School. In addition to Law Practice, George has been actively engaged in several business ventures and took a sabbatical from law to get a couple of graduate degrees in History and taught at local colleges and universities.

George is a Founder of Advocates Law Group (<http://www.advocateslg.com/>), a 14 member virtual law firm operating statewide since 2010. He has always been interested in the structure, marketing and economic aspects of the practice of law. His practice focuses on Business, employment law (Plaintiffs'), real estate and litigation. He offices on Mercer Island.

PRESENTATION OUTLINE - 21st Century Law Practice for Solos and Small Firms (10 minutes)

1. **WHO AM I? WHO ARE YOU?** = To the world it is your website that everyone goes. You can count the hits. It **MUST** look professional and be informative.

<http://www.advocateslg.com/>

2. **HOW TO GET CLIENTS TO COME TO YOU? (and HIRE you)**

- a. Satisfied Clients
- b. Effective Marketing gets them in the door. – GOOGLE CLICKS (separate bio)
- c. Many clients are shopping, as they should. –
- d. **Closing the Deal** Your meeting and your office (conference room)
 1. Organized (no other client files visible)
 2. Pleasant – don't puff
 3. Informative
 4. Confidence building – discuss **reasonable** expectations
 5. **Thorough – close the deal with a clear fair fee arrangement and get a deposit.**
 6. **Follow up** with some action
 7. **Communicate often**
 8. **Bill every month**
 9. **RESOLUTION OF MATTER**

3. **LAW BUSINESS STRUCTURE**

- a. Solo Practice
 - i. **Solo with associate** (How to do this in today's world)
- b. Small firm - do not buy your office
- c. **Virtual or semi virtual** – will discuss later – see handouts – email me
- d. Large firm

4. **HAVING A PLAN FOR WHAT YOU ARE DOING AND FOR THE FUTURE**

5. **EAT what you Kill**

6. **Overhead-Conclusion**

How to set up a Virtual Law Firm

1. Find 2 – 5 lawyers to join with you in the project.
 - a. They should all have a pretty good book of business.
 - b. Compatible practices, but not identical, financially stable
 - c. Discuss short term goals
 - d. Discuss employing consultants – Pete Roberts
2. Agree on a plan and basic structure.
 - a. Budget Startup expenses
 - b. Outline of Operating Agreement**
 - i. Fee distribution formula
 - ii. Overhead budget
 1. Source of revenue
 2. Contribution formula
 3. Surplus/deficit
 - iii. Origination
 - iv. "Firm clients"
 - v. Admission and withdrawal
 - vi. Governance: Manager Executive Committee
 - vii. Dispute Resolution
 - c. Malpractice Insurance
 - d. Physical facilities (if any)
3. Establish operational infrastructure
 - a. Time and billing system; web based, **Bill 4 Time**
 - b. Bookkeeper (**crucial**)
 - c. Website; Tech Support
 - d. Filing, operational software. **OFFICE 365**
4. Discuss mid-term Goals
 - a. Projected firm profile
 - b. New members' profile
 - c. Firm size
 - d. Actual Overhead budget**
5. Sign operating agreement
 - a. Set date to commence operations
 - b. Logo-stationary-cards
 - c. **Outlook**, email
 - d. Launch website
 - e. Deal with WIP and A/R
 - f. Be sure accounting is all set up
 - i. Draw Policy/Report
 - ii. Check writing
 - iii. Trust Account
 - g. DETAILS, DETAILS

Attorney Fee Agreement – contingent fee

(Read carefully)

This agreement is between the undersigned CLIENT and the undersigned attorney (“Attorneys”) regarding Client’s claim against the adverse party described below. The parties agree as follows.

The claim. Attorneys have not fully investigated the claim. Full knowledge of all aspects of the claim does not become apparent, in many cases, until after the Discovery phase in formal litigation. If, at any time it appears not reasonably feasible to continue pursuing the claim, Attorneys’ upon notice to Client, may withdraw from or limit representation of Client.

Scope of services. Attorneys will diligently pursue resolution of the claim. Attorneys will not settle the claim without Client’s express permission. Unless specifically agreed, memorialized by a writing, Attorneys will not assume any responsibility for legal matters other than the Claim. Attorneys and Client will be in reasonable communication regarding the claim and related matters. Client shall promptly disclose to Attorneys all relevant facts relating to the Claim. Attorney may withdraw as attorney for client for any good reason. Likewise, Client may discharge Attorneys at any time for any reason, but Attorneys shall have a right to compensation for work done on Client’s behalf prior to termination, including a reasonable proportion of any contingent fee. Any disputes regarding this agreement shall be resolved through mediation/arbitration by JAMS of Seattle.

Legal fees and billing. Client has been advised that Client may employ Attorneys on an hourly fee basis, but Client has elected a contingent fee arrangement, which will be applied to the gross amount recovered, including any attorney’s fees, penalties, fines, and sanctions as follows:

25% of amounts recovered prior to the commencement of a lawsuit.

33% of amounts recovered after the first deposition has been commenced or the Defendant has responded to Discovery Requests.

40% of amounts recovered within 90 days of any scheduled trial date.

45% of any amounts recovered after a trial has been commenced. Appeals to be negotiated separately.

Costs necessary for litigation are the legal obligation of the client and shall be paid by client as incurred. They include court filing and service fees; deposition expenses and court reporter fees, necessary travel expenses, expert witness and independent consulting fees, para-legal assistant’s costs, transcripts, investigation, and all other out of pocket costs reasonably incurred during representation of client. The incurrence of such costs shall be discussed, whenever feasible, with client. It is Attorneys’ usual practice to secure an advance deposit in the Trust Account for costs to be incurred that are necessary to pursue the claim.

Estimates are not guarantees. Attorneys may have given Client estimates about possible outcomes of the matter, fees and costs. Prior to investigation and discovery, such estimates cannot be based upon all the factors involved in the claim which will become known in the future. Such estimates are opinions only and are made in good faith, but cannot be relied on and are not to be considered binding in any way.

Dated: _____ Client _____

Attorney _____ print client name _____

Claim against _____ regarding _____

\$ _____ Deposit in Attorneys’ Trust Account for “Costs”