

21<sup>ST</sup>

JERRY MIRZA MEMORIAL  
**RISK MANAGEMENT  
CONFERENCE**

OCTOBER 10 -13, 2017

# Law Practice Matters

PRESENTED BY **REID TRAUTZ**



**ISBAMutual**  
Lawyers' Malpractice Insurance



## In Memory of Jerome Mirza



Jerome Mirza was responsible to a considerable extent for the establishment of ISBA Mutual Insurance Company. He was unwilling to accept the substantial rate increases for professional liability insurance being experienced by Illinois lawyers during the time he served in ISBA offices and as ISBA President during the

mid to late 1980's. Jerry pushed for the establishment of our own insurance company as an alternative to the commercial market. He served on the company's management committee from its incorporation in 1988 and became the company's second President during 1989-1990. He played a significant role in charting the company's initial direction and he continued serving on the Board of Directors until 2005.

Jerome Mirza was a very successful and highly respected trial lawyer. He was also a prolific writer and legal educator. He

authored a number of books on trial advocacy published by the West Group. Jerry believed in giving back to the profession. He devoted much of his time to furthering the continuing education of practicing lawyers. In view of his deep commitment to CLE, the Board of Directors of ISBA Mutual Insurance Company believes it appropriate to dedicate our annual series of Risk Management Conferences to the memory of Jerome Mirza. Jerry died in 2007.

In addition to serving as President of the Illinois State Bar Association, Jerry served as President of the Illinois Trial Lawyers Association and served for twelve years on the Board of Governors of the Association of Trial Lawyers of America. He was a fellow of the International Academy of Trial Lawyers, the International Society of Barristers, the American Board of Trial Advocates, and was a member of the Inner Circle of Advocates. He secured numerous record setting verdicts during his distinguished career. In addition to his extensive continuing legal education contributions, Jerry also taught advanced trial advocacy as an adjunct faculty member at his alma mater, the University of Illinois College of Law.



**ISBA Mutual**  
Lawyers' Malpractice Insurance

**2017 21<sup>ST</sup> ANNUAL JERRY MIRZA MEMORIAL RISK MANAGEMENT CONFERENCE**

# Law Practice Matters

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**COLLINSVILLE**

**TUESDAY, OCTOBER 10**

1:00–4:30pm

**Gateway Center**

One Gateway Drive, Collinsville, IL  
618 345-8998

**OAKBROOK TERRACE**

**THURSDAY, OCTOBER 12**

1:00–4:30pm

**Drury Lane**

100 Drury Lane, Oakbrook Terrace, IL  
630 530-8300

**BLOOMINGTON**

**WEDNESDAY, OCTOBER 11**

1:00–4:30pm

**Eastland Suites Hotel and Conference Center**

1801 Eastland Drive, Bloomington, IL  
309 664-5733

**CHICAGO**

**FRIDAY, OCTOBER 13**

1:00–4:30pm

**IIT Chicago-Kent College of Law**

565 West Adams Street, Chicago, IL  
312 906-5000

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**PLEASE NOTE: LUNCH IS NOT PROVIDED**

**CHECK IN**

**12:00 – 1:00pm**

Must be pre-registered by September 15, 2017

**PROGRAM**

**1:00 – 4:30pm**

DISCLAIMER: This material includes loss prevention techniques designed to reduce the likelihood of being sued for legal malpractice. It is not the intent of these materials to suggest or establish practice standards or standards of care applicable to a lawyer's performance in any given situation. Rather, the sole purpose of these materials is to assist lawyers insured by ISBA Mutual in avoiding legal malpractice claims, including meritless and frivolous claims. To that end, the intention is to advise lawyers to conduct their practice in a manner that is well above the accepted norm and standards of care established by substantive legal malpractice law. The recommendations contained in these materials are not necessarily appropriate for every lawyer or law firm and do not represent a complete analysis of each topic.



**ISBA Mutual**  
Lawyers' Malpractice Insurance

## Law Practice Matters

As the law evolves, lawyers must continue to stay abreast of those changes. As the legal profession evolves, how we practice law becomes more important.

Nothing highlights this more than the 2015 change to the Illinois Rules of Professional Conduct requiring lawyers to also strive for reasonable technological competence. Yet technology is not the only aspect of law that is changing. Consumers are changing too. In order to deliver competent, high quality legal service, lawyers must strive to meet the evolving demands and deadlines of clients. More than ever before, law practice matters.

As technology evolves, lawyers must continue to develop ethical and efficient office systems and procedures to meet the evolving needs of clients and the changing face of law practice. Better systems mean better client service; better client service means happier clients. Happier clients mean fewer client problems and fewer law firm risks. Yes, law practice matters.

Whether you attend this conference annually or occasionally, you'll hear about the ever-changing risks to practice with solutions to prevent them from stinging your firm. Plus, you'll receive practical ideas, tips, and strategies to improve your practice and your enjoyment from it. Today, more than ever, law practice matters.



# Agenda

**CHECK IN** **12:00 – 1:00 pm**

**WELCOME & INTRODUCTION** **1:00 – 1:05 pm**

**Jon W. DeMoss** *ISBA Mutual President Emeritus*

**Reid Trautz** *Speaker*

**IMPROVING PRODUCTIVITY & SECURITY IN AN INSANELY BUSY WORLD** **1:05 – 2:20 pm**

Move over time management, here comes distraction management. In a world of smartphones, tablets, emails, text messages, and online social networks, we are being constantly bombarded for demands on our time. These technological distractions lead to loss of productivity and increase risks of making mistakes. We'll share proven strategies, tools, and tips to avoid distractions, improve productivity, and reduce your risks especially when using technology.

What we'll cover:

- Cybersecurity concerns and solutions
- Email management
- Social media best practices
- Distraction management techniques

**BREAK** **2:20 – 2:30 PM**

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**THE AMAZING VALUE OF VIDEOCONFERENCING** **2:30 – 3:15 pm**

Video technology opens up a world of possibilities for law firms large and small. From one-to-one conference calls to multiparty settlement conferences, the use of video is now more acceptable and useful than ever before. Yet many lawyers report negative results or feel uncomfortable using video. We'll explore the technology and ethical best practices for using video in your firm to improve client service and overall communications, while saving time and money. Plus, we'll help you feel comfortable using it.

What we'll cover:

- The real benefits of digital discussions
- The tools to use
- Psychology matters
- Confidentiality and security concerns

**BREAK** **3:15 – 3:30 pm**

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**THE FINE ART OF GETTING PAID** **3:30 – 4:30 pm**

Let's face it; recording time, billing clients, and getting paid is not exciting. In fact, for many lawyers this is the worst part of running a practice. Further, many hard working lawyers find their expectations about getting paid aren't shared by their clients. How can we improve this process to boost client relationships, avoid ethical missteps, and enhance the bottom line? Learn the secrets to getting paid, avert ethical and financial troubles, and capture more of what you've earned!

What we'll cover:

- Setting Fees for Your Clients
- Ethical & Profitable Representation Agreements
- Creating Efficient and Ethical Time & Billing Processes
- Avoiding Accounts Receivable

**PLEASE NOTE LUNCH IS NOT PROVIDED**



## Premium Credit

Each ISBA Mutual insured attorney who attends and completes the conference will receive a \$100 premium credit upon renewal of their current policy, subject to the following guidelines:

- Pre-registration is required by **Friday, September 15, 2017**
- In order to obtain the premium credit of \$100, participants must check in at the registration desk before the program and must complete a conference evaluation form and submit it at the registration desk at the program's conclusion.

### **ATTORNEYS WHO ARRIVE LATE OR LEAVE EARLY WILL NOT RECEIVE PREMIUM CREDIT**

- Each premium credit will be issued in the name of the participating attorney and is not transferable. The premium credit may only be used by the attorney to whom the credit was issued.
- The premium credit may only be redeemed once per attorney, per policy term on policies with renewal dates after the conference date in which the attorney attended and completed.
- The premium credit cannot be used on policies bound before the conference date in which the attorney attended and completed.



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## CLE Credit

In order to obtain CLE credit, participants must sign in at the registration desk before the program and must complete a conference evaluation form and submit it at the registration desk at the program's conclusion.

### **ATTORNEYS WHO ARRIVE LATE OR LEAVE EARLY WILL RECEIVE REDUCED CLE CREDIT**

CLE credit is pending in the following states:

- Indiana
- Iowa
- Missouri
- Wisconsin

ISBA Mutual is an approved Illinois MCLE provider.

Illinois CLE is approved for 3.0 general credits.

Illinois Professionalism credit is pending for 3.0 credits.

**ISBA Mutual will send, by e-mail, an MCLE Certificate of Attendance to each participant 30 days after the program.**



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# 1 Improving Productivity & Security in an Insanely Busy World

## 1.1 IMPROVING PRODUCTIVITY

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As we use computers more today than ever before, mastering the use of computers will improve our productivity and efficiency across our entire office. We can spend all of our time doing billable work, but if we invest even a small amount of time in improving our systems and knowledge, we can have a positive impact on our future work. Not only can we improve efficiency and productivity, we can also increase our security.

As technology becomes more entrenched within the legal profession, lawyers must be aware of the potential pitfalls that can arise based on our ethical obligations. Because of these additional self-imposed professional obligations, we cannot merely rely on the standard of care applicable to other businesspersons. We must take special efforts to make sure our use of technology comports with our profession's ethical standards. Furthermore, as the use of technology becomes more commonplace, we may be required to expend greater effort to comply with our ethical rules. What passed for protecting confidential client information five years ago, may not meet today's standard.

Use the following tips to guide you: Tips are golden little nuggets of information that can be the germ of an idea or can be the whole solution to a perennial problem. When they are short, practical, and quick, we don't have to invest much time reading any of them. However, if just a dozen or so resonate for your practice, then your time reading them will have been well spent. Don't try to implement all of them at once. Identify the best tips for your practice, schedule time to implement them, and involve staff as much as possible from the beginning of your efforts.

### TIME AND DISTRACTION MANAGEMENT

- Eliminate as many computer distractions as possible: Eliminate unneeded emails include SPAM and BACN. (BACN refers to emails you request to receive, such as shopping

alerts and newsletters, but rarely read.) Don't just delete them; stop them from hitting your Inbox by reporting them as junk or redirecting them to Trash. Change any settings that cause unnecessary dings and alerts on any device you use to work so as not to interrupt you when working. Review the placement of your computer screen to reduce distractions. Most of us sit facing toward our office door with our screen between us and the door, making us susceptible to people walking by. Change that direction to reduce this distraction.

- Studies have shown that if you don't use your ability to focus and concentrate, your abilities will be greatly reduced. Email and other distractions prevent you from applying your concentration and practicing your focus. Try to build in blocks of time into your workday to concentrate on getting one thing done without responding to any other request, alert, or other distraction. Those blocks can be 15-60 minutes in length, depending on your work needs.

### OFFICE PRODUCTIVITY

- Set aside blocks of time to return phone calls and emails. Let your clients know while you can't always respond to calls and emails immediately, that you will review them and respond within the same day or within 24 hours.
- If you can't find time to return a call directly with a client, leave a detailed message on voice mail system that you know is confidential and has been approved by the client.
- Calendar both hard and soft tasks. Hard tasks are meetings, court appearances, discovery due dates, client appointments—anything with a deadline or a promised due date. Soft tasks are those tasks that need to be done, such as marketing efforts, review and sending monthly bills, reviewing your accounts receivable, but that don't have a

specific deadline. By setting aside time on the calendar each week or month to complete these types of tasks, you'll be more likely to complete them.

- There are two types of space in a lawyer's office: Work space and storage space. One should never be used for the other. Our desktop is valuable workspace and should not become storage space for files. It's ok to temporarily store them nearby—behind you on a credenza or neatly on the floor, but don't clutter your workspace with small piles of files. Use your desk to spread out and work on the immediate task at hand.
- The digital corollary to the previous tip is to not clutter your computer screen with too many open software applications. Use dual monitors where you have a screen for working and a screen for keeping programs open such as your calendar, email, and web browser. Use the other screen for doing work, such as document creation, etc.
- Whether you've gone digital or use paper, it is very important to internally organize files the same way. For paper, get sturdy file folders containing 4-6 pages each with prongs for attaching documents. The folders should have the same documents on the same pages across all files. Pleadings should all go on the same page; correspondence/emails should go on another. So no matter the file, you'll be able to find the document in the same place.
- Color-code forms and files: Develop simple systems in your office that everyone can use. For example, use different colored file folders (not just colored labels) for different types of cases such as bankruptcy, real estate, or personal injury. This makes it easier for everyone to quickly locate files in a busy office. Also, print forms such as conference notes, checklists, and court appearance memos on different colored paper so they stand out in a file folder.
- Organize paper files the same way you organize your digital files, and vice versa. The similarities will save time and frustration. Use categorization tools such as color-coding and file naming & storage structures that you use in your practice management software to organize paper files—or vice versa, whatever works for you.
- Just say "No": If you are overworked, you've got to learn to say "no" to colleagues, clients and, yes, even your family. Too many commitments lead to burnout, and burnout is a leading cause of premature career death. Gauge the amount of work and commitments you can handle. When you've

reached your limit, decline new clients or tasks until your workload lessens.

- Evaluate the costs and benefits of representing each potential new client. Each client comes with financial and ethical risks. During the telephone screening and initial consultation, evaluate the costs and benefits of representing each potential new client. This will help you identify problem clients before they become a problem. Do they balk at advanced fee arrangements? Cancel one or more prior appointments? Not have their checkbook to pay for initial consultation? Are you the latest in a string of lawyers? Did the client show up late with an unorganized bag full of papers? Did he or she endlessly complain about the current lawyer? If the answer is "yes" to any of these, strongly consider saying "NO" to this risky client.
- Document unbillable time: Write down all the time you work for client, even if it is not billed to the client. Burnout often occurs when individuals do not realize how hard they are working. Then take time at the end of each month to evaluate the efficiency of performing these tasks. Can this work be done a better way or by another person?
- Get practice management software: Practice management software has many features welcomed by lawyers, including document management, calendaring, contact management, timekeeping and billing, and much more. If you tried and abandoned this effort in the past or have not yet decided to spend the money, I encourage you to invest time to research this powerful tool. Here is a good [feature chart](#) from the ABA Legal Tech Resource Center.
- Use Business and Productivity apps on your tablet. Many lawyers are used to using the software applications contained in Microsoft Office, Google's GSuite, or the Mac suite of productivity applications. However, there are many apps for desktop computers, tablets and smart phones that do the job better and easier than more traditional applications. Project Management has come to the legal profession via apps that include Remember the Milk, Wrike, Trello, Workflowy, and Basecamp. Smartphone and tablet apps can also be linked together via services such as [Zapier](#) and [IFTTT](#) to make them more powerful. For example, create an "applet" that automatically saves attachments sent to your inbox to a designated folder in your Dropbox account. Thousands of other applets already exist and can be copied and used for free.

- Use improved speech recognition software to draft documents, e-mail, and control other functions on your computer. Training the software to recognize your voice and certain words used to be much more of a chore; however, the latest versions of the software are much improved. Nuance makes products for Windows and MacOS computers, although Dragon Naturally-Speaking for Windows is much better than the Mac version. The latest versions tie into application commands so that you are able to draft and send emails and archive them without having to type! If what you need is quick document transcription, then consider [SpeakWrite](#). The mobile app is free, the recording is easy, and the transcription service is 1.25 cents per word.
- Remote access technology allows a person to use a web browser on another computer to securely access documents, e-mail, and other information stored on another computer. Accessing your office computer from any remote location is easy and secure with web-based services such as LogMeIn and GoToMyPC. Just download the software on your office computer and create an account. When you need to check your e-mail or access a document, you just use a web browser from any Internet-enabled computer to connect to the GoToMyPC or LogMeIn web site, which then securely connects into your office computer. Remember, you must leave your office computer running and connected to the Internet for this to work. That's not bad for your computer. The service is approximately \$170 per year. In larger firms, be sure to clear this with your firm's network administrator to avoid security glitches!
- Alternatively, install and use a Virtual Private Network (VPN). VPNs provide secure remote access to your office computer network through private connections via the Internet. VPNs are useful to connect several offices together, and to allow remote access to a firm's local area network (LAN). It can be a faster and more secure technology than remote access services. Consider Hamachi (from the folks who bring you LogMeIn), DynVPN, or Comodo Unite as solid, use-to-install products.

## PRODUCTIVITY ENHANCERS

- Exercise regularly: Yes, it's tough to incorporate into your routine, but exercise is one of the most effective ways to combat stress and the long-term effects of stress on the human body. Try to build reasonable steps to a new lifestyle of increased exercise. Start with short exercise sessions three times per week, then build to longer more frequent sessions. Do what you enjoy most: Walking, swimming,

tennis, spinning, etc. Obligatory disclaimer: Consult your doctor before beginning. 😊

- Impose a quitting time: Staying late in the office night after night is counterproductive. The level of human productivity often drops to the level of diminishing returns after 8 hours in the office. Impose a quitting time and, whenever possible, stick to it. You'll find that when you have a set time to leave the office, you will use your time more wisely during the day. Plus, nobody on his or her deathbed says: "I wish I'd spent more time at the office"!
- Practice good nutrition: Improved nutrition is a very important aspect of health and well-being. Proper nutrition helps your body and brain work more effectively and to fend off the effects of stress. Lighter meals and less excess weight yield increased energy. Increasing fruits and vegetables (even by one serving per day) is effective. Research has shown that small achievable steps toward a lifestyle change are more enduring and thus more effective than large changes.
- Take a real break at lunch: Take a walk, exercise with friends, or pick up the phone and invite an old friend to lunch. Make it someone you have not seen for a few years. Catch up on business, but don't make that your primary focus. Laugh and enjoy the time. This short time away from work will pay dividends each afternoon.
- Give your office a stress-reducing make-over: Poor lighting can cause eyestrain and contribute to fatigue; another source of stress is tension and pain caused by bad chairs with poor support; an improperly positioned computer monitor and keyboard can strain neck, eyes, and hands; noisy offices can inhibit concentration and add to frustration. Changing any or all of these can make for happier, healthier, and more productive staff. Finally, consider adding a water cooler in the office to promote increased consumption and better health.

## E-MAIL PRODUCTIVITY

- Many firms use Microsoft Outlook but rarely use the full functionality of the software. Try these ideas to become more productive on this ubiquitous software application:
  - Use "Categories" to organize emails and events. Categories is totally customizable by the user to color-code different Outlook items. Not only will this make them more visible on your calendar but

you can sort your events and activities using the categories. Here is an easy tutorial to get you started: <http://www.techrepublic.com/blog/10-things/10-ways-to-get-the-most-out-of-outlook-categories>.

- All Microsoft Office applications use a “Work Ribbon” at the top of the screen to select functions, such as edit, insert hyperlinks, add tables, etc. The ribbon comes with default settings that may not work best for you. By customizing your work ribbon, you make the applications more user-friendly for your specific purposes. Users can set up the Quick Access Toolbar above or below the ribbon to get to key parts of programs. One small firm I know collaborated to find the best set-up for their firm and had one person customize all the computers in less than 10 minutes per computer.
- Another tool that gets high praise from lawyers is SimplyFile from TechHit. This add-on/plugin application learns your folders, and places Sent emails and Original emails into subfolders you have created to hold old emails until you archive them or delete them. After some initial training the program will begin to predict which folder to send emails to. This is a great tool to move emails out of the inbox.
- Keyboard shortcuts save time and are available on all programs and operating systems. The essential Outlook keyboard shortcuts include:
  - **Ctrl+Shift+M** to create a new message
  - **Ctrl+Enter** to send a message
  - **Ctrl+Shift+I** to jump to the Inbox
  - **Ctrl+Shift+B** to jump to the address book
  - **Ctrl+Shift+K** to create a new task
  - **Ctrl+Shift+N** to create a new note



## 1.2 SECURITY: COMPETENTLY PROTECTING YOUR CLIENTS AND YOUR FIRM

### APPLICABLE RULES AND STANDARDS

There are several rules of professional conduct, which combine to require that lawyers exercise great care in protecting their electronic information.

The ABA 2020 Commission recently revised (and the ABA House of Delegates adopted) the ABA Model Rules of Professional Conduct on which the Illinois Rules of Professional Conduct are based. Following the rationale for the changes, the Illinois Supreme Court adopted several changes to the Rules to make clear the importance of using technology in practice.

Illinois Rule 1.1 governing attorney competence now includes revised Comment 8 regarding lawyers using and understanding technology. The comment states:

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

The Illinois Supreme Court also added a new subpart to Rule 1.6 – Confidentiality. Part (e) states: “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client.”

Revised Comment 20 to Rule 1.6 alerts lawyers to the fact of this duty of confidentiality—and to protect information—extends to former clients. So even though the representation may have ended, our duty to protect client information and other protected information continues as long as we have possession.

Comment 18 to Rule 1.6 informs lawyers that paragraph (e) requires a lawyer to act competently to safeguard information protected under this Rule against unauthorized access by third

parties and against inadvertent or unauthorized disclosure by the lawyer or others persons who are participating in the representation of the client or who are subject to the lawyer’s supervision.

The unauthorized access to, or the inadvertent or unauthorized disclosure of, confidential information does not constitute a violation of this Rule if the lawyer has made reasonable efforts to present the access or disclosure. Factors to be considered in determining reasonableness include, but are not limited to:

1. The sensitivity of the information;
2. The likelihood of disclosure if additional safeguards are not employed;
3. The cost of employing additional safeguards;
4. The difficulty of implementing the safeguards;
5. Adverse effect on the lawyer’s ability to represent clients.

The revised rule and comment essentially provides a safe harbor to those lawyers who employ reasonable efforts to protect access or disclosure.

Note that clients can require attorneys to employ stronger security measures than required by the Rules, and they can also give their informed consent to less security than required in the Rules.

Understanding the new emphasis in the Illinois Rules of Professional Conduct is the first part of the on-going battle to protect data. Understanding the safety issues that face lawyers and law firms is also necessary. Once identified within a law firm, solutions can be implemented to protect the data, the firm’s clients, and the lawyers.

### OTHER OBLIGATIONS TO PROTECT DATA

Lawyers do not live in a vacuum. In addition to the Rules of Professional Conduct, we may be subject to other rules,

regulations, statutes and laws that apply to the digital data. An example of this would be the HIPAA and HITECH Acts.

- HIPAA is the Health Insurance Portability and Accountability Act. HIPAA can be found at <http://bit.ly/1sUcB60>.
- HITECH is the Health Information Technology for Economic and Clinical Health Act specifically designed to protect the exchange and transfer of electronic medical information. According to the HIPAA Survival Guide Website (<http://www.hipaasurvivalguide.com/>).

The HITECH Act is transformational legislation that anticipates a massive expansion in the exchange of electronic protected health information (ePHI). The HITECH Act widens the scope of privacy and security protections available under HIPAA; increases potential legal liability for non-compliance; and provides more enforcement of HIPAA rules.

Civil penalties for willful neglect under the HITECH Act are increased from HIPAA. Penalties can be up to \$250,000; throw in repeat and/or uncorrected violations, and they go up to a whopping \$1.5 million. In certain instances, HIPAA's civil and criminal penalties will also now encompass business associates. Both HIPAA and HITECH prohibit individuals from suing, but they do allow state attorney generals to bring an action on behalf of their citizens.

The definition of who falls within the purview of HIPAA and HITECH is very broad and even if you do not deal with medical providers directly, but with companies that service the medical industry, you need to insure that you are not covered by these Acts. You can learn more about the potential impact on lawyers by reading *New HIPAA Liability for Lawyers*, an article in the ABA GPISolo magazine at <http://bit.ly/1sUcW9y> or *When is a Lawyer or Accountant a HIPAA Business Associate?* from the HITECH Answers website at <http://bit.ly/1sUdv3m>.

## A RECENT EXAMPLE

I encourage lawyers to review the court decision in *Harleysville Insurance v. Holding Funeral Home* from the United States District Court for the Western District of Virginia, issued February 9, 2017. It stands as a real world example of how lawyers should treat client and case information stored in the cloud, and the value of ethical precautions such as an inadvertent disclosure statement in an email message. Available on Fastcase at:

<https://apps.fastcase.com/Research/Public/ExViewer.aspx?LTID=Wf%2FT20sayp4xnYme2m2xN999pavY%2BN6Jhq7WwqNtnwP69ZRAiMbuoK%2BV07IM21cc>

## EVOLVING OUR SECURITY PRECAUTIONS

We must recognize that technology advances may make certain protective measures obsolete over time. Whether a particular system provides reasonable protective measures must be informed by the technology reasonably available at the time to secure data against unintentional disclosure. As technology advances occur, lawyers should periodically review security measures in place to ensure that they still reasonably protect the security and confidentiality of the clients' documents and information.

Your office is your castle. Like medieval castles, it is a multi-layer fortress. Walls, doors, locks and alarm systems are needed to protect the king. Unfortunately, that "king" is not the lawyer, but the data that resides within the office. New knowledge and new tools are needed to keep confidential information in and intruders out. Furthermore, outside intruders are not the only problem. In fact, some studies show that more technology dangers come from within a business than from the outside.

The tools and weapons needed today to defend the castle are many. From computer firewalls to anti-virus protections, from passwords to Internet use policies, from remote data wiping capabilities to hard drive encryption, information security does not have a one product, one-size-fits-all solution.

## THE TOP 2 THREATS TO YOUR PRACTICE TODAY

When it comes to complying with our obligations to safeguard our data from disclosure, the number of cyber threats continues to grow at an alarming rate. However, the two that you should lose the most sleep over have been around for a while. And there are no signs of them disappearing as people continue to fall victim to them. These two threats are:

1. Phishing (aka Spear Phishing)
2. Ransomware

According to Wikipedia, "Phishing" is the attempt to obtain sensitive information such as usernames, passwords, and credit card details (and, indirectly, money), often for malicious reasons, by disguising as a trustworthy entity in an electronic communication."<sup>1</sup>

<sup>1</sup> <https://en.wikipedia.org/wiki/Phishing>

## PHISHING

What is alarming about Phishing is that according to at least one article, “. . .91% of cyber attacks begin with a “spear phishing” email. . .” citing software security firm Trend Micro.<sup>2</sup> Phishing generally uses email or sometimes text messaging to bait its victim. Often times it will take the appearance of an email from a legitimate business or other site (such as Facebook®, CapitalOne® or Apple®) and ask you to follow a link where you are asked to provide your credentials or trick you into entering details such as your account information. The bad guys have even gotten smarter about spoofing the “From” address that they use so even upon examination it appears to be from the legitimate company, entity or site. Image 1 below is an example of such a phishing email claiming to be from CapitalOne®.

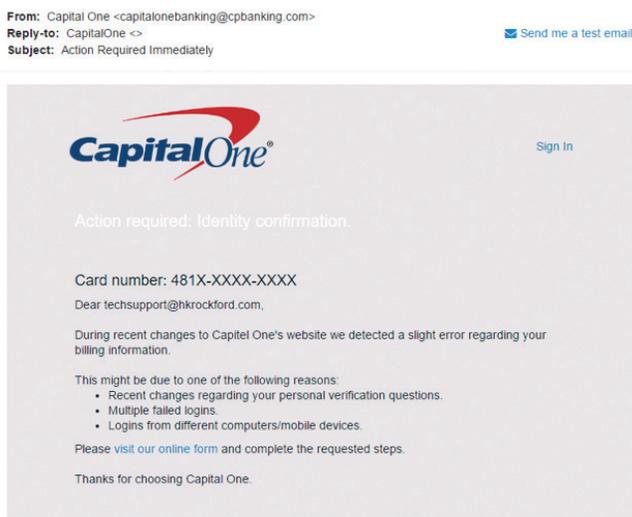


Image 1

### So, what can you do to prevent phishing attacks?

The best defense to prevent phishing attacks is end-user education and training. There are numerous websites, articles, posts and videos about this specific topic, including:

- How to prevent phishing scams <http://usat.ly/2le0UaQ>
- “Phishing” Fraud: How to Avoid Getting Fried by Phony Phishermen <http://bit.ly/2le6oSI>
- How to prevent phishing in 3 lessons <http://bit.ly/2le5wO2>
- 5 Examples To Help You Spot A Fraud Or Fake Email <http://bit.ly/2le16qA>
- Consumer Information website on Phishing (US FTC) <http://bit.ly/2ldW0zu>
- Phishing.org website <http://www.phishing.org>

<sup>2</sup> See <http://bit.ly/2le5WUV>

<sup>3</sup> Kevin Mitnick refers to himself as the “World’s Most Famous Hacker” and after being arrested in 1995 now has his own security company, Mitnick Security, <http://bit.ly/2le0tgM>.

There are also companies that provide education and training regarding these threats that include the ability to send out test phishing emails to see if your staff “take the bait.” Examples of these companies are Wombat (<https://www.wombatsecurity.com/>), PhishMe (<https://phishme.com/>), and KnowBe4 ([www.knowbe4.com](http://www.knowbe4.com)). All of these companies provide differing free resources such as articles, whitepapers and even security tests on their respective websites. KnowBe4 offers subscription services for training and education with tools that you can use to test your vulnerability and that of your staff. KnowBe4 employs Kevin Mitnick as its “Chief Hacking Officer.”<sup>3</sup> For other potential providers, check out 10 companies that can help you fight phishing from CSO Online at <http://bit.ly/2le3fm1>.

## RANSOMWARE

Of all of the cyber threats to lose sleep over, ransomware is the biggest.

Imagine coming into your office and trying to open a file on your computer. When you do, all you get is gibberish. This happens on every file you try to open. It does not matter if it is a Word or Excel file or even the file that stores your accounting data. All of them are the exact same – nothing appears and you cannot figure out what happened. Then you try to open a file and a message opens informing you that your files have been encrypted for your own protection and that if you pay a significant sum to the party that encrypted your files, they will provide you with a decryption key. It’s bad enough that they claim to be doing this to protect you, but if you fail to pay the ransom in time, the price goes up.

Ransomware is installed covertly and may be attached as an attachment to an email that installs its payload when clicked, from following a link in a phishing email or it could be from what is known as a “drive-by-download.” The critical item is that you have no idea it has been installed and most anti-virus software does not catch let alone prevent it from infecting your computers.

What is important to know is that not only does it affect your files, it can spread to your server and other drives that are mapped on your network as well (such as a backup drive attached to a computer using a drive letter such as “E”). Initially, ransomware encrypted files, there are now 2 variants: 1) file encrypting ransomware, and 2) locker ransomware. The first encrypts the files on your system while the second locks you out of the operating system and its applications. It also targets the Shadow copies of files on your computer that allows you to recover files that have problems if that service is running.

So if you get hit with ransomware, what are your options? Realistically, there are only two:

- A) Pay the ransom; or
- B) Restore from a backup.

While some of the ransomware variants have been broken, the vast majority have not. The level of encryption and its sophistication means that you truly do not have any other options. And do not look for this threat to disappear anytime soon: this threat continues to grow and prosper, as it is extremely lucrative for the bad guys.

How lucrative? According to an article from U.S. News citing Cisco Systems, "...ransomware [is] the most profitable type of malware attack in history..." Attackers are even adding translators and customer support assets to insure that their victims can pay them.<sup>4</sup> In the case of ransomware, you need to take a multi-layered approach that includes taking steps to prevent infection and having a way to restore your data that cannot be reached by the bad guys. For a better understanding of what you need to do and tools that you can use, check out these online resources:

- Ransomware Protection & Removal: How Businesses Can Best Defend Against Ransomware Attacks <http://bit.ly/2le69Y1>
- 22 Ransomware Prevention Tips <http://bit.ly/2lebf6q>
- This Free App Can Protect You From Ransomware <http://bit.ly/2le8vpS>
- Top 5 Best Free Anti-Ransomware & Anti-Exploit Software to Avoid Ransomware Attacks <http://bit.ly/2ldZjRX>
- Nomoreransom.org <https://www.nomoreransom.org/>
- The best free anti-ransomware tools 2017 <http://bit.ly/2mkzsq9>

You also need to have, ideally, a daily backup, using a rotating set of two or more back-up storage devices. One is connected to your computer network; the other is detached from your computer network/system each day. These backups need to be tested on a regular basis to make sure they have valid data on them that you can use to restore your data (this means actually doing test restoration of data from the backup, not just using the verification tool in the backup software itself).

**At the end of the day, the most important protection you have against ransomware is a recent and valid backup!**

## DATA BACK-UP AND DISASTER PLANNING

There is nothing more important in your office procedures than the regular back-up information stored on your computer. In other words, information is king — don't kill the king! As the growth of electronic files has multiplied, the need for this redundancy has grown exponentially.

Back up means to copy your important computer files (such as client documents, software applications, time and billing data, and e-mail) onto another computer or media that can be accessed to restore data if your computer crashes, the file is corrupted, or your office is damaged or destroyed.

There are four components to a good back-up system: Automatic back-up software, a large and reliable local storage device, an off-site recipient storage device, and a competent person to make sure it runs correctly. Numerous software options are available and often come bundled with the storage device.

Network-accessible storage (NAS) and portable external hard drives are the two best choices for back-up storage due to their price and reliability. NAS devices are connected to your office computer network via a cable or wirelessly. (Be sure your wireless network is secured against unauthorized access.) These devices will constantly scan your network and automatically back-up any new file found on any computer. This is great peace of mind should a computer hard drive fail or someone accidentally deletes a document. A NAS device for small businesses that holds 2 terabytes of data costs less than \$200. A portable external hard drive is a pocket-sized device that cost less than \$100 but holds 500 gigabytes or more of back-up data. Many solos use two or more of these devices, swapping them out weekly (or daily which is a better practice) and storing the ones not in use out of the office in a secure and confidential location.<sup>5</sup>

Hardware is only part of the process. There are three software choices when using a NAS device, external hard drive, or on-line service.

<sup>4</sup> See a helping hand with a dirty trick: Ransomware now offers helpdesk to victims <http://bit.ly/2lecFxF>; Ransomware developers open helpdesk to help with decryption and payment issues <http://bit.ly/2legTp9>

<sup>5</sup> Remember that any drives or devices removed from the office should be encrypted. Most commercial backup software provides the ability to encrypt the backup. You can also use Microsoft's BitLocker to encrypt external devices as well.

Disk imaging is essentially a complete “snapshot” of your entire computer. If your computer fails or is lost or stolen, you can use this exact image to recreate it on your replacement computer, including all programs, documents, bookmarks, etc. However, it is not easy to just replace one document that gets deleted.

File-based data back up essentially copies any file on the computer based on settings you choose. From software applications to individual client documents, this type of back-up software is very common. It is also very easy to retrieve a single file on your computer, but if your computer fails (or is stolen or lost) it does not recover each and every nuance and setting of the computer.

The third method is file synchronization. This is growing in popularity with the NAS devices discussed above, as well as on-line storage services. Instead of being merely a one-way copying of files, it works multi-directionally to make sure the files across multiple computers are all in sync. Files that are renamed, moved or deleted in one location may be renamed, moved or deleted in the other based upon the user’s choice.

Popular back-up software tools include Windows System Image backup (included free with Windows). Check out how to do this at: <http://bit.ly/1o6SgoY>.

There are also free third party tools such as EasUS ToDo backup <http://bit.ly/GM04bm>, Clonezilla <http://clonezilla.org/> for Windows PCs.

For more information on backing up, check out the absurdly simple guide to backing up your PC at <http://bit.ly/1o6SQTH>.

Mac OS X users can also use Time Machine that is part of OS X <http://apple.co/2mkxxsg> for backing up your Mac.

There are also free third party tools such as SuperDuper! <http://bit.ly/1oQxNXX>, Carbon Copy Cloner <http://bit.ly/1oQyzEk> and CrashPlan <http://bit.ly/1jjHyyK> for your Mac as well.

These free programs offer basic computer backup, but since this is a mission critical task for your office, you should also consider other paid services. Popular services include Dropbox, Citrix Sharefile, SugarSync, Google Drive, Microsoft OneBox, and TeamDrive.

If you choose to back-up your firm and client data to an on-line storage service, make sure you do your due diligence. As lawyers, we can entrust client information to third parties

(such as temporary secretaries and document archive storage companies) if we believe the information will remain secure. Be sure to read the on-line storage security protocol for the company to make sure it will be secure.

Remember, while online back-up services are good to use, if you have to use them to restore one or more computers, the data transfer rate will be much slower than from a local storage device. It may take more than a day to restore all the data from a small firm.

Whichever method you choose, your law firm computers—including laptop computers—should be set to be backed up daily. That’s where the competent person (or staff) comes in! Unless the backup system is used, the technology is worthless. Make sure a competent person carries out this important security step in your firm. They are also the person that should be doing test restoration of data (some files and folders) from these backups on a regular basis. When you really need your backup is not the time to learn the backups didn’t work.

By whatever means are used to back-up important client and firm information, each firm should be able to satisfactorily address the following four issues:

- What is being done to safeguard against a total loss from an accident or act of God?
- What was being done to prevent accidental loss or deliberate theft of specific information?
- What is the accountability chain of the information we have?
- What is the process to recover from either a full or partial loss or compromise of our information?

## **METADATA**

Metadata is data about data. In other words, Metadata is the information hidden behind your words; it includes the name of the file and the author, the date created and last edited, as well as the undo/redo history. Metadata resides in almost every type of document or file created in a law office—especially files created using the Microsoft Office suite. Therefore, when you send the settlement proposal as a Word document, the receiving party may be able to see your edited changes or whether the document is original to that client or a form created for someone else. Clients and others may be able to easily view some of the data to see if any changes you made—say to the final dollar offer contained in your letter created in MSWord. The disclosure of the metadata could be a breach of confidentiality, not to

mention highly embarrassing. To avoid this problem, always convert a document or file to PDF format to eliminate much of the metadata, or try a metadata stripper, such as the Metadata Assistant. Windows 10 also does a better job of managing metadata than prior versions, but it is still best to convert to PDF format. For more information on Metadata and how to deal with it, check out:

- Metadata 101 for Lawyers  
<https://www.attorneyatwork.com/metadata-101-lawyers/>
- Metadata: The Ghosts Haunting e-Documents  
<http://bit.ly/1fQkCXX>
- Top 6 Things Lawyers Need to Know About Metadata  
<http://bit.ly/2lxCXve>

## TECHNOLOGY AND OUTSOURCING

Outsourcing technology functions is growing rapidly across all businesses. Rather than have network servers, software applications, and data reside exclusively within the walls of a law firm, these can now be managed off-site by third-parties at a lower cost than traditional IT. The data is connected to the business by the Internet (and vice versa). This outsourcing has many shapes and forms, and is known as “cloud computing.”

Here is a real-world analogy of cloud computing (courtesy of the *Wall Street Journal*): Imagine a company that, instead of using a commercial service like FedEx, decided to create its own worldwide parcel delivery system. The company would buy warehouses, delivery trucks and airplanes. It would hire package handlers, mechanics and logistical experts. All this would require an enormous investment and would be quite impossible for any but the largest of companies to do efficiently or cost-effectively or well.

Cloud computing is the equivalent of hiring FedEx. It is a way to outsource the service of providing the hardware, software, human resources and business model required to deliver, store and manage digital data offsite. The outside service providers in turn achieve economies of scale, lowering the cost to all their customers. It is up to the individual business to decide how much of their technology to outsource.

Cloud computing services can include complete data center infrastructure including networking, electronic file storage, operating systems, application servers, e-mail servers, security, update and user management, file backup services, and disaster recovery. The most common use of technology outsourcing is on-line data back up discussed above. Almost as common,

especially in smaller firms, is a form of cloud computing known as “Software as a Service” or “SaaS”.

SaaS is software that is not installed on your computer but instead is hosted remotely. Users access the software over the Internet and the data is hosted remotely along with the software. Another way to think of SaaS is that it uses the web as a platform – your operating system becomes, de facto, your web browser.

Options for implementing SaaS in your office are multiplying rapidly. Microsoft Office 365 is a SaaS service, as is Google Docs. There are cloud-based case management programs, such as RocketMatter or Clio. There are CRM (customer relations management) solutions such as Salesforce and Highrise. Even old stalwarts of installed software are moving toward SaaS, such as Intuit’s QuickBooks and Quicken.

SaaS does not require the user to download, patch, update or otherwise maintain the software – all which is done at the host site. This creates an uptick in ease of use for users, but as usual, along with that improvement comes a disadvantage: SaaS products are usually billed in monthly or annual subscriptions; i.e., you stop paying for the service and you stop receiving it altogether.

Outsourcing is an unbeatable market force, but it is also an ethical minefield. Here are the things to do and questions to ask before you outsource.

## COMPETENCE & SUPERVISION

You’re responsible for supervising the work and assuring the competence of your outsourced service providers. At a bare minimum, check the service provider’s references. You may also want to perform a background investigation on all service providers and interview principal lawyers. Also, consider investigating the security of the provider’s premises, computer network, and waste disposal services.

ABA Formal Opinion 08-451, *Lawyer’s Obligations When Outsourcing Legal and Non-Legal Support Services* (August 5, 2008), covers this area in detail.

## CONFIDENTIALITY

Rule 1.6(a) mandates that a lawyer may not reveal confidential client information without the client’s informed consent. Lawyers outsourcing file storage or other computing functions need to exercise professional judgment and caution. It is recommended that before purchasing a cloud-based solution lawyers should:

1. Read the user or license agreement terms.
2. Determine who owns the data, you or the service provider.
3. Determine whom, besides you, has access to the data.
4. Consider if you terminate the service, how do you retrieve your data and what happens to the data hosted by the service provider.
5. Examine the service provider's physical and electronic security and confidentiality policies. What layers of protection do they have? Do they provide notice of a breach?

As Internet connection speeds become faster and less costly, as the cost of internal hosting of law firm servers and software becomes more expensive, and as the reliability and functionality of "cloud" options increase, will firms be able to resist the economic forces at play? As this trend in law firm technology continues to grow, firms must ethically balance the needs of the client with the realities of this new technology.

## MOBILE SECURITY

Many firms are now using notebook computers as full-time replacements for desktops PCs. Lawyers can take them to and from court, depositions, home, etc. Other lawyers are using smartphones or tablet computers to store and access data while on the road. However, this mobility also increases security risks.

Portable devices have a bad habit of being lost, stolen or misplaced. The loss of the computing device is bad enough, but the loss of client data is far worse. All firms must take steps to prevent unauthorized access to client data. All devices must be password protected. Furthermore, if the inadvertent disclosure of client data on your computer would be harmful or embarrassing, then be sure to use encryption technology for all client documents and data.

Mobile security issues also include remote access to your office network from authorized users. The number of lawyers and staff who choose to work outside the office has exploded! We now want to work when we want to work, from home, beach houses, and vacation destinations around the world. The technological tools are many; each firm must to choose the remote tools that work best for their circumstances. However, with such flexibility comes a variety of security issues.

Remote access can take a variety of favors, but all involve Internet connectivity in one way or another. Many small firms use Internet subscription services like GoToMyPC to access their office computer from any Internet-connected computer.

Others use software such as PCAnywhere to access their office computer from home. Still others use more robust (and expensive) tools such as a Microsoft Exchange server or a Citrix server. A full discussion of these options is beyond the scope of this paper; security remains our focus.

Whatever your remote access tool you use, institute the following policies:

- All access must be password protected; all passwords should be at least 8 but preferably 12 characters, and no partner or employee of the firm may disclose his or her password to anyone. This includes prohibiting any user from using the "Remember Me" feature on their remote computer.
- Require all remote users to have the same level of Internet security as the law firm: Any computer seeking to access your network must use firewalls, anti-virus software, anti-spyware, etc.
- Review the security policies regularly to make sure system integrity is maintained.

When it comes to protecting smart devices, tablets and laptops, consider using a Mobile Device Management (MDM) tool that installs an application on your device. While features can vary from MDM to MDM, most generally including tracking of your devices location, enforcing security protocols such as encryption on the device and external storage such as memory cards, remote locking and data wiping of the device and notifications when the device is operating or not. ManageEngine offers their MDM tool for free for up to 25 devices (<http://bit.ly/2mQ4r0c>). Spiceworks does offer a free MDM tool although somewhat limited in its features (<http://bit.ly/2liB6PF>) with the full feature set being available in the premium version. Other options include those listed in Top 10 best MDM solutions in 2016 <http://bit.ly/1n7hS5G>. You may also want to check out Comodo Device manager <https://dm.comodo.com/>.

MDM tools usually charge per month per device although some, like Comodo Device Manager, where one license covers up to 5 devices for the same user per month. So, for \$4.00 per month, a single subscription could be used to cover a user's laptop, smartphone and iPad or Android tablet. The cost of MDM is small compared to the potential costs due to a stolen or lost device.

## PASSWORDS AND PASSPHRASES

Passwords are something that we all need in the modern world but that we all love to hate. Strong passwords are a must, but

strong passwords are also difficult to remember. Too often people pick something that is easy to remember or they don't believe that anyone can gain access to say their server so they choose something like passw0rd or pa\$\$word.

### Password Best Practices:

1. 10 or more digits
2. Mix of lower case and upper case letters
3. Numbers
4. Special characters

### Password Examples:

1. C4RV^6aj\$^ (10 characters)
2. 3q^eDKmBVXn4y (13 characters)

### Password Best Worst Practices:

Password	qwerty
trustno1	adobe123
123456	123456789
Monkey	password1
P@ssw@rd	admin

Go ahead and do an Internet search on worst password and you will find numerous articles including:

- Time's The 25 Worst Passwords You Should Never Use <http://ti.me/2mkm4ZY>.
- Yahoo Tech's A List of 500 Passwords You Shouldn't Be Using <http://yhoo.it/XeH9DN>.

## PASSWORD MANAGERS

Use a password manager to store your passwords. You only have to remember one strong password that will allow you to access your password repository. You can then create separate passwords for each site and not have to worry about keeping them all straight. Best in class password managers do more than simply manage your passwords but provide the ability to generate passwords using criteria you set, keep secure notes and some also integrate with additional security products for 2FA/MFA.

There are a number available that provide basic protection for free and business/enterprise level protection for a small annual fee. Best in class solutions include:

**LastPass** <https://lastpass.com/>

**1Password** <https://1password.com/>

**KeePass** <http://keepass.info/>

**Dashlane** <https://www.dashlane.com/>

There are others as well for both Mac and PC. The important thing is to use one.

## USE TWO-FACTOR OR MULTI-FACTOR AUTHENTICATION

Most cloud services allow you to add an additional layer of security to allow you to further protect access to your online accounts. Many of these services such as Dropbox refer to it as two-step verification. In the technology world, this is known as two factor or multifactor authentication; 2FA and MFA respectively.

2FA requires something you know, like your password plus at least one of the following:

- Something you have, such as an authentication code or security dongle; or
- Something you are, such as a fingerprint or retina scan.

Some good articles to read to learn more include:

- cnet's article Two-factor authentication: What you need to know <http://cnet.co/1r6NjJP>
- Lifehacker's article *Here's Everywhere You Should Enable Two-Factor Authentication Right Now* <http://bit.ly/XeYIsM>
- PCWorld's 5 things you need to know about two-factor authentication <http://bit.ly/2mkwwjT>

There are also apps for smart devices to generate the authentication code. For desktop systems and business/enterprise class solutions there are also items such as the Yubikey that works in conjunction with LastPass and other verification technologies. You will find a Yubikey product comparison at <http://www.yubico.com/features/>.

For larger firms or firms that need even stronger authentication capabilities, take a look at:

Safenet eToken key at <http://bit.ly/Xf1xog>

## ENCRYPTION

Encryption is a way to enhance the security of a message or file by scrambling the contents so that it can only be read by an authorized person who has the right key to unscramble it.

There are 2 types of encryption for computers and smart devices:

1. Asymmetric AKA public-key encryption that uses a public key known by everyone and a private key known only to the recipient.
2. Symmetric encryption where you use the same key to encrypt and decrypt the information. An example of symmetric encryption would be the \_\_\_\_\_, which uses the same key to encrypt and decrypt a user's data.

Encryption on data in the cloud, on portable devices such as tablets and laptops, and even portable USB flash drives is important due to the majority of states now having in place data breach laws that require firms to notify clients if data is stolen or lost. If you are in NV and MA, the law requires that you encrypt personal information if it is taken from the office.

While most cloud storage services provide encryption, THEY control the encryption key.

The downside to the provider controlling the encryption key includes:

- Provider "controls" the encryption key;
- Provider's staff can decrypt your data if required by court or other government order;
- Provider's staff could decrypt data on their own; and
- Encryption key and data can be stored on the same servers making it much easier for a hacker to gain access to your data as they only need to gain access to one system, not two if the data and the encryption keys are stored on different network and servers.

The upside to the provider controlling the encryption key includes:

- You never have to worry about losing or forgetting the encryption key;
- They have policies and procedures in place to protect your privacy;
- They generally provide better network security than you can in your own office; and
- They often times store your data in geographically different data centers to provide redundancy.

Not all services control the encryption key. For example, SpiderOak allows you to control the encryption key as well as several other services. Generally, however, these services like SpiderOak are not as easy to use as say Dropbox or Box.com.

Many in the legal technology world believe that the concerns over a provider controlling the encryption key is overblown: lawyers have entrusted their files to couriers and offsite storage providers for years, and this is much the same as we rely on others to protect our data.

When it comes to desktop tools, the best solutions encrypt the entire hard drive on a desktop or laptop computer. While there are a number of products that will encrypt files or folders, encrypting the entire drive means you don't have to worry about whether or not you protected a file if your computer is lost or stolen. For desktop and laptop computers, take a look at:

- Windows 7 Ultimate & Enterprise include BitLocker
- Windows 8.1 Pro & Enterprise include BitLocker
- Windows 10 Pro & Enterprise include BitLocker
- FileVault and FileVault2 for OS X
- Symantec Encryption Desktop (formerly PGP Whole Disk Encryption)
- Free tools such as DiskCryptor and Veracrypt

When it comes to cloud based storage service such as Dropbox, Google Drive, Box.com and others there are a number of tools that may be able to provide encryption using an encryption key that you control. This is in addition to the encryption provided by the provider such as Dropbox.

Users do need to check carefully before using one of these cloud-based tools as some of them only work with Dropbox while others work with Dropbox, Google Drive, OneDrive and Box.com. Also, some are free while others have commercial versions.

Checkout:

- **Sookasa** <https://www.sookasa.com/>
- **Viivo** <https://viivo.com/>
- **BoxCryptor** <https://www.boxcryptor.com/en>

For other encryption ideas for the desktop, portable drives and the cloud, you may wish to read:

- <http://www.techsupportalert.com/best-free-encryption-utility-for-cloud-storage>
- <https://tresorit.com/cloud-storage-comparison>
- <http://lifehacker.com/the-best-cloud-storage-services-that-protect-your-privacy-729639300>

## **DEVISE, MONITOR, AND ENFORCE AN INTERNET AND E-MAIL USAGE POLICY**

Many cyber security experts believe the biggest threat to a business comes from employees inside the company taking risks when using the company's computers and computer system. It is important to train employees and have them understand the importance of practicing safe computing. It is recommended that all law firms have a written Internet usage policy to underscore the importance.

It is also best to include provisions about personal use of the Internet while at work. Nothing is so great a time-waster as the Internet. Make sure your employees are given specific instructions about what they may and may not do, including instant messaging and chat rooms. Do you want them streaming audio and video and taking up bandwidth (reducing upload and download speeds) needed for work? Probably not, so tell them. Incidental personal use of e-mail is usually granted, but do not assume that the policy will solve your problems. Most firms today are monitoring, at least to some extent, their employees' usage of the network. You don't have to be Big Brother, but you do need to keep control of the very seductive Internet!

## **THE ETHICS OF CLOUD COMPUTING**

As pointed out in numerous legal ethics opinions across the country (all contained in this [handy chart](#) from the ABA Legal Technology Resource Center, there are ethical concerns that must be addressed by lawyers before storing data in the cloud. The data on those remote storage servers remains our responsibility, but there are precautions to take:

- Read the Terms of Service or user license agreement.
- Determine who owns the data, you or the service provider.
- Determine who, besides you, has access to the data during transmission and while it is stored.

- Consider if you terminate the service, how do you retrieve your data and what happens to the data hosted by the service provider.
- Examine the service provider's physical and electronic security and confidentiality policies. What layers of protection do they have? Do they provide notice of a breach?
- Is the data held outside the U.S. where it may be subject to different laws?

These are basic questions to ask, and the answers need to satisfy your concerns. You may decide to ask a few more before deciding to trust your data to a provider. Also note the Legal Cloud Computing Association has published draft standards for all cloud service providers and their customers.

<http://www.legalcloudcomputingassociation.org/standards/>

## **TRAINING**

To maximize and protect your investment in technology, make sure everyone in your office gets computer training each year. The better you and your colleagues know the software, the better and more effective you will be using it. It is that simple. Leaving the office to take such training is hard, so use many of the on-line services today, including Lynda.com, LearnKey.com, GCFLearnFree.org, not to mention the tutorials available on-line from just about all software application developers in the law office/practice management software market. The most important part? Schedule time for each person to take training each month. Just an hour or two will do!



## 2 The Amazing Value of Videoconferencing

### INTRODUCTION

Video communication is the future of business communications, and that future begins today. The vastly improved quality, ease of use, and low cost has propelled this technology to the forefront of many small businesses, including law firms. Coupled with the myriad benefits of using videoconferencing, it is the best interests of law firms throughout the U.S. and Canada to incorporate it into their business and communications processes. Such communication includes not only scheduled meetings, but also many routine calls that now take place using the telephone.

Social scientists have known for years that face-to-face meetings where both sound and visual queues are used is the most beneficial form of communication—better than telephone calls and far better than email or written correspondence.

### What is video communication technology?

Since first prototype was introduced at the 1964 World's Fair, the videophone has captured the imagination of the American public. Although it has taken decades to mature, what was once a dream is now a reality. The development of the Internet, and the “faster, cheaper, smaller” on-ward march of computing technology have made it possible. Yet few people (and companies) are adopting and using the technology to obtain its full benefits. Is it a lack of understanding how to implement the technology? A lack of desire to use the technology? A lack of usefulness of the technology?

Videoconferencing and video calling are much the same thing, it is only the number of participants that matters. Video calling replaces telephone calls, which usually occur with one, possibly two parties. Videoconferencing can use identical technology, but refers to meetings or discussions between multiple individuals—ranging from three to dozens of participants or more. However, for most lawyers, video conferencing includes less than a dozen participants.

### MANY USES OF VIDEOCONFERENCING

- Initial consultations with people who have difficulty getting to your office: Time, distance, and aggravation are all impediments to a client or prospective client being present in your office for a face-to-face meeting. Reduce that friction and maintain the personal interaction by using videoconferencing.
- Client meetings: Not every meeting needs to be in-person, but they are always better face-to-face. Save clients the time and aggravation of getting to your office by offering a video alternative.
- Conversations with remote employees: Video communication also builds better relationships with staff, especially those who telecommute.
- Settlement negotiations: Negotiations are always more productive when parties can see and feel the opposing sides behavior.
- Case preparation: As a case is being prepared for trial, many small questions arise. While it is easy to reach for the phone, isn't it better to see the client's response to those questions? When the client cannot be in the same room, video communications is a convenient and cost-effective alternative.
- Witness preparation: Isn't it always better to see the witness? So, when a witness can't come to you, take the video to them.
- Job Interviews: Allowing applicants the option of interviewing with your firm expands the hiring pool by including those too far to affordably travel to your office.
- Multi-office staff meetings: Use videoconferencing to bring your entire staff together for monthly or quarterly all-staff meetings.

## BENEFITS

The main benefits of videoconference technology most often cited are cost and convenience, yet there are several benefits that may be of greater benefit to law firms.

**Cost:** Videoconferencing eliminates travel costs and delays. It is especially beneficial for shorter meetings where travel takes up more time than the meeting. This is true whether clients and others spend a day flying in and out for a two-hour meeting, or it saves a client two hours in rush hour traffic to attend a quick meeting to review a final settlement proposal.

**Convenience:** Collaboration can happen sooner if you have a video platform to hold the meeting or conversation. Rather than find a mutually available block of time to travel to and participate in the meeting, video allows you to set up that event in a smaller block of time, which usually is much sooner on calendars. This benefit is magnified greatly when there are more than just two or three participants in the meeting. It allows you to add people—experts, co-counsel, etc. at the last minute without delaying the meeting or discussion.

**Greater participation:** Eliminating travel time and costs can allow for greater participation in meetings. Some people cannot afford the expense of travel, while other potential participants may have commitments that prevent traveling to, attending, and returning from the meeting.

**Productivity:** Adding the video component allows us to use visuals as part of the interaction. We can share documents, show visuals, and view exhibits so that decisions can be made in real time rather than waiting for call participants to receive, print, and review them later. Further, being on camera reduces multitasking. Multitasking has been proven to be a myth, yet many people surf the Internet and read emails during telephone conversations. However, when on-screen, their attention must be focused on the call rather than other matters. When people pay attention, the interaction becomes more productive.

However, the biggest benefits of using video impact far more than costs. Video can actually improve interactions and outcomes.

**Improved Communications, Relationships, and Outcomes:** With 70% of communication known to be non-verbal, experts have long agreed that face-to-face interaction has the best communication outcome. Better communication leads to better understanding, and that leads to better working relationships. Fewer misunderstandings lead to a greater sense of trust

among the people collaborating. Having trusting relationships with clients, co-workers, and co-counsel is the hallmark of excellent lawyering. Seeing rather than just hearing allows us to build solid relationships:

1. Video calls allow us to see a person's general appearance. We make decisions about people based on their overall appearance. Height, weight, demeanor, hairstyle, clothing, jewelry, and more can be seen, but not heard. We often make judgments about a person based on how we perceive these visual characteristics.
2. We can see a person's surroundings, and use that information to make decisions, assumptions, and judgments. Does it make a difference if the lawyer you are negotiating a deal is sitting in a shabby office or from a deck with the Pacific Ocean in the background?
3. Video allows us to see reactions to our spoken words. We look for facial expressions, gestures, head movements, and body positioning and shifting.
4. We can see whether the other participants are paying attention, and whether they appear engaged or distracted. We look for visual cues such as head nods and eye contact to see if our message is being understood or being ignored.
5. Non-verbal cues allow us to know when it is our turn to speak. Sometimes it is hard to know when a person on the telephone stops speaking. With videoconferencing, we can see the person as well as hear them, providing more cues as to when they will stop speaking to allow a person to respond.
6. In larger conferences with more than several participants, we make judgments based on who else is on the videoconference. The status and power of the other people will influence our perception of the conference content and value.
7. All of these non-verbal messages help us to make determinations whether we are making progress and achieving a common understanding about the subject matter of the videoconference. If the opposing lawyer looks to be engaged, is nodding appropriately, and appears to be working toward common ground (agreement on the issues), then we are likely to decide to invest more time in the interaction. Without the visual aspects, we would be less likely to know if we are achieving progress toward a common ground.

## THE RISE OF TELEMEDICINE

Lawyers are not the first to use video technology to connect with clients. More and more doctors are taking advantage of this technology that has been dubbed “telemedicine.”

According to *Wikipedia*, telemedicine is the use of telecommunication and information technology to provide clinical health care from a distance. Although there were distant precursors to telemedicine, it is essentially a product of 20th century telecommunication and information technologies. These technologies permit communications between patient and medical staff with both convenience and confidentiality. Early forms of telemedicine achieved with telephone and radio have been supplemented with video telephony.

It's not just being used to reach people in rural areas underserved by medical professionals. It is popular in metropolitan areas, including New York City, where it can be difficult and frustrating to travel to see a doctor when ill.

If doctors can do this, and their patients like it, why can't lawyers practice telelawyering?

## PSYCHOLOGY AND HUMAN NATURE

If we are going to improve our use of video communication technology, then we must improve our understanding of the psychological aspects of the medium. We need to know how and why we react to the technology as we do.

While video communication technology has evolved, our understanding of the human reluctance to using the technology has not. If we feel more comfortable using the technology, then we will use the technology more often. Let's delve into the psychological impediments and their solutions.

**Self-awareness on camera:** The biggest complaints about using video communication technology include fear of public speaking, not looking good on camera, and not meeting visual expectations of others (proper dress, environment, and physical appearance). All of these are really aspects of self-awareness. We don't act or appear differently on camera than in our regular office setting, but we become nervous or uneasy when we see ourselves on our computer screen. That's because the camera is often placed close to our face, and improved camera and screen resolution allows other viewers to see detail behind us too. The best solution for this is to avoid looking at ourselves. It is best to

minimize or eliminate the screen showing our image. We can also take steps to improve the camera angles, background, and other factors that will be discussed further below.

For example, we put cameras on our video monitor as a convenience to stay out of the way of our other work. In large conference rooms, we place cameras on the wall out of the way. In reality, we should improve the locations. If the image of a person is deemed too big, it is perceived as too intimate. If the person (or people) on camera is viewed as too small, then the benefits of visual cues are reduced.

The most pleasing angle for viewers to see you is at eye level. A laptop camera in a lap is too low, and a camera clipped to a bookshelf may be too high.

**Desire to multitask:** Conference calls using the phone have allowed participants to hide the fact that they are multi-tasking during the call. Many people are listening to a call while catching up on email, eating lunch, or sorting mail. It is much harder to hide these activities when on a video call, hence the reason so many people turn off their camera during video calls. However, studies have shown us the myths of multi-tasking: It just isn't possible. We cannot fully participate in a conversation while simultaneously doing other tasks. Adding the video component to calls makes them instantly more productive as well as accountable to the other participant because it does make it difficult to do other tasks when people are watching. After all, isn't the point to be paying attention to the content or the call and respecting the input of all the participants? If participants feel the call is a waste of time, then look for ways to shorten the call—to make it more productive by using less time. This is another reason that a good agenda is important especially for videoconference calls.

**Uneasy navigating the technology:** A good number of lawyers and clients do not know how to use video communication technology. While it is becoming more widely used, participants learn just enough to log in and show up. They remain nervous or uncomfortable about more in-depth features of the communication hardware and software. Using a consistent video platform coupled with some basic training will help overcome this unease among clients and lawyers. Choosing a platform that is easy to use is a great first step. Make sure the features like pin codes, Internet connectivity, and participant dashboard are simple to use and understand. Remember, overcoming this psychological resistance will help unlock the tremendous benefits of video communication technology.

## VIDEO TOOLS & TECHNOLOGY

Video calling will continue to evolve, but the tools needed today are robust and mature in their capabilities. Necessary tools include:

- A stable Internet connection
- Video cameras
- Audio speakers
- Microphones
- Lighting

Many of these tools are already available to or owned by lawyers. Almost all smartphones, tablets, and laptops have cameras, speakers, and microphones built-in. Many desktop computers also come with this hardware. You can also buy this equipment individually to fit the video and audio needs of the law firm. We'll review some of the tools below.

### A WORD ABOUT DEDICATED VIDEOCONFERENCE ROOMS

At present, there are differing expectations for what a participant should expect from a videoconference. Most people today view it as a replacement for a meeting in a conference room rather than the equivalent of a telephone call. A videoconference call can be held anywhere you can get a stable Internet connection and have a smartphone, yet few people would call that a videoconference. As will be discussed below, environment matters. Does that mean that law firms should have a conference room with dedicated videoconferencing equipment? Can a firm use desktop computers and mobile devices to host and participate in all video communications?

Ultimately, our expectations should shift to accept more informal video calling arrangements, but until then law firms should consider having videoconferencing equipment in a conference room. Sure, some firms may decide to bring in laptop computers for each videoconference, while other firms may decide to spend thousands of dollars to equip each conference room in the firm. The marketplace features a wide range of equipment options in a fairly wide range of prices. The key is to know how you plan to use video communications and what expectations your clients have when participating in the conferences: Is it more like a telephone call or a formal meeting?

Probably the best way to know is to start using the equipment you have, and then decide whether to upgrade your equipment based on actual use and feedback from clients, staff, and other frequent participants.

## INTERNET CONNECTIVITY

A dedicated Internet connection is still the fastest and most stable method to participate in a videoconference. This is just an old-fashioned USB cable plugged in to the nearest Internet connection. However, today's Wi-Fi offers almost similar speeds and reliable performance to hold video calls. Whether you choose to plug or unplug, you'll want Internet download and upload speeds of at least 5 Megabits per second (5X5) per user. Business-class Internet speeds are pegged at 25 Mbps but can be 100Mbps or higher in certain areas. Cell phone network speeds have also improved, thereby making video calls possible (and visually acceptable) just using your phone plan. However, phone network data speeds are not that reliable yet, so it is still better to be connected via Wi-Fi. Moreover, a 4-minute video call can use from 8 to 12 MB of data depending on the video calling app you are using. If you are not using an unlimited data phone plan, this can get very expensive.

## HARDWARE

**Smartphones:** The simplest and most common tool for video conferencing is the smartphone. Every phone today comes with a built-in camera, microphone and speaker to use with a myriad of apps, some of which come pre-installed on the phone. Whether calling one or two people or conferencing with hundreds, the phone in your purse or pocket can do it. Depending on your signal strength and location, the call may not be the most professional, but it certainly can work very well to interact face-to-face with clients, staff, expert witnesses, opposing counsel, or others.

**Tablets & Laptops:** Similar to smartphones, tablets have all the tools needed to participate in a video call or conference. It also has a larger screen to help make the video call a better visual experience. Almost all laptop computers manufactured in the past few years have a built-in video camera, microphone and speakers to handle video calls.

**Desktop computers:** Almost all desktop computers in the past five years support audio and video, and either have video camera built into the monitor or one can easily be added to sit on top of the monitor. The microphone is almost always built into the speaker array within the monitor.

**Cameras:** While the cameras that are built in to most computing devices are acceptable for video calling, in large conference rooms or larger offices, a separate camera may yield a clearer and wider picture. Decent cameras of this type start at under \$100, and excellent cameras with remote panning, tilting, and zooming capabilities range from \$100 to \$1000 or more. Popular brands include Logitech, Microsoft, and Aver.

**Microphones and Speakers:** As with the camera, the larger the room, the more impact the microphone and speakers will have on the video communication. While the microphone and speaker built-in to your laptop, tablet, or desktop will be fine for video calls in an office, standalone alternatives will be better for conference rooms. There are really two options at this juncture: A quality portable microphone and speaker or an array of installed microphones and speakers on the tabletop or in the ceiling. Again, let your experience and participant expectations guide you into what is best for your firm. A good quality omnidirectional microphone starts at just under \$100, and good quality camera/microphone/speaker combos (such as the Logitech Connect) cost about \$500; installed microphone and speaker arrays are considerably more but may be worth it for your firm.

**Lighting:** Video cameras need light to create visual clarity. However, video cameras are much more light-sensitive today, providing acceptable clarity in lower light levels, so it is not as critical to have special lighting. Office lighting is acceptable for video communications, but it is still good to be aware of the lighting effects. Overhead fluorescent lighting is acceptable, but not the best or most flattering. Consider a light source that emanates from behind the camera to illuminate you. It doesn't have to be a glaring spotlight, but maybe natural light from a window or warm lighting from a desk lamp.

Also, be aware of natural lighting through windows. Sitting in front of a window is a disaster because most cameras even today cannot adjust for the contrast between the brightness of sunlight and the relative darkness of an office. Instead of sitting in front of a window, sit facing the window with the camera between you and the window. Having a window to the side of you can provide acceptable illumination.

Wherever you decide to do most of your video communication, spend time testing the picture clients and others will see. Play around with existing lighting—try combinations of overhead, desk lighting, and natural lighting from windows. If you can't find a pleasing light level, purchase a flexible desk lamp where the lighting level is also adjustable. You'll find the right lighting with a little bit of trial and error.

## AVAILABLE CONFERENCING SERVICES AND TOOLS

**BlueJeans:** Aimed at large enterprises, BlueJeans is a complete videoconferencing service that can be used on any device or computer, and integrates with leading desktop applications. Probably priced above the needs of small to medium law firms, but a player in the market nonetheless.

**ClickMeeting:** Often cited as the service with the best balance between ease of use and deep functionality, ClickMeeting offers some common features, and then a few more not always found in the \$25 per month category. For example, it includes a rebranding feature that allows the user to customize the service with their own brand so that your clients see your firm name not ClickMeeting logos.

**EzTalks:** A small but growing segment of the market is the all-in-one hardware and software videoconferencing system. This system usually includes a camera/microphone/speaker combination that sits on top of your conference room monitor, plus the software to host videoconferences without the need for Webex, Zoom or similar. For example, the EZTalks Onion is one such product for use in small conference rooms or offices, connects up to 5 devices, and sells for about \$1,300. That might seem expensive, but there are no monthly fees to pay like with other video conferencing services.

**FaceTime:** This is Apple's video and audio calling service. It is an app included on all iPhones, tablets and Mac computers. FaceTime can be used on both your mobile phone plan or via Wi-Fi connection. Wi-Fi offers a better video experience and can save on data consumption. You can "FaceTime" anyone in your phone contacts when on Wi-Fi; call recipients can choose to join the call by audio only or using video and audio. Google Duo is a similar app for Android (and now iPhones) that is new and still a bit buggy.

**Google Hangouts:** Google has expanded Hangouts into two different but integrated services. Google Meet is a video calling and meeting service that aims to be the simplest and frictionless video calling service on the market. It integrates with Google's GSuite and Google Chat, a group messaging service that allows teams to collaborate in private chat rooms and across enterprises.

**Go2Meeting:** One of the signature collaboration products of LogMeIn, as a result of their 2017 merger with GetGo (formerly owned by Citrix). This service offers similar features to Zoom, Skype for Business, and Join.me, including high-definition video, one-click calls, screen sharing and other collaboration tools.

**Join.me:** Also owned by GetGo, this is a freemium videoconferencing service that fits the budgets of many small firms. The free version allows three participants to join a call, but their Pro version for \$20 monthly is very robust. It integrates with Outlook and Google Calendar for scheduling calls, and then has a quick and simple sign-in to join a call especially if you use the Chrome browser. Users may want to test the free version before deciding on the paid Pro version.

**Skype:** Probably the best-known video calling service, Microsoft owns Skype. Most people have used Skype on their phone or tablet, and it continues to be a popular product for personal use. However, law firms will want to consider Skype for Business, a more robust version that is included in business versions of Office 365. It has better encryption and other security features, allows for larger conferences, and provides more conferencing functionality. Available in Office 365 Business Professionals, but is more fully integrated in Office 365 Business Premium. Skype for Business is fully integrated into Outlook and other applications for one-click video calling, among other features.

<https://products.office.com/en-us/skype-for-business/compare-plans>

**Skype Translator:** This new addition to the Skype product family allows a person to converse in real-time with a person who speaks another language. Your words are translated into the language they understand and vice versa.

**WebEx:** Cisco continues to evolve their product line to add video communication functionality. WebEx is best known as webinar hosting/video collaboration software, but now there is Cisco Spark, a video communication and collaboration platform for one-to-one calls, team huddles, or larger conferencing. Free to try, but prices really start at \$12 monthly for business-level functionality.

**WhatsApp:** Once just for messaging, this smartphone app (iPhone and Android) introduced video calling in late 2016. Its goal is to provide a satisfactory video call anywhere in the world, not just in places with stable LTE connections and the latest smartphones. Six months later, the 1 billion users are placing 55 million video calls a day around the world, using an average of 340 million minutes a day. Maybe not your first choice in the U.S., but definitely worth considering if you have clients around the world. Similar messaging apps that now have video calling capability include Facebook Messenger, SnapChat, WeChat, and LINE.

**Zoom.us:** Zoom bills itself as the #1 videoconferencing system on the planet, and with good reason. They offer a wide variety of functionality and pricing plans that fits any budget. The service itself is very robust and stable. I've been using Zoom for over three years, and find it to be simple to use and easy for participants to quickly join a call or conference. The video and audio quality are outstanding.

## ENVIRONMENT

As noted earlier, video calling continues to evolve. As people become familiar with using video rather than merely audio

for communication, the psychology of the calls will evolve as well. Presently, because users do not have much experience with video calls, they will look to similar experiences to fill in gaps in their knowledge. For example, they will equate video calls with what they are used to seeing on a screen. The screen they watch the most is television. They expect their visual experience will be similar to what they see on TV. For now, expectations will be for similar backgrounds and proportionality on their screens. As the experiences evolve, I believe the expectations will be for less formal backgrounds and environments, but for now we may need to meet the visual expectations of video communication participants.

It is important to make the video background pleasing to the viewer, conducive to being productive, and meet the expectations of other participants. While your video call or conference is not a professional television show, participants may equate the two, causing them to have higher visual expectations of the call. Often, this is an office setting, but it is not the same as being in your office or conference room. When a person is sitting in a room they can look at the surroundings and gather information about who you are and what you do. In a smaller video screen, people can only see what the camera sees. Be aware of what is in the camera range—usually the wall behind you. What objects are on the wall? What color is the wall painted? If it is a window, how does that impact what video participants will see?

Often, lawyers will meet clients in a conference room where the space is less cluttered with files and other distracting items. Similarly, you could create a space in your office, conference room or other space to hold your video calls and conferences.

Avoid distracting furniture or decorations. Don't do brightly painted walls or little objects where viewers will spend more time deciphering your background than communicating with you. Have you noticed the backgrounds TV news networks use for interviewing legal commentators? They use bookshelves filled with law books. Uniform books are not distracting, and they add context to the lawyer's appearance on the news program.

Consider placing certain items in the background for clients to see. Uniform shelves of law books are acceptable, as are your law diploma, bar admission certificate, family photos, and civic awards. Also, consider custom visuals on a background including a firm logo, city skyline, or world map.

If the videoconference emanates from a location that includes several live participants be sure the table and chairs are appropriately arranged for the size of the conference and that you allow remote participants to see the live participants in the room.

To avoid distractions and interruptions from people in your office or home office, put a “Do not disturb” sign or similar on your door.

## ETIQUETTE

In 2016, West Unified Communications surveyed 230 full-time U.S. employees about their videoconferencing experiences. Participants reported the following biggest annoyances:

- 76% Background noise or distractions
- 70% Late-joining participants
- 67% Participants talking over each other
- 57% Repeating information
- 48% Using filler words like “um” and “er”

Use these tips to train yourself to avoid being the annoying person, and consider creating a video etiquette training seminar for your staff:

- Arrive early to make sure you are familiar with the technology. Know where the controls are to “raise your hand”, mute your microphone, chat offline, and share your screen, as appropriate.
- Avoid distractions by silencing your phone and minimizing disruptions.
- If you are in a public location—airport, beach, house, use a headset or earphones with microphone to reduce background noise and more easily mute your microphone as needed.
- Enter your name for display to others; encourage them to do the same.
- Avoid side conversations and activities that are often distracting.
- At times, look into the camera as if you were looking at the camera. Don’t always be looking at your notes or scribbling notes.
- If you take notes, whether writing on paper or typing on your keyboard, know that video microphones are often in the computer keyboard or on the conference table, so be aware of the noise.
- Microphones today are smart and will adjust themselves for the distance between the speaker and the microphone. Be aware that you probably do not have to shout even if the microphone is several feet away.
- If you are participating in a video call from a home or other remote location, take steps to minimize disruptions from those around you.

- Sitting upright in your chair and facing the camera is the best position for showing you are attentive to the other participants.
- Avoid yawning. If you feel a yawn coming, take a sip of water from a nearby mug that contains water but no ice.

## KEYS TO PRODUCTIVE CALLS

- Introduce each client to your video communication efforts during the initial consultation. Let them know the benefits of using this technology, and that they can easily communicate with you using their smartphone, tablet, laptop or desktop computer. Consider adding a brief provision to your representation agreement highlighting the understanding with each client to try to use this technology rather than always using the telephone or in-person meetings. Make a note in each client’s contact information which tools they have to communicate via video.
- It’s always good to have an agenda, even if it is a brief email with a client that states you’d like to talk because you have two issues to run by the client before finalizing their documents.
- For larger meetings, an agenda is a must. An agenda is an ordered sequence of items that helps shape expectations. It should also include the names of those responsible for leading the discussion of each item, and the amount of time allocated in the meeting to address the item.
- It is important to include the details for call participants to join the call or conference. Initially include them in the confirmation of a scheduled call, and then follow-up early on the day of the call by sharing the call time and location with participants.
- Use participant’s names during the call. In face-to-face meetings, we can turn to a person and look them in the eye so they know we are talking to them. That is harder in a videoconference, so use names so they know you are talking to them.
- Recording: Many videoconferencing services have a recording feature that allows the host to record the conference for use by others at a later time. This is helpful to people who missed the conference. Recordings can be used in different ways within a firm. For example, an associate could record an initial interview with a potential witness, allowing a more senior attorney to review it later.

## ETHICAL CONSIDERATIONS

Whenever lawyers are dealing with client information and technology, we have to be concerned about three issues: confidentiality, competence, and communication.

We have a duty to communicate with clients, keep their information confidential, and have the technological competence to do both.

As we've argued above, using video to communicate with clients is a superior method of exchanging information. Doing so often, in accordance with Rule 1.4 is the ethical standard.

Lawyers need to be vigilant that the video service they use keeps client information confidential. Most video services do not store client information or record conferences or calls on their cloud-based servers; they merely transmit the packets of video between participants across their system. Lawyers contracting with video service should exercise professional judgment and caution when reviewing the security of the service. All of the commonly used services have white papers that discuss their security, such as this [paper](#) from Zoom.

- A. Lawyers should read the user or license agreement terms to understand the methods and technology that are deployed to maintain security and confidentiality of all video communications and conferences.
- B. Lawyers should know what video data or other information, if any, is obtained, stored, or accessible to the provider or a third-party.
- C. Determine if there is such information, whether it is kept secure and confidential, or whether it is deleted upon the termination of the call or affirmative act of the host.
- D. Consider if you terminate the service, how and when is the client information deleted.
- E. Examine the service provider's physical and electronic security and confidentiality policies. What layers of protection do they have? Do they provide notice of any breach?

One area of special concern is the recording function of video services. Video call recording is available on all common video services, usually with just a click of the mouse. Generally, only the host can start and stop the recording (but it is always good to check). Videoconferences can be recorded to allow missing participants to review it later. One-to-one client conversations can be recorded to preserve the content of the call or to allow a lawyer or paralegal to review the call for important information. There are two issues to know before you record.

Make sure if you do record the event that the other participant(s) agrees. You do not want to get into a legal situation where the other person did not know you were recording the meeting or conversation. That is probably best to do "on the record" at the beginning of the video.

Secondly, the recording can be stored on the meeting host's computer or the video service's server. It is best to choose your own computer to record and store the file. Any confidentiality issues then disappear.



## 3 The Fine Art of Getting Paid

In today's economic environment, it is important to understand how a firm's need for productivity and profitability can be undercut by a client's unreasonable expectations of what they want to pay. Successfully managing clients' financial expectations is key to a law firm's overall profitability. From the client's first contact with the firm and throughout the entire engagement there are opportunities to manage these expectations. Too often, lawyers and their firms wait until a client's bill is too large before taking action. Much of that inaction comes from ignorance of what to do, how to manage the expectations, and the issue of money.

It's not just about psychology, it's about having an efficient and trustworthy system to convert time into money. Your timekeeping and billing system is vitally important to the economic success of the law firm, and the better the system, the more money the firm can realize.

When combined, these form the art and science of getting paid. The art and the science may not be applied equally in each firm, but each firm must apply both in the percentages best for their clients. A firm representing larger businesses will probably need more science than art, but a family law firm will need to focus more on the art and maybe a little less on science. However, it won't take that much trial and error with each to have your practice full of clients who *want* to pay your fees.



## 3.1 THE ART OF GETTING PAID

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**Many lawyers have clients who owe them money, but they either dislike chasing the fee or don't know how. What can a lawyer or law firm do to address this issue?**

The key is to not wait until the bill is overdue, but to address the issue at the beginning of the relationship. It is up to us as businesspersons to be clear with clients about the fees, and to form expectations early. We need to communicate early and often about our expectation of being paid, and check often with the client that they continue to share our expectations.

**What specific things can you do to communicate and set shared expectations about your fees?**

Many of us start out believing that the initial consultation is a chance for a new client to evaluate us as a lawyer, but we soon learn it is imperative for us to evaluate and qualify the prospective client too. We need to make sure we have the competence to handle their matter, and that they have the financial commitment to pay us for our work.

When you take on new work, does the firm analyze whether the potential client will be able to pay in full to solve their legal problems? If you don't, you become the client's banker and loan officer— and odds are you don't get the kind of loan information that banks routinely demand!

I am not saying that lawyers shouldn't do *pro bono* work. That it is part of a lawyer's professional obligation to do a certain amount of work without expectation to be paid. However, each lawyer will definitely feel more fulfilled if they carry out their *pro bono* obligation with cases they deem worthy. If you let your clients turn their matters into a *pro bono* case without your consent, you will experience frustration and anger.

The best practice to ensure payment is for each practice group to develop a checklist of "red flags" to use during the client intake process. Red flags are often specific to practice areas, but some are universal: Did they forget their checkbook to pay the

initial consult fee? Do they try to negotiate down your advance retainer? Do they keep saying they are in this for the principle, not the money! Lawyers holding an intake consultation should have this list in front of them to use and fill out.

Lawyers always ask what are the standard fees to charge for various matters, but that is like asking, "How much does a chicken weigh?" Why? Because the marketplace of legal services is not one monolithic market. The entire legal marketplace is made up of many segments. Throughout the marketplace, there are different fees for different practices; different fees for different clients. Think about it: Does Nordstrom charge the same as Wal-Mart for a t-shirt? Does a Chevrolet cost the same as a BMW? Why does Dell have so many different models of laptops? Because different consumers want different things.

Some consumers want the cheapest deal; others want personal service; some want "the best"; many consumers want to feel comfortable with their lawyer; while others want convenience. The list of differences in consumers is really quite long. It is up to you to know if your prospective clients fit your fee structure.

Your marketing messages influence which potential clients contact the firm. It is important that your marketing messages are in sync with your intended marketplace, and that your fees are in line with your client's perception of your value. If you have large accounts receivable from too many of your clients, then look at your marketing not just your fees, billing, and collection. It may be you are attracting the wrong type of client.

Getting this all-in sync does take more than a bit of trial, error, and constant analysis, but it does pay off. It will go a long way to make sure that the clients who hire you will pay you!

Discuss fees as soon as possible after the client has completed their initial story-telling—after they define their legal problem or needs--and you have a good understanding that you can help. Clients are nervous (or concerned) about costs, so be

pro-active to bring up the subject. You may not have a full sense of the case or the cost to resolve it, but you'll have enough information to discuss it to find out if you and the client have similar expectations. Do they understand the costs and are they committed to resolve the matter?

If so, decide if the client is credit-worthy and set an appropriate advance fee. Don't be afraid to ask for significant financial security up front. You are a lawyer, not a banker. Develop financial terms that are favorable to you and the client. In addition, consider holding back some or all of the initial advance fee to cover some or all of the last few bills.

**The potential client in front of me wants to hire me, and I think this person will be a good client. I have a fee agreement I borrowed from my old firm that apprises the client of my fee. Is this enough?**

It is very important that you confirm your understanding with each client in a well-crafted representation agreement, not just a fee agreement. This is the express foundation of your relationship. It clearly sets out the client's obligations and responsibilities to pay your fees in a timely manner. It should create an understanding in your clients' minds that you expect to be paid. A well-written representation agreement has several characteristics:

1. **Thorough, but concise:** No representation agreement can cover every aspect of the attorney-client relationship; anything more than three pages may be too long for the client to grasp. Include provisions that identify when the relationship starts, the nature of the relationship, the scope of the representation, the rights and obligations of each party including the obligation for payment, the rate and basis of the fee charged, how each party may exit the relationship, and what to do about any disputes over fees or documents.
2. **Jargon-free:** The agreement should be free of legalese. To test whether your model representation agreement(s) is understandable, have a lay person read the document. Rewrite as necessary to clarify.
3. **Ethically correct:** Read your state's ethics rules and ethics opinions on fees, fee advances (retainers), interest, and other related issues. Make sure you follow the appropriate rules and opinions.
4. **Customized for your practice:** Do not copy or use another lawyer's written representation agreement. Some lawyers rely on form agreements, not knowing their origin and assuming the form is correct. Take the time to create one that you know is correct.

5. **Two-sided:** Don't just put in all the things a client is obligated to do. A well-written representation agreement should clearly set out each party's rights and responsibilities during the term of the agreement. This builds trust in the mind of the client and gets the attorney-client relationship off to a good start.
6. **Clearly explains how fees are calculated:** If you are charging by the hour, explain what that means, and what is included. Explain any fee advance and how you intend to draw against it. Expressly state in the agreement the legal matter in which you are representing the client. Be specific. If the matter is a DWI case in Superior Court, write that in the agreement. Make your services contingent on cooperation and payment from the client. If you want payment before commencing work, clearly state to the client that your services start after the client has paid the advance or the flat fee. State that your services may cease if the client fails or ceases to pay your bill. If you later decide to terminate representation of your client for non-payment of fees, be sure you are in compliance with any and all court rules and procedures, including seeking leave to withdraw if such leave is required.
7. **Explain your billing practices:** Let your client know how often he or she can expect to receive your bill (preferably monthly), then make sure you stick to the promised schedule. Also, explain when payment is due (upon receipt; within 30 days, etc.). You can charge interest on the unpaid balance as long as you disclose the terms in your written representation agreement with the client, and follow all applicable laws and ethical opinions. Let the client know whether you charge interest on unpaid balances, and follow all federal and state laws regarding credit.
8. **Allow your client time to question your bill:** Discussing your bill with your client will ease client concerns when the bill starts to mount. Let your client know in the representation agreement that he or she may discuss the bill with you at any time. However, put a time limit on the ability to question specific charges—say, within 30 days of receipt. This may save you problems with a client who later decides to question all charges and not pay the bill.
9. If you believe the contents of the representation agreement is getting too long, consider creating a small booklet entitled "A Statement of Professional Commitment and Services" that is referenced in your agreement and given to each new client.

10. Make sure the client has a copy of the signed representation agreement. Place it in a folder with your firm's name and contact information. Include a few extra business cards, as the client may want to share your name with friends and colleagues.

### **You've discussed steps a lawyer can take at the formation of an attorney-client relationship, but what about after the client is on board?**

Many lawyers view billing as a drudgery. Many hate reviewing pre-bills or even submitting or even recording time. But billing is far more—billing is a great opportunity to communicate with clients about all your hard work on their behalf.

Billing helps make your work more tangible. Show your clients how hard to work for them. Use your billing descriptions to project effort. Use action words that explain the behind-the-scenes work they don't witness and understand.

Send out bills regularly. Clients won't give your bills as much respect if their only show up sporadically.

Deliver superior client service to exceed client expectations. In today's consumer-driven environment, clients expect quality legal abilities as the starting point. When you agree to represent a client, they presume you will provide an acceptable legal result, not always a win, but results within the scope of expectations set at the initial consultation and revisited throughout the pendency of the matter. But clients want more. Clients want legal service, not just results.

According to Patrick Lamb of the Valorem Law Group, "great client service is about doing things when convenient for the client, which requires you to judge from the client's perspective."

Rather than create office processes and train staff to do things the way you as the lawyer/business owner want things done, create them the way the clients want to be treated. That requires three commitments from you and your staff:

1. That you care enough about your clients to ask them what they want. This is not to say you should create a different service process for each client. However, every firm should inquire at the initial consultation about the best ways to communicate with that client, as well as service deadlines, and anything else to provide the service expected by the client. It is also a time to decline to represent the potential client because you cannot meet their expectations.

2. That you have analyzed each client contact point and determined whether your firm's current behavior meets or exceeds client expectations. For example, a 24-hour phone call return policy may fit your busy schedule, and be within the norm for a timely-returned call, but is it really great service? A client calls when it is convenient for her. Returning the call the next day may be timely, but not convenient. Returning calls as quickly as possible to be convenient to the client takes service up a notch.
3. That at the end of every client engagement you ask the client for feedback on how you can improve your service for the future. Continual improvement of client service processes is a hallmark of an exceptional law firm, and surveying clients is an important part of this. Use online survey companies such as SurveyMonkey or SurveyGold to create a client satisfaction survey to send to clients at the end of each matter. Also, ask for feedback throughout the process any time you meet with the client.

### **Reid, let's say you've had a client for a while then they stop paying for no apparent reason? What can you do to prevent this?**

Build trust and respect in all you do. Get to know your clients. Show them that you care about them and their problems. If you have business clients, get to know their businesses and the industries in which they operate. Get to know their people. Read their annual reports. Find out if they have websites and familiarize yourself with the information on them.

Keep your promises. Missed deadlines, late returned calls, and a "too busy" attitude can damage trust and degrade a feeling of respect.

Develop your listening skills. Learn how to encourage your clients to talk and how not to interrupt. Learn how to communicate attentiveness. Use appropriate body language. Learn how to be still. Don't play with paper clips. Don't gaze out the window. Don't allow interruptions.

Make your work tangible to the client. They often don't see how hard you are working for them. They don't often understand the processes either, so use communication points as opportunities to educate and inform. Use billing descriptions to project action. Send copies of correspondence and pleadings to clients so they can see and touch what you've created. Use these contact points to explain your work and its benefits to the client.

## **I have more than a few clients who owe me money, what specifically can I do?**

Nonpaying clients are telling you something, but the bare fact that the bill hasn't been paid is not an explanation. Maybe they did not receive the bill, or they forgot to look at it. Maybe they are procrastinating or simply have not prioritized it. Maybe the bill arrived at the wrong time in their cash flow or bill-paying cycle, and the client is waiting for its own receivables to come in.

It is up to you to take the initiative to determine the reason for nonpayment. When you clarify the reason, you can create a solution that will improve your relationship with this client.

The message you want to send is that you manage your financial affairs with the same diligence as your legal work. Your reputation, your most valuable asset, is on the line; if you are unassertive about getting paid, you eventually might be typed as being lackadaisical about the quality of your legal services.

Some clients simply do not have the means to pay your bills. Clients who truly cannot pay are not just insoluble collection problems, they also are evidence of poor credit-granting policies. If you have a significant number of clients who cannot pay for services already rendered, your credit policy and intake procedures need to be revised. By carefully screening new work, you can dramatically decrease the number of clients who fit into this category.

How can you avoid taking on too many clients who can't pay? Determine your clients' creditworthiness at the beginning of the representation, and check on it as the matter proceeds. If you neglect this, you will become the client's banker and loan officer.

The biggest collection headaches are clients who will not pay—they have the ability to pay but now decide not to. Unfortunately, these also are the clients most likely to respond to a fee collection suit with a counterclaim for malpractice.

A small number of clients never intended to pay you. Most "won't pay" clients, however, view nonpayment as a way to make a statement about your bill and about your services, your skills, and the relationship they have with you. It is important to remember that the issue usually is value, not price—not what you charged but what you gave in return.

Trust and respect may seem irrelevant concepts in bill collection, but they are fundamental. The more your clients trust and respect you and the work you do for them, the more likely they are to value their relationship with you as their lawyer. They see

paying your bills on time as a way to preserve the relationship. But when you do not meet your clients' service expectations, you cannot build the trusting, respectful relationships clients desire.

How do you deal with the client who has decided not to pay you? You must discover the reason for the decision and determine what, if anything, you can do to save the relationship. This can be a tricky task, but it may mean the difference between getting paid and losing a client.

The first step is to call the client and request a meeting. If the client will not come to you, go to the client. When you meet, remember that you are not trying just to get paid for an existing bill; you are trying to repair a relationship so you can turn a dissatisfied client into a happy one who will be a source of revenue and referrals for many years to come. This is your chance to save the relationship or, at the very least, to prevent it from damaging your business.

At the meeting, tell the client that you realize there is a problem with the relationship and the client's opinion of your service. Let her know by asking how you might improve the relationship and stating that you value the relationship and want to salvage it. Then sit back and let the client talk. Be prepared for harsh words, but do not be defensive. Show the client you are listening by maintaining eye contact and using affirmative gestures. Do not take notes—show that you are listening. If the client does not want to talk, ask non-defensive questions to draw out her thoughts. Debrief the case and the relationship. What went wrong? What aspects of your legal representation would the client like improved? Is it you, or does the client have other concerns for which you are not responsible?

The relationship may be salvaged or you may have to cut ties with the client. Do so as professionally as possible.

## **Reid, is this something lawyers must do, or can they delegate the tasks to staff to handle?**

Some of the administration can be delegated, but the system should be developed by the stakeholders—the lawyers. The lawyer begins the relationship with a client, and is most involved throughout, so they have the greatest impact on the client. It is up to the lawyers to create a client intake procedure, set client service expectations, deliver on the promises made, and oversee a billing process that all clients honor and respect. Lastly, it is up to the lawyers to talk to clients about overdue bills. Many lawyers push this important discussion to administrative staff to discuss with clients, but that is never as effective.

The most effective person to talk to the client is the lawyer. The lawyer's excuse is almost always "it will hurt our working relationship." That is a cop out. The lawyer is the most effective person to talk to the client—using the techniques outlined in this article.

**My young associates don't consistently meet our suggested monthly billable targets. Why don't they work as hard as more experienced lawyers?**

There is no course in law school that teaches lawyers the economic realities of modern day law firms. A few schools offer courses on law practice management that touch this subject, but few students learn about hourly rates and billable hours, and none have any clue what to charge, how to track their time, or what to bill. Worse, new lawyers have no idea how to talk about money to a client.

So, the job must fall to the firms that hire newly minted or lateral attorneys. Rest assured, making money in a law firm is a learned behavior—it comes naturally to a relative few. Firms must be the ones to teach these skills including: how to bill, what to bill, how to record time, when to record time, what rates to charge and when, how to listen to clients when discussing the costs of legal services, how to talk to clients about fees and costs, when and how to discuss overdue bills with clients; how and when to discuss unpaid bills with irate clients, how and when to successfully fire clients, and how their paycheck is directly tied to the success of all of the above.

Firms should have detailed classes on that explain the firm's written policies on these topics and teach these skills to each new lawyer. Not just at the inception of a lawyer's career with the firm, but throughout the years. There should be periodic education about talking with clients about fees because almost everyone has a hard time talking about money. Money, or the lack thereof, raises emotions. How do you feel when a client does not pay? Does that feeling intensify when the amount overdue increases? How do you think the client feels about not paying? There are emotions on both sides. Emotions disrupt objective discussions. Lawyers need training to be able to handle these situations.

**These are great ideas. Any more tips to share with us?**

Create an objective questionnaire to send to clients with a thank you letter at the end of each matter. Satisfied clients will often return the survey, but will be glad you sent it even if they do not return it. Dissatisfied clients often return it more frequently, providing you with an opportunity to rehabilitate the relationship before the client starts bad-mouthing your services.



## 3.2 THE SCIENCE OF GETTING PAID

Many solo and small firm practitioners find it difficult to prepare and send bills to clients on a regular basis. It seems that this is often a job for a Saturday when the phone is not ringing and the day-to-day crises are on hold for a moment. Even then, the job can take hours.

Logging time, drafting bills and getting them out the door does not have to be difficult. An efficient time & billing administration system will reduce stress, improve cash flow, and free you from your practice for a few more hours each month. Making the improvements requires a simple written plan with the personal commitment to follow the plan for a minimum of several months—the time it takes to adjust to the new system.

In what follows, I present numerous ideas and procedures for you to consider as you write and adopt your own time and billing administration system. You will find that most of our suggestions deal with the time before the bill becomes delinquent. Our observation of lawyers suffering from collection problems has convinced us beyond all doubt that most collections problems arise because the problem was not nipped in the bud. By the time the file becomes delinquent, it's too late to do very much.

### DEVELOP AN INDIVIDUALIZED TIME AND BILLING SYSTEM

The key to an efficient and beneficial system is to make it your own. It may help to find out how other lawyers and law firms get their bills out, but the best system is the one that works for you in your business.

A system is a step-by-step written description of the tasks that need to be completed for you to get your bills out the door in a timely and efficient manner. Follow the time-honored acronym of KISS: Keep it simple, but detailed enough to be effective.

Be sure to give yourself time to do your bills each month. Many lawyers make billing a low priority and wait until the last possible moment to do them. In a word, don't. Your billing process should start well before the end of the month; just dedicate a few hours

each week to the task rather than dreading it and procrastinating to the end.

If you have staff to assist you in this process, delegate the authority, but don't abdicate the responsibility. You can let others handle administrative tasks, but it is important that you manage your billing process.

Write down a step-by-step description of your system so that the staff person to whom a task is delegated has a system to follow and you have a way of determining if the person is doing the task as assigned.

Give your system a chance to work, and after a few complete cycles, decide if the system is working. If so, continue to improve it and enjoy the newfound freedom for you and/or your staff. If not, make more fundamental changes to improve the efficiency of administering your bills.

### USE UP-TO-DATE TIME & BILLING COMPUTER SOFTWARE

The time is past when lawyers could justify manual timekeeping and billing. Every lawyer should have a time & billing software application to enter their time and prepare their bills. More law firm-specific software, including cloud-based services exist today at affordable prices. Whichever specific time & billing program you chose, it should be able to help you with three distinct phases of collecting the fees you earn.

- 1. Time Entry:** A time & billing program should include tools to help you log your time and expenses for each client matter. A common tool is a pop-up timer that can be open and available for use on your computer all day. As you do client work or return phone calls, you can immediately enter the details of each task on your billing system. The program should also allow you to pre-enter standard task descriptions with abbreviations; for example, when you enter an abbreviation such as "TCC", the time and billing program knows to print it as "Telephone Call with Client."

2. **Bill Preparation:** The time & billing program should also be flexible and helpful in the preparation of your bills. The program should be easy to use and provide shortcuts and redundancy to speed the task. The software should be flexible so you can draft your bills at your clients' request.
3. **Reports:** From the management perspective, the most valuable aspect of a time & billing program is the ability to use the information from the bills to create reports. These reports can give you information about your clients' timely payments or delinquencies, as well as insight into other financial trends in your practice.

## SOFTWARE CHOICES IN THE MARKETPLACE

There are dozens of time & billing programs on the market. It is hard to recommend any specific one without knowing the facts and situation of a law firm. However, here are important factors to consider as you select the right software for your firm:

1. Make sure the software is targeted at your firm. Is it designed for solos, small firms, large firms or megafirms? It makes a difference not only in the software but in the training, support, and other aspects of using the product.
2. If you switch from an existing product, you may have significant costs to convert your existing billing data to be usable in the new software. Even if the software seller agrees to cover the data conversion costs, the conversion is rarely accurate or smooth. Be prepared to identify any differences, and be prepared to possibly write-off some past charges that failed to convert to the new system.
3. Training is the key to the success of any software. Make sure your billing administrator is sufficiently trained and continues to take periodic training when the software has significant upgrades. Make sure timekeepers are also trained for their functions. Timekeeper ability to effectively and efficiently use the timekeeping functions will have a direct impact on profitability. Period.
4. All newer entries in the marketplace are cloud-based software-as-a-service products. The software is hosted by each company on their servers, so you have no software installation or updates — you just access your account from any Internet-connected computer or device. This is a less-costly method of delivery, and allows for better support and upgrades. It also provides flexibility so users can be located anywhere there is an Internet connection. Billing software that is locally

installed on a firm's computer network continues to have a place in the market, but many of those products are evolving into or being replaced by cloud-based products.

5. The overall functionality of each time & billing software product is generally the same, but certainly not identical. Know what functions you need and want before you buy. Make a chart to compare apples to apples. Include your billing administrator and a timekeeper or two to help in this process (that is beyond the scope of this article).
6. The biggest difference between these products is the “look” and “feel.” Is it intuitive? Does it work the way you do? Even without training, how far can you maneuver inside the software to get tasks done? Does it have a clear or cluttered look when using it?
7. The ABA Legal Technology Resource Center maintains a good chart of time & billing software products with listings of their various features and functions. It is worth checking out.

## USE YOUR STAFF OR HIRE A RELIABLE CONTRACTOR FOR ASSISTANCE

Although you should remain active in your monthly billing, you can always seek some assistance with the administration of the process.

If you are a solo practitioner without staff, you should consider hiring a consultant to assist you for a few hours each month. Consultants are available in many areas, and also via the Internet. There are also billing services that will provide assistance in this process on a monthly basis for a reasonable fee. Either way, you need not hire an employee (and all that entails) to help you.

If you have staff, you may have an employee who is primarily responsible for the billing administration in your firm. Have this person help you develop an efficient time & billing administration system. To maximize the effectiveness of your system, make sure this person has the proper training to efficiently use your time & billing software. This also means periodic retraining when the software is upgraded.

## FINANCIAL REPORTS AND OTHER TOOLS TO PUMP UP YOUR PRACTICE

Reports are important tools generated from the billing data in your time & billing program. The reports give you information on the financial health of your practice, the performance of your timekeepers, and the integrity of your clients. Compile the

reports each month and use them to assist you in collecting the fees owed to your firm. Common reports from time & billing programs include:

- 1. Aged WIP:** “WIP” stands for “work in progress”; this report shows how much work is outstanding for each client in 30-day increments (30, 60, 90, 120 days, 120+) so you know who is ready for a bill.
- 2. Aged Accounts Receivable:** This key report shows you how much each client owes and how long the balance has been outstanding in 30-day increments; it tells you who’s paying and who’s not.
- 3. File/Client Status:** This is a snapshot report that summarizes the status of the financial relationship with a client or on a file. It might include total billed to date, billed amount outstanding, unbilled time and costs, money in trust, date of last payment, last service rendered on the file, etc.
- 4. Date of Last Payment:** This information is often in the aging report, but can also be separated into another report. If a client hasn’t paid in more than 60 days, you may have a problem, and need to act to make sure your relationship with the client is still intact.
- 5. Timekeeper Report:** This report reports the number of hours billed by each person (timekeeper) during a given time, usually monthly. It can also be a misleading report, because the person billing the most time does not always generate the most actual income to the practice.
- 6. Realization Rate:** The realization rate is the percentage of the time posted by a lawyer that the lawyer actually bills. For example, a lawyer books 200 hours per month at \$200 per hour for a total time value of \$40,000. However, she bills, on average, \$30,000. Timekeeper A’s realization rate is 75%. Although she books the most hours, because of the low realization rate, another timekeeper with fewer hours billed and a higher realization rate may actually be generating more billings for the firm.
- 7. Collection Rate:** This report is like the realization report, except that it is the percentage of amounts billed that are actually turned into cash. Again, a lawyer with high billings and high write-offs may actually generate less cash flow than a lower biller with a higher collection rate.
- 8. Time Code Reports:** These reports show which tasks or activities timekeepers bill most frequently. It is helpful to show each timekeeper what he or she billed, and see what they didn’t bill. Some lawyers forget to bill for some activities, and it will be apparent from the time code report.
- 9. Trust Account Balances:** Another report to have is the client ledger balance report for clients with retainers. This should be monitored closely to notify the client that their account needs to be brought current in order to continue to provide legal services.
- 10. Electronic Postage System:** Have a postage meter or a computer-based electronic postage services. Either system will help make the job of posting the bills much quicker. Purchase a machine that also wets and seals the envelopes. The cost of an electronic system will pay for itself in just a few months in the time it saves you.
- 11. Credit Cards:** Open a merchant credit card account and begin accepting credit cards. This payment tool used to be “déclassé” in the legal profession, but more and more lawyers are learning it can be an important tool to get paid. You may need two separate accounts, one to accept fee advances (unearned funds) into trust, the other to take payments on account from clients (earned funds). There are now several credit card processors aimed specifically at the unique issues of lawyers, so seek them out in the market. (The most well-known is LawPay.)

## KEEPING TRACK OF EXPENDED TIME

It is important that each timekeeper capture his or her time each day. Studies show that the sooner timekeepers record their time after doing the work the more time they bill each month.

Recording your time is really an issue of personal integrity. When you went into practice, didn’t you make a promise to yourself to do the best job you can for your clients and your practice? Recording your time is an important part of the success of your practice. Make a personal commitment to record your time as soon as you complete a task for a client. Then, at the end of each day, go over the time you entered. How much time were you able to spend on client matters? Did you forget to log any activity? Is the record accurate?

If you have entered your time on a daily basis, you have a contemporaneous record of your time. There will be no need at the end of the week or month to try to reconstruct your time. Best of all, there will be no under- or over-billing of time because you cannot remember how long you spent.

Record all your time, not just billable time. You may deem a matter to be “unbillable” to a client, but the client should be aware of the extra work you are doing on their behalf. Keep track of this time and note it on the client’s bill. It shows the client you are doing work on their behalf that you are not charging for every minute. This builds value in the mind of the client. If the time is

not billable to any client, it should show in your time records so you can evaluate how much non-billable time you are spending.

## TIME CAPTURE SYSTEMS

Everyone is different, so there is no timekeeping system that is universal. However, there are four methods that work successfully for many lawyers.

1. **Time sheets:** Many lawyers like to keep track of their time and efforts using a log sheet. This is a form that allows you to note your time and activities. The form is kept handy at all times to make notations. The entries are then entered into the computer system by the lawyer or staff member on a daily or weekly basis.
2. **Dictation:** Some lawyers keep a dictating machine close at hand and dictate their time records as they go through the day. This system takes a lot of discipline and uses staff time in transcription.
3. **Pop-up computer timers:** Every computer time & billing program has a timer that “pops up” on your computer screen with a simple command. It times your activity, such as a telephone call, then it prompts you to make a time entry on the spot. A very handy tool, but only when you are near your computer.
4. **Mobile devices:** Many lawyers now use the time entry software available for smartphones, iPads and other tablets. These hand-held, go anywhere devices allow you to enter your time and sync with other computers. However, most time entry apps do not work with law office-specific accounting software. This is slowly changing, so do your homework if remote/mobile time entry is on your wish list.

## KEEP TRACK OF EXPENSES

It is customary to charge clients for expenses related to the completion of their legal matters. These expenses include costs incurred to third parties on behalf of the client and charges incurred within the law office for the benefit of the client.

Out of Pocket Expenses include courier fees, copy costs to outside copy companies, court fees, court reporter fees, long distance telephone charges, etc. If possible, try to have these expenses billed directly to the client to save you from fronting the costs.

In-office Expense Recoveries generally include photocopying charges, postage charges, and often fax charges. These small charges can be difficult to track each month — Bit is

time-consuming to enter all those little charges into your time & billing program. Clients often find them annoying — like a shop charge in car repair shop. Here are two alternatives that can save you time and headaches.

1. Do not charge clients for these expenses. Absorb them into your fee structure rather than billing them directly to the client. You may decide to raise your rates by a small amount to cover the expenses.
2. Charge a one-time administrative fee for each client matter to defray the cost of these expenses. Add the fee into the language of your written fee agreement. The fee should be based on your expense history in each type of case. You be the judge, but about one percent of total fees is often accurate.

## CRAFT YOUR BILLS SO THEY COMMUNICATE VALUE

A well-written, informative, easy-to-read bill should be the goal of every law office. It takes a bit of work, but it pays off when appreciative clients promptly pay your bills.

### HERE ARE SOME TIPS:

1. **Format your bills for easy reading.** Often the best format is one with plenty of white space; too much printing in a small space gets confusing, so do not be afraid to use multiple pages. Use a readable print font that looks professional.
2. **Develop custom formats for your practice.** Most time & billing programs allow you to change the format of your bills. (The default format chosen by the software developer is often not the best.) Review the possible formats available and choose the best one for your practice. Some clients have a need for a particular format, often to fit their company’s accounts payable requirements. Your time & billing program should also allow you to use multiple billing formats to accommodate these requests.
3. **Use words that project value.** Clients do not see most of the work you do. They cannot taste it, smell it or place it on the mantle. Your bill may be the most tangible result of your work that the client can see, hold and feel. Communicate your efforts to the client using language that provides the clients with a picture of your efforts. Use active words that convey action.
4. **Avoid jargon.** Make sure your bill is understandable by the average client. Use the same test as you used for

your fee agreement. Ask a lay person to look at it. Is it clear and concise?

5. **Create a list of task descriptions for almost everything you do.** Create and use standard phrases and sentences to describe the work you do. Such phrases as “Telephone Call with Client” or “Draft, review and send correspondence to client.” Use the descriptions consistently. These descriptions provide the client with a sense of uniformity and avoids client confusion trying to understand your bill. It also makes time entry easier.
6. **Use nicknames or task codes.** All time and billing programs allow you to create short abbreviations for each phrase. For example, “Draft, review, and file Bill of Complaint for Divorce” could be abbreviated “DBCD” or even numerically as “101” or whatever you choose. However, the abbreviations should not show up on the bills sent to clients, as they can be confusing.
7. **Provide additional information.** Do not hesitate to provide additional detail for each description as warranted on each individual bill.

## DEVELOP A SYSTEM FOR ADMINISTERING THE BILLING PROCESS

This is the part of the billing experience most lawyers really hate to do. It seems to be the farthest thing from practicing law. Unfortunately, it is the lifeblood of a law practice. Without creating bills and mailing them to clients, there is no money coming into the practice.

The answer for many lawyers is to delegate this task to others. While that may free up some time each month, you need to remain involved in the process, even if someone else does the entries: it’s your business and your license to practice law. In addition, the person who handles your bill administration may quit (or in the case of the former firm of one of the authors, die suddenly). Will you know how to pick up the reins? If a problem happens, will you know where to look to solve it?

One key to an effective billing system is doing the work in stages. Waiting until the last minute to do it all will result in procrastination about doing it at all. Another key is timing. If you complete each part of the billing process within an appropriate period, your bills will be completed with less hassle and in a timely manner calculated to reach your clients at the optimal time to pay.

1. **Enter time into the computer:** Although discussed above, it should be stressed again: have every timekeeper in your firm enter their billing information directly into the time & billing system on a daily basis. If you choose to have administrative staff do this, have them do it daily and provide you with a report for you to review. Do not wait until the end of the month or the beginning of the next month to enter your time.
2. **Enter payments into the computer:** Enter client payment checks into your billing system on the same day you deposit them into your operating account. Procrastinating until the last day of the month is part of the prescription for failure. Omitting receipt of a client payment on their bill can make the customer a bit upset, and is one example of how an attorney-client relationship can devolve over time. Don’t let it happen to you.
3. **Time your billings:** Your goal should be that your bill should arrive when your client has the money to pay it. Often, lawyers try to get their bills to their clients near the first of the month. If you choose to do that, make the last day of your billing cycle the 25th of the month, rather than the last day of the month so you have several days to finish your bills and get them mailed out before the first of the month. For some clients, the first of the month is when they are paying other large bills, like mortgage and car payments. It may be beneficial for you to get your bill to them by the 15th of the month. You can even allow your clients to choose their pay date. They are more likely to pay it because they generally will have the funds when it is received. Make a space on your client intake form to ask the client if they would prefer to receive your bill on the first or fifteen of the month. If at all possible, send the client the final bill immediately upon completion of the legal matter. If you have successfully assisted the client in resolving the legal matter, they will never be so grateful as at that point in time. Do whatever it takes to get the bill promptly into the hands of the proper person to pay the fee.
4. **Review the pre-bills:** Print and review draft versions of each bill. Check for errors in data entry (i.e., 80-hour phone calls, etc.) Also, check that each bill is legible and presentable to the client. If you enter your time every day, you will have a valid, contemporaneous record of your time. You need only review your monthly entries for data entry errors — errors because of keying in the data. This saves a huge amount of review time. It also is understood that you not be tempted to underestimate your time because you have forgotten how much time you really spent.

5. **Print the bills:** Bills do not have to be printed on costly letterhead, but a computer-generated printout can look cheap if it doesn't include your letterhead and is printed on cheap paper. In a sense, your letterhead is the "logo" clients will associate with your firm. If you do send paper bills to clients, use window envelopes so that the client address on the bill is visible in the window.
6. **Digital bills:** A good question to add to your client intake form is whether the client wants you to send a paper or digital bill. Digital bills are much easier and less costly to send. Remember, a bill is a communication device to improve the attorney-client relationship, so don't avoid sending a paper or digital bill that provides information to the client. Use the electronic bill function of your software, or print PDFs of the bills to email to your clients.
7. **If you charge interest** there are some disclosure requirements to be able to charge interest on your unpaid bills, but it is often well worth it. Clients often choose to pay their bills that charge interest, so as not to incur more interest charges. Charging a market rate of interest is acceptable, but check your state's ethics rules.
8. **Get the bills out the door:** If everyone in the office likes to get paid, they better help get the bills off of the printer into the envelopes and over to the post office. Make it a party or make it a requirement. Pick the day each month that you and/or members of your staff are to be available to get the bills out the door!

## MOTIVATING YOUR TIMEKEEPERS AND STAFF

Despite money seeming to be an obvious motivator, it is sometimes hard to get lawyers and staff to focus on billing and collecting. Lawyers procrastinate making time entries or turning in time sheets. Lawyers are also notoriously bad at reviewing pre-bills and contacting clients who have not paid their bills. Staff members take their cue from the lawyers and procrastinate doing bills and generating reports. To have a timely and efficient time & billing system you need to motivate lawyers and staff alike to complete the cycle every month. Motivation generally takes two forms: punishment or reward. Reward is usually the better motivator.

1. **Lawyers:** Reward your timekeepers not for the quantity of hours, but for the actual money received from the client, that is, for their realization and collection rates. Also, reward timekeepers for entering their own time, not having someone else do it. If the time and billing software is optimized, then it should

take very little time for a lawyer to enter his or her own time. However, a monthly reward for doing it promptly is often appreciated.

2. **Staff:** If you have staff actively involved in the administration of the bills, challenge them to complete the process in a timely manner. Reward them when they complete the bills (as defined in your written system) on time for a period of X months. It may be a part of the job description to finish the bills on time, but a little generosity can go a long way to ensuring this important job gets done.

## COMMUNICATE ABOUT YOUR BILLS

Billing is part of the client communication process within your office — a very important part. Pay particular attention to how you deal with your clients' potential stress around your bills.

1. **Prepare your clients for surprises:** If, during the preparation of your bills, you note that a client is to receive an unusually large bill, call the client before the bill is mailed. Alert the client to the fact that the bill is larger than usual. Assure them that you have reviewed the bill for accuracy, and are willing to discuss it if they have any questions.
2. **Invite discussion:** It may be helpful to place a message on each bill that you will be glad to discuss any questions the client may have about the bill. Some lawyers take this a step farther and add a letter or small note with the bill thanking the client for their business, offering to discuss any questions about the bill, and requesting prompt payment. This may add another page to the bill, but it may be the extra touch needed to get the client to pay.
3. **Discuss your bills with non-paying clients:** This may be the toughest part of practicing law. We went to law school to be lawyers, not bill collectors. But when collecting our accounts receivable, we must be part lawyer, part bill collector, part psychologist. The task at this stage is to convince the client of something our best efforts and service failed to do: get them to pay the bill! You may have a staff member make these calls, but it is better to have each lawyer do it. An even better alternative is to have the lawyer discuss it in person with the client. At this point, you need to bring all aspects of your system to bear on the problem at hand. Your time & billing software should produce reports that identify problem accounts. Your staff should assist in keeping you on task to collect. You will

need a protocol that governs everyone who is involved in the process. It can include reminder statements, reminder letters, follow-up phone calls from staff or the lawyer, meetings, withdrawal, all carefully staged to encourage prompt payment.

## **COLLECTION MATTERS**

If all your attempts to collect for a bill have failed, you still have several alternatives.

1. Fee mediation/arbitration Mediating or arbitrating fee disputes is often less damaging and costly than a lawsuit to recover the fees. Many state bar associations now offer this service for members and their clients. Consider putting an arbitration clause in your written fee agreements; check with your state bar rules beforehand.
2. As a last resort, you may consider suing a client for the unpaid fee. Often these suits result in a specious counter-claim for malpractice, so at least be sure any recovery will at least cover the deductible of your malpractice policy.
3. Write it off to bad management and promise yourself to improve.

And that is a good note on which to end this article. You will never have a perfect system for getting paid. No one does. The best you can hope for is one that is constantly improving, constantly moving toward the ideal.

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*A portion of this article was co-authored with Paul McLaughlin of Edmonton, Alberta, and appeared in The Practical Lawyer, published by the American Law Institute.*



## 4 About Reid Trautz

Reid is a lawyer, author, and practice management advisor who helps lawyers improve their businesses and the delivery of legal services to their clients. He is a frequent speaker at legal conferences throughout North America on the issues of management, technology, legal ethics, and attorney-client communications.

Reid is co-author of the book, *The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice*, published by the ABA. In 2012 he served as the chair of **ABA TECHSHOW**, the legal profession's premier technology conference. Today he serves as Vice-Chair of the ABA Law Practice Division Futures Initiative working to develop new viable and ethical business models for the delivery of high-quality legal services.

He is admitted to the bars of Minnesota (inactive), Virginia, and the District of Columbia. Reid is an elected Fellow of the College of Law Practice Management. In 2012 he was honored in the sophomore class of the Fastcase 50, recognizing innovators in legal technology.

Prior to his focus on the business of practicing law, Reid was a partner in a five-lawyer firm in Alexandria, Virginia.

Reid leads an active family life with his wife and three sons. When not at home in Virginia, they like to travel the US, discover local diners, drive-ins and dives, and ride rollercoasters until they can't anymore. Earlier this year he fulfilled a long-time dream to casually traverse Route 66 from Chicago to LA.









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