Legal Technology for Senior Lawyers
October 25, 2022
Index

ICLEF Electronic Publications 3
MANUAL - Legal Technology for Senior Lawyers - October 25, 2022 4
Agenda 7
Presenter 8
Presenter Bio 9
Legal Tech for the Seasoned Attorney 10
Table of Contents 11
I. INTRODUCTION 18
    A. ROPC Changes 18
II. YOUR ETHICAL DUTIES 18
    A. IN RULE 1.1 - Competence 18
    B. IN Rule 1.1 Comment 6 19
    C. IN RULE 1.6 - Confidentiality of Information 19
    D. ABA Model Rule 1.6 - Confidentiality of Information 19
    E. IN RULE 1.6 Comment 16 - Acting to Preserve Confidentiality 19
    F. ABA Rule 1.6 Comment 18 - Acting Competently to Preserve Confidentiality 19
    G. IN Rule 1.6 Comment 17 20
    H. IN RULE 5.1 - Responsibilities of a Partner or Supervisory Lawyer 20
    I. IN RULE 5.3 - Responsibilities Regarding Nonlawyer Assistants 21
    J. ABA Formal Opinion 4771 - Securing Communication of Protected Client Information 21
III. RECOMMENDATIONS FOR PROTECTING CLIENT DATA 24
    A. How To Deal With This Issue 24
    B. Encryption Defined 25
    C. Consider Hiring A Company for a Security Audit: 25
    D. Laptops, Tablets and Phones Must Be Locked Down 26
    E. You Need an Option for Email Encryption 27
    F. WiFi Encryption 29
    G. Password Manager 31
    H. Use Two Factor Authentication Everywhere You Can 32
    I. Antivirus/Antimalware Software 34
    J. Secure File Sharing and Data Rooms 35
    K. Encryption Options for Online Sync Programs Like Dropbox, OneDrive, Box and Google Drive 36
    L. External Hard Drive and Flash Drive Encryption 36
    M. Develop and Follow Policies 37
    N. Training 39
IV. OTHER TECHNOLOGY-RELATED RECOMMENDATIONS FOR SENIOR LAWYERS 39
    A. Seek Technological Self-Reliance 39
    B. Learn To Type; and If You Can't Type, Get Dragon Speech Recognition 40
    C. Learn A Digital Signature Platform 40
V. VIRTUAL MEETINGS - WHAT YOU NEED TO KNOW 41
    A. You Need A Web Meeting Subscription 41
    B. Web Meeting Options 43
    C. What You Should Know How To Do With Your Service 44
    D. Get A Better Webcam 44
    E. Better Lighting 44
    F. Backdrops 45
    G. Microphones or Headsets 45
VI. LEARN TO DRAFT COMPLEX DOCUMENTS WITHOUT REQUIRING HELP FROM SUPPORT STAFF 45
    A. Legal Drafting Methodologies 45
    B. Why Template Building is Critical for All Law Offices 50
VII. HOW TO BUILD A RELIABLE ELECTRONIC FILING SYSTEM WITH REMOTE ACCESS 52
    A. Pick a System Approach 52
    B. Ensure You Have Redundant Backup Systems and Security 53
    C. Required Hardware 53
    D. Scanned Documents Must Be In Searchable PDF Form 53

E. Requirements If Using Simple Document Management. 54
F. Requirements If Using DMS. 55
G. Digitize Incoming Documents. 55
H. Email Must Be Stored Electronically Outside of the Email Program. 55
I. Collaborative Technology. 55
J. Write Down Your Office Protocols. 56
K. Provide Training for all Lawyers and Staff. 56
VIII. RECOMMENDATIONS FOR COMMUNICATION AND KEEPING EVERYONE CONNECTED WHEN THEY 56
A. Consider An Employee Performance/Talent Management Platform. 56
B. Consider A Recognition and Rewards Platform. 57
C. Meeting Recommendations. 59
D. Consider a Business Communication Platform. 60
E. Voice Over Internet Protocol (VoIP) Phone Systems. 61
F. Web Meeting Services. 63
G. Secure Instant Messaging. 63
H. Professional Answering Services. 64
I. Other Ideas. 64
IX. REMOTE EMPLOYEE MANAGEMENT RECOMMENDATIONS. 64
A. Track Time. 64
B. Set and Manage Expectations. 65
C. Be Available and Responsive Internally. 65
D. Work To Give Employees A Sense of Belonging. 66
E. Promote Collaboration. 66

ICLEF Electronic Publications

Feature Release 4.1
August 2020

To get the most out of your *ICLEF Electronic Publication,* download this material to your PC and use Adobe Acrobat® to open the document. The most current version of the Adobe® software may be found and installed by clicking on one of the following links for either the free Adobe Acrobat Reader® or the full retail version of Adobe Acrobat®.

Feature list:

1. **Searchable** – All ICLEF Electronic Publications are word searchable. To begin your search, click on the "spyglass" icon at the top of the page while using the Adobe® software.
1. **Bookmarks** – Once the publication is opened using the Adobe Acrobat® software a list of bookmarks will be found in a column located on the left side of the page. Click on a bookmark to advance to that place in the document.
2. **Hypertext Links** – All of the hypertext links provided by our authors are active in the document. Simply click on them to navigate to the information.
3. **Book Index** – We are adding an INDEX at the beginning of each of our publications. The INDEX provides "jump links" to the portion of the publication you wish to review. Simply left click on a topic / listing within the INDEX page(s) to go to that topic within the materials. To return to the INDEX page either select the "INDEX" bookmark from the top left column or right-click with the mouse within the publication and select the words "*Previous View*" to return to the spot within the INDEX page where you began your search.

Please feel free to contact ICLEF with additional suggestions on ways we may further improve our electronic publications. Thank you.

Indiana Continuing Legal Education Forum (ICLEF)
230 East Ohio Street, Suite 300
Indianapolis, Indiana 46204
Ph: 317-637-9102 // Fax: 317-633-8780 // email: iclef@iclef.org
URL: https://iclef.org

LEGAL TECHNOLOGY FOR SENIOR LAWYERS

October 25, 2022

WWW.ICLEF.ORG

Copyright 2022 by Indiana Continuing Legal Education Forum

DISCLAIMER

The information and procedures set forth in this practice manual are subject to constant change and therefore should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein. Further, the forms contained within this manual are samples only and were designed for use in a particular situation involving parties which had certain needs which these documents met. All information, procedures and forms contained herein should be very carefully reviewed and should serve only as a guide for use in specific situations.

The Indiana Continuing Legal Education Forum and contributing authors hereby disclaim any and all responsibility or liability, which may be asserted or claimed arising from or claimed to have arisen from reliance upon the procedures and information or utilization of the forms set forth in this manual, by the attorney or non-attorney.

Attendance of ICLEF presentations does not qualify a registrant as an expert or specialist in any discipline of the practice of law. The ICLEF logo is a registered trademark and use of the trademark without ICLEF's express written permission is prohibited. ICLEF does not certify its registrants as specialists or expert practitioners of law. ICLEF is an equal opportunity provider of continuing legal education that does not discriminate on the basis of gender, race, age, creed, handicap, color or national origin. ICLEF reserves the right to refuse to admit any person or to eject any person, whose conduct is perceived to be physically or emotionally threatening, disruptive or disrespectful of ICLEF registrants, faculty or staff.

INDIANA CONTINUING LEGAL EDUCATION FORUM

OFFICERS

LYNNETTE GRAY
President

HON. ANDREW R. BLOCH
Vice President

SARAH L. BLAKE
Secretary

HON. THOMAS A. MASSEY
Treasurer

ALAN M. HUX
Appointed Member

LINDA K. MEIER
Appointed Member

DIRECTORS

James H. Austen
Sarah L. Blake
Hon. Andrew R. Bloch
Melanie M. Dunajeski
Lynnette Gray
Alan M. Hux
Dr. Michael J. Jenuwine
Shaunda Lynch
Hon. Thomas A. Massey
Linda K. Meier
Richard S. Pitts
Teresa L. Todd

ICLEF

SCOTT E. KING
Executive Director

James R. Whitesell
Senior Program Director

Jeffrey A. Lawson
Program Director

LEGAL TECHNOLOGY
FOR SENIOR LAWYERS

Agenda

1:10 P.M. Welcome & Introduction

1:15 P.M. Part 1- In 2012, the American Bar Association amended the Model Rules of Professional Conduct ("ROPC") to address technology issues. As of today, 40 states have adopted at least some of those changes (including Indiana). Among other things, the italicized language was added to Rule 1.1, Comment 8: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including *the benefits and risks associated with the technology relevant to the lawyer's practice,*"Further, Rule 1.6 (Confidentiality of Information) comment 16 stipulates that "A lawyer must *act competently* to safeguard information relating to the representation of a client..." Unfortunately, lawyers of all ages often feel less than confident that they're acting competently as it relates to cybersecurity and protecting electronic client data. As we all know, digital client data is much harder to protect from unauthorized disclosure than the analog (paper-based) data it is replacing.

Another issue we'll cover is that it's nearly impossible to practice law today without directly using technology. For many in the generation of lawyers who didn't grow up with technology, the new tools and procedures being thrust upon us are a constant source of discomfort and irritation.
What does a senior lawyer need to know about the ethics rules changes; and how does one properly supervise or police the use of technology tools by others? What (simple and inexpensive) tools are available to help lawyers discharge their duty to use "reasonable efforts" to protect client data?
How can a lawyer (who may not consider him/herself to be tech-savvy) learn to be more self-reliant and confident about the technology tools we simply cannot avoid while practicing law? In this segment, we'll answer all those questions and more. (2.25 CLE / 2.25 Ethics) *(Model Rules of Professional Conduct to Be Discussed During Part 1 // Rule 1.1 Competence; 1.6 Confidentiality; 1.15 Safekeeping of Property; 5.3 Responsibilities of Non-Lawyer Assistants)*

2:45 P.M. Break

3:00 P.M. Part 1 – Continued

3:45 P.M. Part 2 - Don't expect web meetings (Zoom, GoToMeeting, Microsoft Teams, etc.) to go away any time soon, regardless of whether COVID-19 ever gets under control. More importantly, how does one participate in Zoom meetings without worrying about embarrassment, tech problems or appearing as a kitten? In this segment, we'll focus on Zoom and explain how the technology works, what you need to know, and what simple things you can do to upgrade your web meeting game. We'll give you very specific recommendations for things you probably never thought you'd need to know to practice law such as web cameras, backdrops, microphones, and better lighting options. We'll explain how virtual backgrounds work, the benefit of a "green screen," and how to get the "computer audio" options to work for you. (.75 CLE (NLS))

4:30 P.M. Adjournment

October 25, 2022

WWW.ICLEF.ORG

LEGAL TECHNOLOGY FOR SENIOR LAWYERS

Faculty

Mr. Barron K. Henley, Esq.
Affinity Consulting Group, LLC
1550 Old Henderson Road, Suite S-150
Columbus, OH 43220
ph: (614) 602-5561
e-mail: bhenley@affinityconsulting.com

October 25, 2022

Barron K. Henley, Esq., Affinity Consulting Group, LLC, Columbus OH

Barron K. Henley, Esq. is one of the founding partners of *Affinity Consulting Group*, a legal technology consulting firm focused on automating and streamlining law firms and legal departments. He earned his B.S./B.A. (marketing and economics) and J.D. from The Ohio State University and is a member of the American, Ohio and Columbus Bar Associations, and the Worthington Estate Planning Council. He is a Fellow of the College of Law Practice Management, a Fellow of the American Bar Foundation, a member of Ohio Supreme Court Commission on Technology and the Courts, and a member of both the ABA Law Practice Management and the Real Property Trust and Estate Law ("RPTE") Sections. He's also a former member of RPTE Futures Task Force, a former Board Member for the ABA TECHSHOW, and the former Chair of the Ohio State Bar Association Law Office Automation & Technology Committee. Mr. Henley heads Affinity's document assembly/automation and software training departments. Barron is also an expert in launching new law firms, overhauling existing firms, and documenting and re-engineering law firm processes. Finally, Barron teaches continuing legal education (CLE) classes throughout the U.S. and Canada covering a wide variety of topics related to law practice management, technology, and ethics.

Legal Tech for the Seasoned Attorney

Barron K. Henley, Esq.
bhenley@affinityconsulting.com
Affinity Consulting Group, LLC
1550 Old Henderson Rd., Suite S-150
Columbus, MN 43220
614.340.3444
www.affinityconsulting.com

Legal Tech for the Seasoned Attorney
Table of Contents

I. Introduction 1

A. ROPC Changes 1

II. Your Ethical Duties 1

A. IN RULE 1.1 - Competence 1

B. IN Rule 1.1 Comment 6 2

C. IN RULE 1.6 - Confidentiality of Information 2

D. ABA Model Rule 1.6 - Confidentiality of Information 2

E. IN RULE 1.6 Comment 16 - Acting to Preserve Confidentiality 2

F. ABA Rule 1.6 Comment 18 - Acting Competently to Preserve Confidentiality 2

G. IN Rule 1.6 Comment 17 3

H. IN RULE 5.1 - Responsibilities of a Partner or Supervisory Lawyer 3

I. IN RULE 5.3 - Responsibilities Regarding Nonlawyer Assistants 4

J. ABA Formal Opinion 477 4
  1. Observations About How The Practice Has Changed Since 1999 4
  2. Reasonable Efforts Standard 5
  3. Reasonable Efforts Factors 5
  4. Other Findings 5
  5. Guidance Regarding Reasonable Steps 6
  6. Conclusion 6

III. Recommendations For Protecting Client Data 7

A. How To Deal With This Issue 7

B. Encryption Defined 8

C. Consider Hiring A Company for a Security Audit 8

D. Laptops, Tablets and Phones Must Be Locked Down 9
  1. Duty To Protect 9
  2. PC Encryption 9
    a. BitLocker 9
    b. Mac FileVault 9
    c. ESET Full Disk Encryption 9
    d. AlertBoot 9
    e. SecureDoc Full Disk Encryption 9

- f. AxCrypt 9
- 3. Smartphones 9
- 4. Tablets 9

E. You Need an Option for Email Encryption 10
- 1. Revisit Rule 1.6, Comment 19 10
- 2. What The Experts Say 10
- 3. Email Encryption Services 11
  - a. Office 365 Message Encryption 11
  - b. Protected Trust 11
  - c. RMail 11
  - d. Trustifi 11
  - e. SenditCertified 11
  - f. EchoWorx Encrypted Mail 11
  - g. Hushmail 11
  - h. ZixMail 11
  - i. ShareFile 12
- 4. Encrypt Email Attachments 12

F. WiFi Encryption 12
- 1. Home or Work Wireless Connections 12
- 2. Risk of Using Public WiFi 12
- 3. How To Protect Yourself 13
  - a. Cellphone WiFi Hotspot 13
  - b. Consumer VPN Services 13

G. Password Manager 14
- 1. What Is a Password Manager 14
- 2. Why You Need A Password Manager 14
- 3. Good Options 14
  - a. 1Password 14
  - b. Dashlane 14
  - c. Keeper Desktop 14
  - d. LastPass 14
  - e. LogMeOnce 15
  - f. RoboForm 15
  - g. Sticky Password 15
  - h. TrueKey 15

H. Use Two Factor Authentication Everywhere You Can 15
- 1. What Is Two Factor Authentication? 15
- 2. How Do You Get 2FA? 16

I. Antivirus/Antimalware Software 17

J. Secure File Sharing and Data Rooms 18
- 1. ShareFile by Citrix 18

2. Merrill DataSite Virtual Data Room 18
3. Firmex Virtual Data Room 18
4. SmartRoom Virtual Data Room 18
5. Ansarada Virtual Data Room 18
6. IntraLinks Virtual Data Room 19
7. Microsoft Office 365 or OneDrive for Business 19
8. G Suite by Google Cloud 19
9. Dropbox Business Standard or Advanced 19
10. SpiderOak Professional 19
11. Syncplicity 19
12. Box.com 19
13. TrueShare 19
14. FileGenius 19
15. OneHub 19

K. Encryption Options for Online Sync Programs Like Dropbox, OneDrive, Box and Google Drive 19
1. Sookasa 19
2. BoxCryptor 19

L. External Hard Drive and Flash Drive Encryption 19
1. External USB Hard Drives 20
  a. Samsung T7 Touch Portable SSD 1 TB - Ridiculously fast with built-in encryption 20
  b. Apricorn Aegis Padlock 2 TB 20
  c. Fantom Drives DSH2000 DataShield 2TB 20
  d. Lenovo ThinkPad USB 3.0 Secure 20
2. Flash Drives 20
  a. Apricorn Aegis Secure Key 20
  b. Kingston Digital 8GB Data Traveler 20
  c. IronKey S250 8 GB 20

M. Develop and Follow Policies 20
1. Internet and Email Usage Policy 20
2. Document and Email Retention Policy 20
3. Secure Password Policy 21
  a. Why You Need This 21
  b. Types of Password Hackers 21
  c. Examples of Password Hackers 21
  d. Recommended Policy 22
4. Mobile Device Security Policy 22
5. Equipment Disposal Policy 22

IV. Other Technology-Related Recommendations For Senior Lawyers 22

A. Seek Technological Self-Reliance 22

B. Learn To Type; and If You Can't Type, Get Dragon Speech Recognition 23

C. Learn A Digital Signature Platform 23
  1. What They Are 23
  2. Digital Signatures Are Not Electronic Signatures 23
  3. How They Work 24
  4. How You Obtain a Digital Signature 24
    a. RightSignature 24
    b. DocuSign 24
    c. Hellosign 24
    d. Adobe Sign 24
    e. OneSpan 24

V. Virtual Meetings - What You Need To Know 24

A. You Need A Web Meeting Subscription 24

B. Web Meeting Options 26
  1. Zoom 26
  2. Join.Me 26
  3. GoToMeeting 26
  4. WebEx Meetings 26
  5. Microsoft Teams 27
  6. Adobe Connect Meetings 27
  7. BlueJeans 27
  8. ClickMeeting 27

C. What You Should Know How To Do With Your Service 27

D. Get A Better Webcam 27

E. Better Lighting 27

F. Backdrops 28

G. Microphones or Headsets 28

VI. Learn To Draft Complex Documents Without Requiring Help from Support Staff 28

A. Legal Drafting Methodologies 28
  1. Find, Rename and Modify 28
    a. High Margin for Error 28
    b. Slow 28
    c. Errors of Omission 28
    d. Errors of Inclusion 29
    e. Compromised Documents 29
  2. Gold Standard Templates 29
  3. Gold Standards + Word Processor Automation 29

4. Gold Standards + Case/Matter Management Software 30
5. Subscription Drafting Systems 30
6. Gold Standards + Document Assembly Software 30
    a. What Is Document Assembly? 31
    b. How It Works - Big Picture 31
    c. Document Assembly Options 33

B. Why Template Building is Critical for All Law Offices 33
1. Self-Reliance 33
2. Word Processor Based (Inexpensive and Easy) 33
3. Error Reduction 34
4. Drafting is a Mission Critical Function for Most Lawyers 34
5. The Hyper-Competitive Legal Market Penalizes Lawyers Who Work Slowly 34
6. Something You Can Improve Over Time 34
7. Speed Gains 34
    a. Draft a Will Using Find, Rename & Modify 34
    b. Draft a Will Using a Gold Standard Template 35
    c. Draft a Will Using Document Assembly 35
8. Templates Allow You To Share What You Know With Others 35

VII. How To Build a Reliable Electronic Filing System With Remote Access 35

A. Pick a System Approach 35
1. Simple Document Management 35
2. Document Management with a Dedicated Document Management System ("DMS") 36
3. Document Management with a Case Management System ("CMS") 36

B. Ensure You Have Redundant Backup Systems and Security 36

C. Required Hardware 36
1. Desktop scanners 36
2. Monitor Configuration 36
3. Laptops or Tablets 36

D. Scanned Documents Must Be In Searchable PDF Form 36

E. Requirements If Using Simple Document Management 37
1. Consolidate Folder Structure 37
2. Establish File Naming Conventions 37
3. Search Utility 37
    a. Windows Search Options 37
    b. Apple/Mac Search Program Options 37

F. Requirements If Using DMS 38
1. NetDocuments 38

        2. Worldox 38
        3. iManage Work 38
        4. Laserfiche 38
    G. Digitize Incoming Documents 38
    H. Email Must Be Stored Electronically Outside of the Email Program 38
    I. Collaborative Technology 38
    J. Write Down Your Office Protocols 39
    K. Provide Training for all Lawyers and Staff 39

VIII. Recommendations for Communication and Keeping Everyone Connected When They're Working Remotely 39

    A. Consider An Employee Performance/Talent Management Platform 39
    B. Consider A Recognition and Rewards Platform 40
    C. Meeting Recommendations 42
        1. Traction Meetings 42
        2. 1-On-1 Meetings With Staff and Lawyers Who Work For You 42
        3. Regular Case Meetings 43
        4. Monthly All Staff Meetings 43
    D. Consider a Business Communication Platform 43
        1. Instant messaging 43
        2. Web meetings 43
        3. Share Procedural Information and Announcements 43
    E. Voice Over Internet Protocol (VoIP) Phone Systems 44
        1. Explanation and Benefits of Hosted VoIP 44
        2. How VoIP Works 44
        3. Sample Budget 45
        4. VoIP Providers 45
            a. RingCentral 45
            b. Vonage 45
            c. Nextiva 45
            d. 8 x 8, Inc. 45
            e. Hover Networks 45
    F. Web Meeting Services 46
        1. Recommended Services 46
            a. Zoom 46
            b. Join.Me 46
            c. GoToMeeting 46
            d. WebEx Meetings 46
            e. Microsoft Teams 46

- f. Adobe Connect Meetings ... 46
- g. BlueJeans ... 46
- h. ClickMeeting ... 46
- 2. What You Should Know How To Do With Your Service ... 46

G. Secure Instant Messaging ... 46
- 1. Microsoft Teams ... 46
- 2. Slack ... 46
- 3. Google Chat ... 46

H. Professional Answering Services ... 47
- 1. Ruby ... 47
- 2. Smith ... 47

I. Other Ideas ... 47
- 2. Ministry of Fun ... 47
- 4. Affinity Gives Back ... 47

IX. Remote Employee Management Recommendations ... 47

A. Track Time ... 47

B. Set and Manage Expectations ... 48
- 1. Define SMART Goals ... 48
- 2. Provide Assistance with Time Management and Prioritization ... 48

C. Be Available and Responsive Internally ... 48

D. Work To Give Employees A Sense of Belonging ... 49

E. Promote Collaboration ... 49

Legal Tech for the Seasoned Attorney

I. INTRODUCTION:

A. **ROPC Changes**: In 2012, the American Bar Association promulgated amendments to the Model Rules of Professional Conduct which dealt with technology and data security. 40 states have adopted those changes (Indiana is included, but for a full list of states, see http://bit.ly/2HJEoFH). Rule 1.1 Comment 6 now says that "[t]o 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." This means that a lawyer cannot disclaim responsibility for knowing how to use (plus the risks and benefits of) the technology tools necessary to do one's job.

Furthermore, Rule 1.6 Comment 16 requires a lawyer to "act competently" to safeguard information. Comment 17 further stipulates that "reasonable precautions" must be taken to prevent client information from falling into the wrong hands. In a digital world, the exact meaning of "reasonable efforts" and "reasonable precautions" may be subject to debate. However, it's hard to argue that doing nothing to protect client data would meet the standard.

Finally, what can really be scary for senior lawyers who didn't grow up with all of this technology is that Rules 5.1 and 5.3 can make it *their* fault if someone else makes a mistake resulting in a violation of the Rules of Professional Conduct (such as disclosure of client data in violation of Rule 1.6).

The good news is that you don't have to be a security expert or techie to protect yourself and your office. We'll discuss how to cover all the bases of computer, smartphone, tablet, email, wireless and document encryption. Half of the battle is simply knowing what questions to ask and it's not nearly as complicated as it sounds. Establish best practices in your office and discover the inexpensive or free tools that will make sure your confidential information remains confidential.

II. YOUR ETHICAL DUTIES:

I've only reproduced the sections of the rules and comments below which are relevant to this discussion. See https://bit.ly/2YmkHhj for the full set of rules. Further, I've bolded the particularly important text.

A. **IN RULE 1.1 - Competence**: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. **IN Rule 1.1 Comment 6**:

> [6] 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 the technology relevant to the lawyer's practice***, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

C. **IN RULE 1.6 - Confidentiality of Information**:

> (a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
>
> …

D. **ABA Model Rule 1.6 - Confidentiality of Information**:

> (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
>
> ***(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.***

E. **IN RULE 1.6 Comment 16 - Acting to Preserve Confidentiality**:

> [16] A lawyer ***must act competently to safeguard information*** relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision.

F. **ABA Rule 1.6 Comment 18 - Acting Competently to Preserve Confidentiality**:

> [18] Paragraph (c) requires a lawyer ***to act competently to safeguard information*** relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. ***The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered*** in determining the reasonableness of the lawyer's efforts

include, but are not limited to, the ***sensitivity of the information***, the ***likelihood of disclosure*** if additional safeguards are not employed, the ***cost*** of employing additional safeguards, the ***difficulty*** of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). ***A client may require the lawyer to implement special security measures not required by this Rule*** or may give informed consent to forgo security measures that would otherwise be required by this Rule.

G. IN Rule 1.6 Comment 17:

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

H. IN RULE 5.1 - Responsibilities of a Partner or Supervisory Lawyer:

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) *A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.*

(c) **A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if**:

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

(2) **the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action**.

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

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

(a) **a partner, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;**

(b) **a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and**

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

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

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

J. **ABA Formal Opinion 477[1] - Securing Communication of Protected Client Information**: This opinion is an update of Formal Opinion 99-413[2] (which addressed a lawyer's obligations for protecting confidentiality when using email) to address the technology and ethics rules changes which have occurred since that time. Key points from the opinion include:

1. **Observations About How The Practice Has Changed Since 1999**: The committee notes that unlike 1999, lawyers today primarily use electronic methods of communication. Each device and storage location for those communications represents the possibility of unauthorized disclosure or access. Further, the ABA adopted technology amendments to the Model

---

[1] See http://bit.ly/2HNSWEb, May 4, 2017.

[2] See http://bit.ly/2HRyB11, May 5, 1999.

Rules in 2012 which affected Rule 1.1 (Competence) and 1.6 (Confidentiality).

"At the same time, the term 'cybersecurity' has come into existence to encompass the broad range of issues relating to preserving individual privacy from intrusion by nefarious actors throughout the Internet. Cybersecurity recognizes a post-Opinion 99-413 world where law enforcement discusses hacking and data loss in terms of 'when,' and not 'if.'"[3] The opinion goes on to describe why law firms are particular targets for hackers and other cyber criminals.

2. **Reasonable Efforts Standard**: The committee concluded that the reasonable efforts standard "rejects requirements for specific security measures (such as firewalls, passwords, and the like) and instead adopts a fact-specific approach to business security obligations that requires a "process" to assess risks, identify and implement appropriate security measures responsive to those risks, verify that they are effectively implemented, and ensure that they are continually updated in response to new developments."[4]

3. **Reasonable Efforts Factors**: When conducting a fact-based analysis as to what level of security should be employed, practitioners should consider the following (pulling directly from Rule 1.6 Comment 18):

   a. The sensitivity of the information,

   b. The likelihood of disclosure if additional safeguards are not employed,

   c. The cost of employing additional safeguards,

   d. The difficulty of implementing the safeguards, and

   e. The extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use)

4. **Other Findings**:

   a. "**A fact-based analysis means that particularly strong protective measures, like encryption, are warranted in some circumstances.** Model Rule 1.4 may require a lawyer to discuss security safeguards with clients. **Under certain circumstances, the lawyer may need to**

---

[3] ABA Formal Opinion 477, lines 34 - 37.

[4] ABA Formal Opinion 477, lines 99 - 104.

obtain informed consent from the client regarding whether to the use enhanced security measures, the costs involved, and the impact of those costs on the expense of the representation where nonstandard and not easily available or affordable security methods may be required or requested by the client. **Reasonable efforts, as it pertains to certain highly sensitive information, might require avoiding the use of electronic methods or any technology to communicate with the client altogether**, just as it warranted avoiding the use of the telephone, fax and mail in Formal Opinion 99-413."[5]

b. "[T]he use of unencrypted routine email generally remains an acceptable method of lawyer-client communication. However, cyber-threats and the proliferation of electronic communications devices have changed the landscape and it is not always reasonable to rely on the use of unencrypted email."[6]

5. **Guidance Regarding Reasonable Steps**: The committee recommends the following considerations:

   a. Understand the nature of the threat.

   b. Understand how client confidential information is transmitted and where it is stored.

   c. Understand and use reasonable electronic security measures.

   d. Determine how electronic communications about client matters should be protected.

   e. Label client confidential information.

   f. Train lawyers and non lawyer assistants in technology and information security.

   g. Conduct due diligence on vendors providing communication technology.

6. **Conclusion**: "A lawyer generally may transmit information relating to the representation of a client over the Internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access to information relating to the representation. However, a lawyer may be

---

[5] ABA Formal Opinion 477, lines 116 - 124.

[6] ABA Formal Opinion 477, lines 135 - 139.

> required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security."[7]

III. **RECOMMENDATIONS FOR PROTECTING CLIENT DATA**: Now that you know the rules affecting this issue, here are some tools and techniques to keep your client data safe.

A. **How To Deal With This Issue**: As you read above, Rules 5.1 and 5.3 impose a supervisory duty on senior lawyers/partners to make sure the technology tools are being used correctly or the mistake can end up being your fault - even if you're not the one who actually *made* the mistake. Rule 1.1 stipulates that you have to understand the risks and benefits of relevant technology.

If all of that makes you feel ill because you're not really that familiar with all of today's tech, you're not alone. However, you need to become an expert for 5 minutes so you can at least confirm that protocols are being followed and the tools are being used correctly. Of course, you can delegate that task and if you're not comfortable doing it yourself, it's perfectly fine to do that.

Think about everything that happens in your firm and practice that someone else does for you. It's fine if only one person knows how to do a particular thing *as long as the steps to do that particular thing are written down*. For example, here are a few things that should be reduced to writing in your office:

1. How to redact a PDF
2. Where key document templates are stored and how to use them
3. Accounting functions which are typically handled by software:
    a. The logon and password for your system
    b. How to produce an invoice
    c. How to post a payment against an invoice
    d. How to pay a bill
    e. How to create a time entry
    f. How to produce an A/R or A/P report
    g. How to run pre-bills (if your office does that)

---

[7] ABA Formal Opinion 477, lines 333 - 339.

        h. How new matters are set up in your accounting software

    4. How to electronically file a case with a court

    5. How to Bates number PDF documents

    6. How to use your scanner(s)

    7. The process for closing a file/matter

    8. File naming conventions and where electronic documents are stored

    9. Who to call if you have a question about payroll, your copier, your postage machine, your leased office space, your health insurance, etc.

B. **Encryption Defined**: For purposes of this discussion, encryption can be defined as follows.

> "Encryption is the process of converting data to an unrecognizable or 'encrypted' form. It is commonly used to protect sensitive information so that only authorized parties can view it. This includes files and storage devices, as well as data transferred over wireless networks and the Internet.
>
> …
>
> An encrypted file will appear scrambled to anyone who tries to view it. It must be decrypted in order to be recognized. Some encrypted files require a password to open, while others require a private key, which can be used to unlock files associated with the key."[8]

C. **Consider Hiring A Company for a Security Audit**: For example, we hired a security company to audit our processes, policies and data security. Afterwards, we followed the recommendations by improving all three things. We obtained cybersecurity training for all employees, got every computer on the same highly-rated antivirus/antimalware application, made sure every single computer is encrypted (Bitlocker or FileVault), rolled out a firm-wide password manager, and enabled two-factor authentication everywhere we could (among other things). If you have an IT company and think they should do this for you, make sure they have a background in security and have clients they can refer to you for whom they've done that kind of work. Anyone can say they're a security expert so be wary.

---

[8] See http://techterms.com/definition/encryption

D. **Laptops, Tablets and Phones Must Be Locked Down**: Here's the good part, once this is enabled, you won't even know it. You enter a password and the whole computer unlocks itself. However, if someone takes it, they won't be able to get anything off of it.

1. **Duty To Protect**: If you are carrying confidential client data on any of these devices, "reasonable efforts" to maintain confidentiality cannot possibly include doing nothing to protect it.

   > "Not properly protected, laptops and portable media can be recipes for a security disaster. One survey reported that 70 percent of data breaches resulted from the loss or theft of off-network equipment (laptops, portable drives, PDAs, and USB drives). Strong security is a must. Encryption is now a standard security measure for protecting laptops and portable devices—and attorneys should be using it."[9]

2. **PC Encryption**: If you've got a notebook computer, there's always the chance that someone will steal it or that you'll misplace or otherwise lose it. If you have confidential client information on the laptop, then it would be prudent for you to encrypt the laptop. Encryption would prevent a thief or finder of your laptop from obtaining any information from the hard drive, even if they remove the hard drive and install it in another computer. There are many choices for this type of software, including the following:

   a. **BitLocker** - included for free with Windows 8, 8.1 & 10 Professional.

   b. **Mac FileVault** - included for free with OSX.

   c. **ESET Full Disk Encryption** - https://bit.ly/3moSaQF

   d. **AlertBoot** - http://tinyurl.com/63h36wt

   e. **SecureDoc Full Disk Encryption** from Winmagic Data Security - http://tinyurl.com/4vek6ot

   f. **AxCrypt** - see https://www.axcrypt.net/

3. **Smartphones**: All of the smartphone operating systems have free encryption built in, you must only enable it. Make sure you do this.

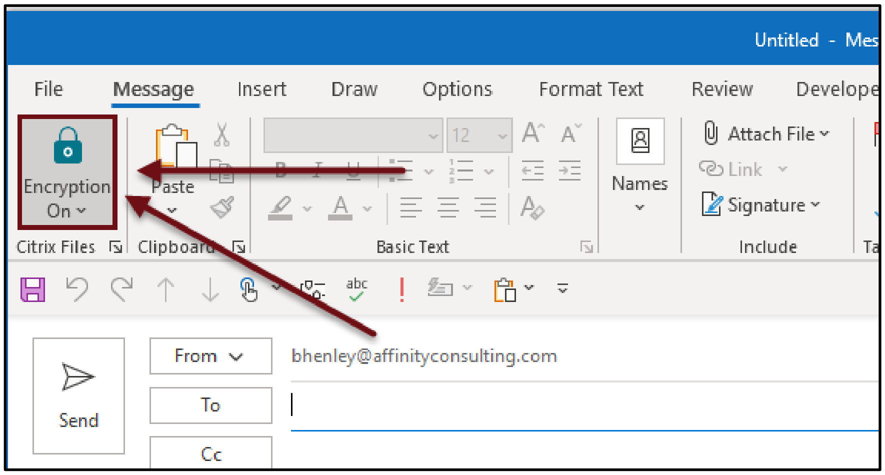
4. **Tablets**: Like smartphones, Android and iOS tablets have built-in encryption that you must simply turn on. Windows tablets may also have

---

[9] Encryption Made Simple for Lawyers, by David G. Ries & John W. Simek, GP Solo, November/December 2012 - see http://tinyurl.com/znh4jqz

BitLocker depending upon the version of Windows installed. Of course, any of the Windows encryption options above would also work (besides BitLocker).

E. **You Need an Option for Email Encryption**: This is simply a way of sending the text of an email and any attached files in a manner that ensures only the intended recipient can open or read it. If you use a common email program like Outlook, this is as easy as clicking a button before clicking SEND:


Untitled - Mes
File
Message
Insert
Draw
Options
Format Text
Review
Develope
Encryption On
Paste
12
Names
Attach File
Link
Signature
Citrix Files
Clipboard
Basic Text
Include
Ta
abc
Send
From
To
Cc

From: bhenley@affinityconsulting.com

1. **Revisit Rule 1.6, Comment 19**: Let's look at that again.

> "When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients."

The questions to consider are: What constitutes "reasonable precautions" to protect the client's data; and do you have a reasonable expectation of privacy when you use email? I would argue that reasonable precautions means that you must encrypt your email when sending sensitive documents. Further, although the ethical rules and case law presume that lawyers have a reasonable expectation of privacy when sending an email, common sense has to tell you otherwise.

2. **What The Experts Say**: Here are a couple of quotes to consider.

> "A secure email account that the attorney is assured protects the content of correspondence. No attorney should use Gmail or other free services that in fact admit that they use personal information from email content. They should encrypt their client correspondence. Before

> sending sensitive correspondence, they should check by phone or text with the client to see what method of delivery is preferred."[10]
>
> "The level of encryption may vary based on practice areas or, more importantly, the firms' clients. At a minimum, emails and attachments that contain confidential data should be encrypted or sent through collaboration tools that send encrypted links rather than plain text data."[11]
>
> "It's all about encryption of the 3 main risk areas for data held: data in transit, at rest and in backups. It doesn't matter if it's email, Instant Messages, case files, discovery or 3rd party expert communications, the principle of encryption is the ONLY way you can really satisfy due diligence requirements."[12]

3. **Email Encryption Services**: There are many ways to encrypt email, but the easiest is to use an encryption service. The options listed below are inexpensive and easy. They encrypt both the emails and any attachments to the email. In most cases, a password must be entered by the recipient to open the email and any attachments.

    a. **Office 365 Message Encryption**: http://bit.ly/2L8zW2I

    b. **Protected Trust**: https://protectedtrust.com/ - this is easily my favorite option.

    c. **RMail**: http://www.rmail.com/ - registered email service which can prove delivery + encrypted email

    d. **Trustifi**: https://trustifi.com/

    e. **SenditCertified**: http://www.senditcertified.com/ and note that they offer discounts through several bar associations.

    f. **EchoWorx Encrypted Mail**: http://tinyurl.com/h6sm668

    g. **Hushmail**: https://www.hushmail.com/

    h. **ZixMail**: https://www.zixcorp.com/

---

[10] Law Firm Data Security: Experts on How to Protect Legal Clients' Confidential Data, by Nate Lord, DigitalGuardian, October 13, 2015, quoting Robert Ellis Smith. See http://tinyurl.com/h6nzvjb.

[11] ibid., quoting Marco Maggio.

[12] ibid., quoting Steve Santorelli.

i. **ShareFile**: https://www.sharefile.com/

4. **Encrypt Email Attachments**: Word, WordPerfect and every good PDF program including Acrobat offers file encryption. This functionality is built-in so you only have to learn how to use it. With file encryption file simply cannot be opened without a password. You email could unencrypted and simply say "Please see attached." However, the attached file containing the sensitive information would be encrypted on its own.

F. **WiFi Encryption**: Of course, it is assumed that the WiFi connections you may use at your office and home are properly encrypted. This recommendation is focused on what to do to protect yourself if you're connected to a *public* WiFi connection (at the court, library, coffee shop, airport, etc.). It's not complicated. You just connect to the WiFi hotspot the way your normally would. After you're connected, you simply run the application that locks down your connection (this is typically referred to as a Virtual Private Network application).

1. **Home or Work Wireless Connections**: If you rely on a wireless Internet connection at your office or home to work with sensitive client information, it goes without saying that your wireless router or access point should be properly encrypted. If you set it up yourself and aren't sure, then you should immediately secure the assistance of an expert to ensure that your security is properly configured. Sometimes, it's as easy as calling the technical support line for the manufacturer of your router. The big companies that sell wireless routers all have technical support representatives that can walk you through the process over the phone. In case you're wondering, big names in wireless routers include Cisco, Linksys, Netgear, Belkin, TP-Link, D-Link and Asus, among others.

2. **Risk of Using Public WiFi**: First of all, you need to be educated about this subject. For a quick primer, here are two short articles that will bring this issue into focus: Here's what an eavesdropper sees when you use an unsecured Wi-Fi hotspot by Eric Geier, 6/28/13 (see http://tinyurl.com/ppm3oyc) and What Is A Packet Sniffer? by Andy O'Donnell, 12/15/14 (see http://tinyurl.com/jxvhf92). For an interesting discussion of this in the legal arena, see the now famous California Formal Opinion No. 2010-179 which states:

> "With regard to the use of a public wireless connection, the Committee believes that, due to the lack of security features provided in most public wireless access locations, **Attorney risks violating his duties of confidentiality and competence in using the wireless connection at the coffee shop to work on Client's matter unless he takes appropriate precautions, such as using a combination of**

> **file encryption, encryption of wireless transmissions and a personal firewall**. Depending on the sensitivity of the matter, Attorney may need to avoid using the public wireless connection entirely or notify Client of possible risks attendant to his use of the public wireless connection, including potential disclosure of confidential information and possible waiver of attorney-client privilege or work product protections, and seek her informed consent to do so."[13]

3. **How To Protect Yourself**:

   a. **Cellphone WiFi Hotspot**: Rather than connecting to the public WiFi where ever you are, consider using a cellular hotspot or MiFi. Properly configured, these connections are a secure way to connect your notebook or tablet to the Internet via the phone hotspot.

   b. **Consumer VPN Services**: There are many services that allow you to create a Virtual Private Network connection even though you're using a public and otherwise unsecured WiFi connection. "In the simplest terms, a VPN creates a secure, encrypted connection between your computer and the VPN's server. This tunnel makes you part of the company's network as if you are physically sitting in the office, hence the name. While connected to the VPN, all your network traffic passes through this protected tunnel, and no one in between can see what you are up to. A consumer VPN service does the same thing, but extends that protection to the public."[14] Here are some options for this. Private Internet Access is the one I use personally.

      i. **NordVPN**: https://nordvpn.com/

      ii. **Hide My Ass**: https://www.hidemyass.com/

      iii. **Private Internet Access**: https://www.privateinternetaccess.com/

      iv. **IPVanish**: https://www.ipvanish.com/

      v. **ExpressVPN**: https://www.expressvpn.com

---

[13] See http://tinyurl.com/3szklcx, emphasis added.

[14] The Best VPN Services for 2016, by Max Eddy, Fahmida Rashid, 3/9/2016, PCMag - see http://tinyurl.com/njuv7br.

        vi. **PureVPN**: https://www.purevpn.com/

        vii. **StrongVPN**: https://strongvpn.com

        viii. **Cloak** (Mac only): https://www.getcloak.com/

        ix. **CyberGhost**: http://www.cyberghostvpn.com/en_us

        x. **VyprVPN**: https://www.goldenfrog.com/vyprvpn

        xi. **Hotspot Shield Elite**: https://hsselite.com/

        xii. **Spotflux Premium**: http://spotflux.com/

G. **Password Manager**: On this subject, also see paragraph III.M.3. below (Secure Password Policy).

1. **What Is a Password Manager**: A password manager is a program that helps one store, create and organize passwords (and logons and websites, etc.).

2. **Why You Need A Password Manager**: First, it's part of your estate plan. Second, it's a place to keep logons, websites, account numbers and passwords all in one place. I use Dashlane and it will generate and store strong passwords for me (so I don't have to make them up). It will also let me know if my passwords are weak and recommend that I change them. It tells me how many different websites I'm using the same password for (it's not recommended that you use the same password for everything). It also lets me know if there are any reported security breaches for any of the websites it holds passwords for and recommend that you change them. Finally, it will hold all of my credit card information, secure notes about anything I want and personal information like my driver's license, passport, etc.

3. **Good Options**: Top rated password managers include the following (and I strongly recommend the versions you have to pay for - almost all offer a free version that is missing features):

    a. **1Password** - https://1password.com/

    b. **Dashlane** - https://www.dashlane.com/

    c. **Keeper Desktop** - https://keepersecurity.com/

    d. **LastPass** - https://www.lastpass.com/

e. **LogMeOnce** - https://www.logmeonce.com/

f. **RoboForm** - https://www.roboform.com/

g. **Sticky Password** - https://www.stickypassword.com/

h. **TrueKey** - https://www.truekey.com

H. Use Two Factor Authentication Everywhere You Can: This is also known as 2FA or multi factor authentication. It is annoying, but it ensures that your accounts cannot be hacked.

1. **What Is Two Factor Authentication?** Here's a good definition.

"Two-factor authentication (2FA), often referred to as two-step verification, is a security process in which the user provides two authentication factors to verify they are who they say they are. 2FA can be contrasted with single-factor authentication (SFA), a security process in which the user provides only one factor -- typically a password.

Two-factor authentication provides an additional layer of security and makes it harder for attackers to gain access to a person's devices and online accounts, because knowing the victim's password alone is not enough to pass the authentication check. Two-factor authentication has long been used to control access to sensitive systems and data, and online services are increasingly introducing 2FA to prevent their users' data from being accessed by hackers who have stolen a password database or used phishing campaigns to obtain users' passwords.

The ways in which someone can be authenticated usually fall into three categories known as the factors of authentication, which include:

1. **Knowledge factors** -- something the user knows, such as a password, PIN or shared secret.

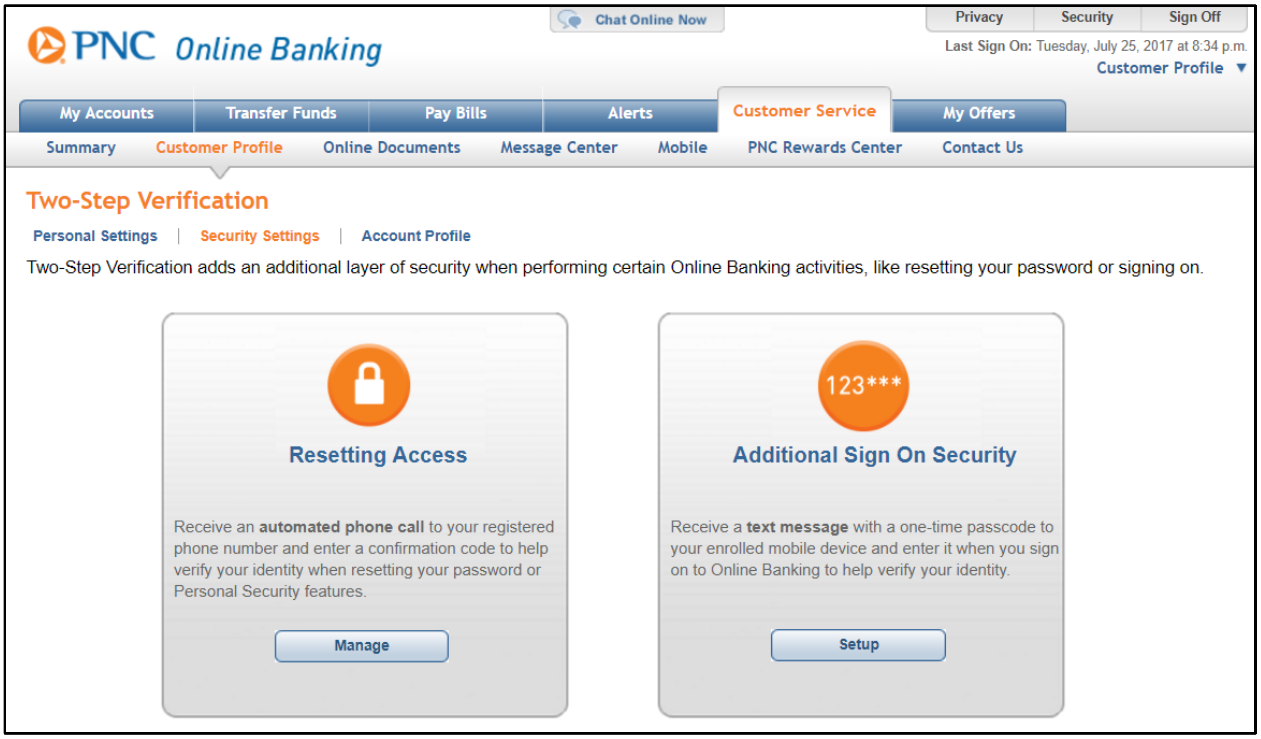
2. **Possession factors** -- something the user has, such as an ID card, security token or a smartphone.

3. **Inherence factors, more commonly called biometrics** -- something the user is. These may be personal attributes mapped from physical characteristics, such as fingerprints, face and voice. It also includes behavioral biometrics, such as keystroke dynamics, gait or speech patterns."[15]

---

[15] See http://searchsecurity.techtarget.com/definition/two-factor-authentication

2. **How Do You Get 2FA?** For critical services you access online, check to see if they offer any type of 2FA. Keep in mind that 2FA is ANNOYING, but better security is almost always more annoying. If you want to protect yourself well, be prepared to be slightly annoyed. Anyway, here are some 2FA ideas. Your bank probably offers it:


PNC Online Banking
Chat Online Now
Privacy
Security
Sign Off
Customer Profile ▼
My Accounts
Transfer Funds
Pay Bills
Alerts
Customer Service
My Offers
Summary
Customer Profile
Online Documents
Message Center
Mobile
PNC Rewards Center
Contact Us
Personal Settings
Security Settings
Account Profile
123***
Manage
Setup

Last Sign On: Tuesday, July 25, 2017 at 8:34 p.m.

Two-Step Verification

Two-Step Verification adds an additional layer of security when performing certain Online Banking activities, like resetting your password or signing on.

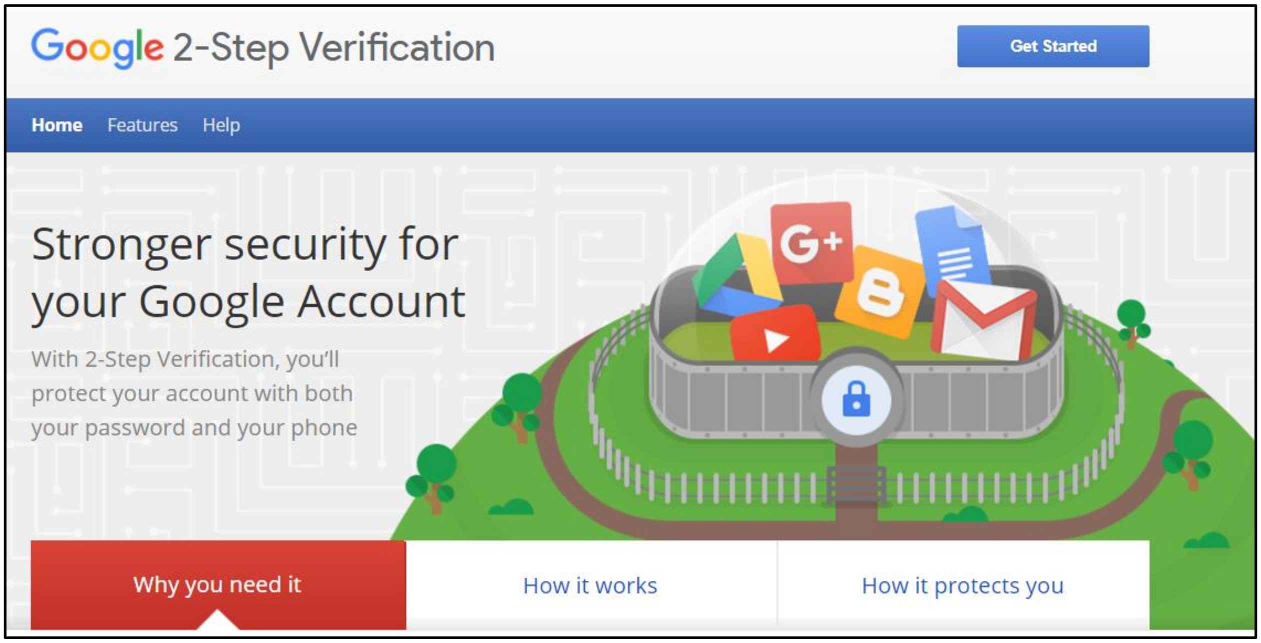
Resetting Access

Receive an **automated phone call** to your registered phone number and enter a confirmation code to help verify your identity when resetting your password or Personal Security features.

Additional Sign On Security

Receive a **text message** with a one-time passcode to your enrolled mobile device and enter it when you sign on to Online Banking to help verify your identity.

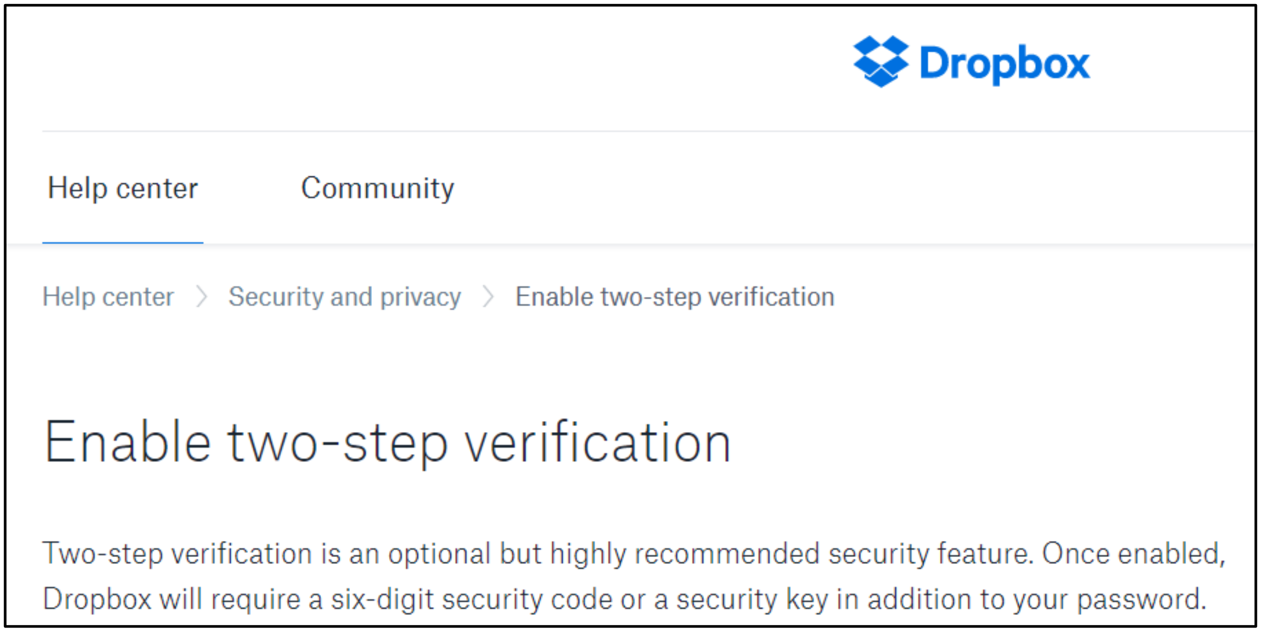
Your email account probably offers it:


Google 2-Step Verification
Get Started
Home
Features
Help
Why you need it
How it works
How it protects you

Stronger security for your Google Account

With 2-Step Verification, you'll protect your account with both your password and your phone

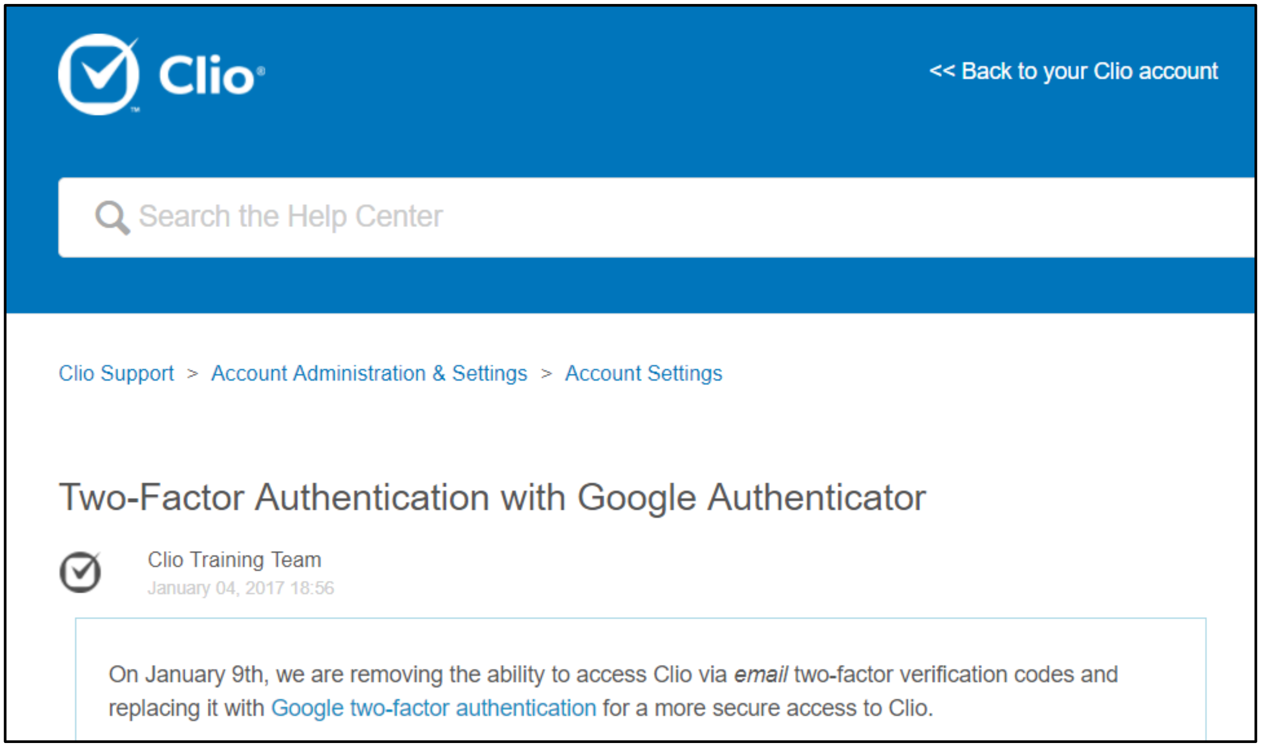
Your file sharing service probably offers it:


Dropbox
Help center
Community
Help center > Security and privacy > Enable two-step verification

Enable two-step verification

Two-step verification is an optional but highly recommended security feature. Once enabled, Dropbox will require a six-digit security code or a security key in addition to your password.

Your case management system probably offers it:

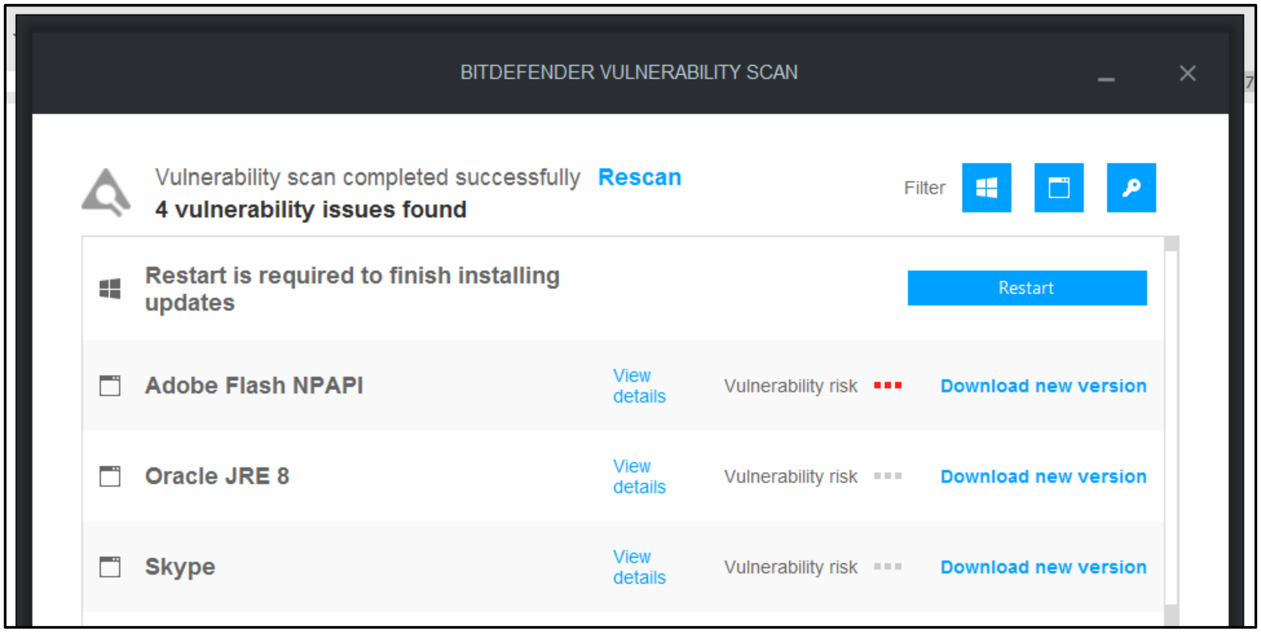

Clio
<< Back to your Clio account
Search the Help Center
Clio Support > Account Administration & Settings > Account Settings

Two-Factor Authentication with Google Authenticator

Clio Training Team
January 04, 2017 18:56

On January 9th, we are removing the ability to access Clio via *email* two-factor verification codes and replacing it with Google two-factor authentication for a more secure access to Clio.

I. **Antivirus/Antimalware Software**: It is fairly common that users think they have protective software running when they actually do not. You should be able to confirm that protective software is running on your computer(s). Again, you may need to consult an expert. we use Deep Instinct[16] which I *really* like. Of course, there are many good options available from McAfee, Webroot, Bitdefender, Symantec (Norton) and Kaspersky. A good security suite (like Bitdefender Internet Security 2016) provides antivirus, web protection, vulnerability testing (to make sure you have the latest versions of programs that may represent vulnerabilities), a firewall, intrusion detection, antispam and ransomware protection. For example, when I first ran the Bitdefender vulnerability test, it produced the following which not only told me which programs needed to be updated, but also provided links so I could get to them quickly:



Vulnerability scan completed successfully

4 vulnerability issues found

Restart is required to finish installing updates

Adobe Flash NPAPI	View details	Vulnerability risk ■■■	Download new version
Oracle JRE 8	View details	Vulnerability risk ■■■	Download new version
Skype	View details	Vulnerability risk ■■■	Download new version

J. **Secure File Sharing and Data Rooms**: Make absolutely sure that all file shares have a password required to access them.

1. **ShareFile by Citrix**: https://www.sharefile.com/ - This is a fantastic service that allows you to create virtual "rooms" for others and share documents with them securely. You decide what rights each user has to the collection of documents.

2. **Merrill DataSite Virtual Data Room**: See http://tinyurl.com/laam53o.

3. **Firmex Virtual Data Room**: See https://www.firmex.com/.

4. **SmartRoom Virtual Data Room**: See http://smartroom.com/.

5. **Ansarada Virtual Data Room**: See https://www.ansarada.com/

---

[16] See https://www.deepinstinct.com/

6. **IntraLinks Virtual Data Room**: See http://preview.tinyurl.com/lt6d899.

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

8. **G Suite by Google Cloud**: The Basic edition is $5/user/month and includes 30 GB of cloud storage; the Business edition is $10/user/month and includes unlimited cloud storage. See your options here: http://tinyurl.com/kkocuto

9. **Dropbox Business Standard or Advanced**: Standard is $12.50/user/month and Advanced is $20/user/month. For an explanation of their business plans, see https://www.dropbox.com/business/plans-comparison.

10. **SpiderOak Professional**: See this for more: https://spideroak.com/business_pricing/

11. **Syncplicity**: See https://www.syncplicity.com/.

12. **Box.com**: https://www.box.com/pricing

13. **TrueShare**: http://www.trueshare.com/

14. **FileGenius**: http://www.filegenius.com/

15. **OneHub**: Secure file sharing - see https://onehub.com.

K. **Encryption Options for Online Sync Programs Like Dropbox, OneDrive, Box and Google Drive**: There are inexpensive and easy-to-use services that will encrypt your files before sync and file-sharing services. These services will effectively eliminate your ability to share files with individuals outside of your office, but they also provide complete protection for your files as they are encrypted before the sync service ever gets your files.

1. **Sookasa**: See https://www.sookasa.com/

2. **BoxCryptor**: See https://www.boxcryptor.com/en

L. **External Hard Drive and Flash Drive Encryption**: If you need to use external hard drives or flash drives, there are many choices for encrypted devices. Of course, you can also use encryption programs like BitLocker to encrypt external devices as well. In any event, here are some options:

1. **External USB Hard Drives**:

    a. **Samsung T7 Touch Portable SSD 1 TB** - Ridiculously fast with built-in encryption

    b. **Apricorn Aegis Padlock 2 TB** USB external hard drive.

    c. **Fantom Drives DSH2000 DataShield 2TB** USB external hard drive.

    d. **Lenovo ThinkPad USB 3.0 Secure** Hard Drive.

2. **Flash Drives**:

    a. **Apricorn Aegis Secure Key** FIPS Validated 4 GB USB 2.0 256-bit AES-CBC Encrypted Flash Drive

    b. **Kingston Digital 8GB Data Traveler** AES Encrypted Vault Privacy 256Bit 3.0 USB Flash Drive

    c. **IronKey S250 8 GB** USB 2.0 Flash Drive

M. **Develop and Follow Policies**: There are many places to find sample policies for the following and a great resource is the SANS Institute. To see their sample policies, just go here: https://www.sans.org/security-resources/policies.

1. **Internet and Email Usage Policy**: There may be (and likely is) a big gap between what you would deem acceptable use of company internet and email and what your employees deem acceptable use of those resources. Thankfully, you can Google “internet usage policy” and find many free examples to start with.

2. **Document and Email Retention Policy**: Lawyers tend to hold onto every document and email forever and this is simply a bad policy. You can end up with so much irrelevant digital clutter that you’re unable to find the things you actually need. Your policy should comply with any applicable federal or state laws, the Rule of Professional Conduct and any other relevant regulations. It’s also a great idea to contact your malpractice insurer to see what they recommend (they may even have a sample policy you could start with). The ABA has a nice compilation of records and document retention resources (http://tinyurl.com/7z8ksye) and another excellent article to read on the subject is Sample Document-Destruction Policy by Megan Zavieh, 1/21/14, Lawyerist.com (see http://tinyurl.com/hrs3hxy).

3. **Secure Password Policy**:

    a. **Why You Need This**: You need a secure password policy because of the plethora password crackers that are out there.

    b. **Types of Password Hackers**: Here are the main types (there are many more):

        i. **Dictionary attack**: This attack uses a file that contains a list of words that are found in the dictionary. This mode matches different combinations of those words to crack your device open.

        ii. **Brute force attack**: Apart from the dictionary words, brute force attack makes use of non-dictionary words too.

        iii. **Rainbow table attack**: This attack comes along with pre-computed hashes. When user passwords are stored by a service (say www.Target.com), the raw (actual) passwords are converted into a string of random characters by complicated mathematical computations. This conversion process is called hashing. For an extremely interesting article on this technology, see Hacker Lexicon: What Is Password Hashing? by Andy Greenberg, June 8, 2016[17].

    c. **Examples of Password Hackers**: Just so you can appreciate how readily available these are to anyone.

        i. **John The Ripper** - http://www.openwall.com/john/

        ii. **Aircrack-ng** - https://www.aircrack-ng.org/downloads.html

        iii. **RainbowCrack** - http://project-rainbowcrack.com/

        iv. **Crowbar** - https://github.com/galkan/crowbar

        v. **Ophcrack** - http://tinyurl.com/3uyvmy

        vi. **L0phtcrack** - http://www.l0phtcrack.com/#download-form

        vii. **DaveGrohl** - https://github.com/octomagon/davegrohl

    There are many others like Cain and Abel, THC Hydra and HashCat.

---

[17] See https://www.wired.com/2016/06/hacker-lexicon-password-hashing/

d. **Recommended Policy**: I will warn you that a really strong password security policy can be extremely annoying because most of them recommend that you change your password every 30 days, don't repeat old ones and use unique passwords for each logon. While I appreciate the value of those rules, they would drive most people batty in short order. Here are some less annoying rules that will still help ensure your passwords are secure:

- 12 Characters, Minimum: You need to choose a password that's long enough. There's no minimum password length everyone agrees on, but you should generally go for passwords that are a minimum of 12 to 14 characters in length. A longer password would be even better.

- Include Numbers, Symbols, Capital Letters, and Lower-Case Letters: Use a mix of different types of characters to make the password harder to crack.

- No Dictionary Words or Combination of Dictionary Words: Avoid obvious dictionary words and combinations of dictionary words. Any word on its own is bad. Any combination of a few words, especially if they're obvious, is also bad. For example, "Wagon" is a terrible password. "RedWagon" is also very bad.

- Doesn't Rely on Obvious Substitutions: Don't use common substitutions, either — for example, "RedWag0n" isn't strong just because you've replaced an o with 0.[18]

4. **Mobile Device Security Policy**: This policy describes protocols that must be used when using notebooks, tablets or phones to conduct legal work.

5. **Equipment Disposal Policy**: The general rule is that no mobile device, PC or copier should ever be disposed of while it still contains client data.

N. **Training**: The biggest hole in every organization's security are the users. It is imperative that tools are provided and that training is mandatory.

IV. OTHER TECHNOLOGY-RELATED RECOMMENDATIONS FOR SENIOR LAWYERS:

A. **Seek Technological Self-Reliance**: Anyone can learn how to use technology tools and it doesn't matter what year you were born. It might take finding someone tech savvy who will spend some time with you and develop a base-level of tech knowledge, or taking classes, but you can get there. It's maybe easier to ask someone to do something for your or look up information you need. However, it's worth spending a few more minutes to learn to do more for yourself. It's empowering, you'll get what you need faster, and you'll lower your costs going forward. All it takes is asking questions regarding how to perform tech-related tasks, and writing down the instructions so you don't have to ask next time.

---

[18] See How to Create a Strong Password (and Remember It) by Chris Hoffman, 5/29/15, How-To- Geek, see http://tinyurl.com/kx6s7uf.

B. **Learn To Type; and If You Can't Type, Get Dragon Speech Recognition**: There are actually many free typing tutorials on the web that will teach you the "home row" and how to become a better typist. If that's not for you, then Dragon Professional Individual (https://amzn.to/3lb1sAy) or Dragon Legal Individual (https://amzn.to/3BtKCmh) are both *amazing*. You just need a good Windows computer and a good headset. As fast as you can talk, it will type what you're saying in any application.

C. **Learn A Digital Signature Platform**: You need to be able to execute documents electronically; and you need to be able to obtain signatures from clients and other parties electronically. It may be that the days of round-table closings are just over.

1. **What They Are**: This is unquestionably one of the most confusing topics I've ever encountered in legal technology, mostly because any explanation of it is techno-babble overload. So I can't avoid all of the techno-speak when explaining it, but I'll try to limit this to what you need to know.

   A digital signature is like a conventional handwritten signature in that it identifies the person signing a document. Key benefits of digital signatures are:

   a. Unlike a handwritten signature, a digital signature is difficult to forge because it contains encrypted information that is unique to the signer.

   b. Recipients can easily verify the authenticity of the digital signature (you simply click on the signature in a PDF to verify it).

   c. Once digitally signed, neither the signature nor the document signed can be altered without detection.

   d. Digital signatures are legally binding in the U.S. so an electronic signer cannot later deny responsibility or that they actually signed the electronic document.

2. **Digital Signatures Are Not Electronic Signatures**: *Digital signatures* are created and verified by cryptography, the branch of applied mathematics that concerns itself with transforming messages into seemingly unintelligible forms and back again. The technology behind digital

signatures is an industry standard known as Public Key Infrastructure (PKI), which guarantees data integrity and non-repudiation of transactions. The digital signature cannot be copied, tampered or altered. On the other hand, *Electronic signatures* are electronic images that are physically or logically attached to the signed data. Adding a sentence "I, Barron Henley, sign this document" is good enough to be considered as an electronic signature; however, it is clear that electronic signatures are easy to forge, unlike digital signatures.

3. **How They Work**: An explanation of digital signatures is on SearchSecurity's website and authored by Ben Lutkevich, Vicki-Lynn Brunskill and Peter Loshin which you can read here: https://bit.ly/3nFEdg5

4. **How You Obtain a Digital Signature**: If you have an Adobe Acrobat DC subscription, you already have Adobe Sign and you just have to set it up. Otherwise, there are many services you can sign up for including:

   a. **RightSignature**: www.rightsignature.com

   b. **DocuSign**: www.docusign.com

   c. **Hellosign**: https://www.hellosign.com/

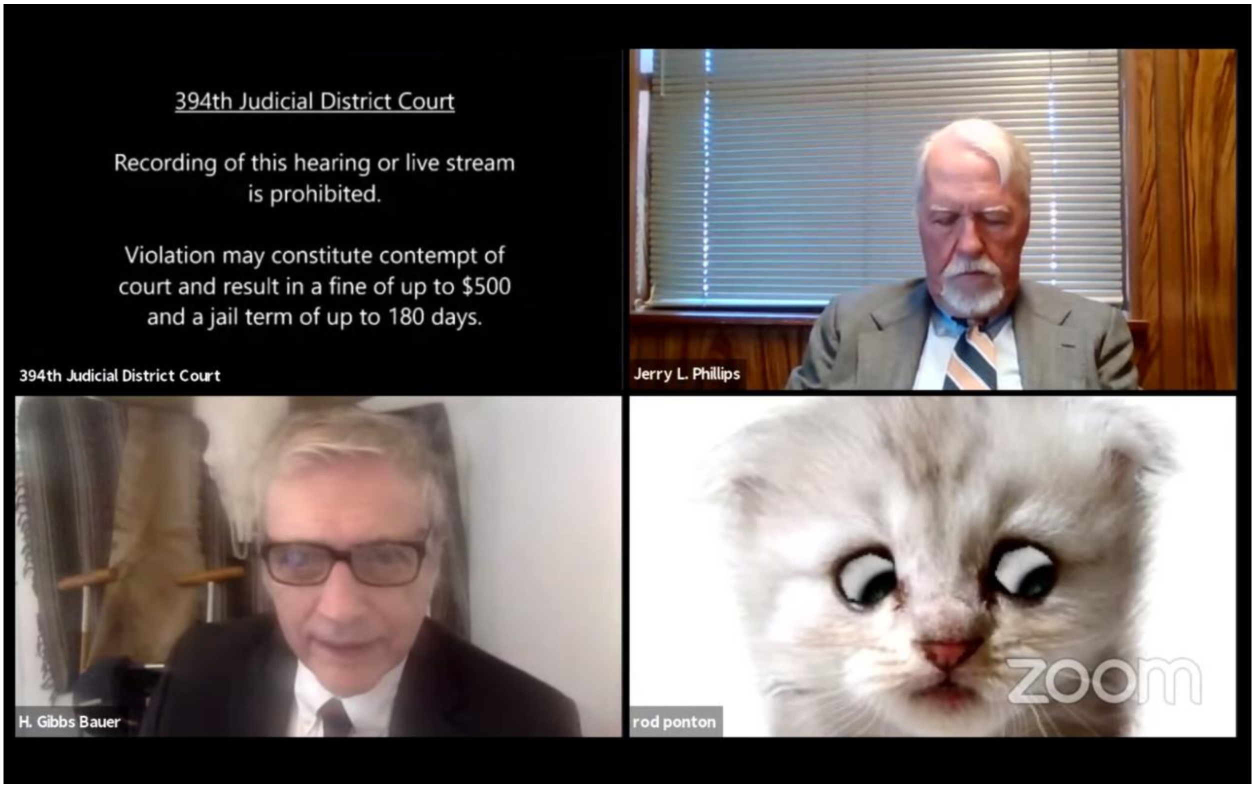
   d. **Adobe Sign**: http://tinyurl.com/z84af3r

   e. **OneSpan**: https://www.onespan.com/products/esignature-professional-plan

V. VIRTUAL MEETINGS - WHAT YOU NEED TO KNOW

V. **VIRTUAL MEETINGS - WHAT YOU NEED TO KNOW**: Not everyone is going to have the perfect backdrop or equipment for the likely non-stop web meetings they'll be participating in. However, it's easy and relatively inexpensive to equip them with the tools they need.

A. **You Need A Web Meeting Subscription**: It's important that you have your own web meeting subscription and not rely on someone else's subscription or computer, you may end up like the infamous "I'm not a cat" lawyer (who was using his legal assistant's computer).



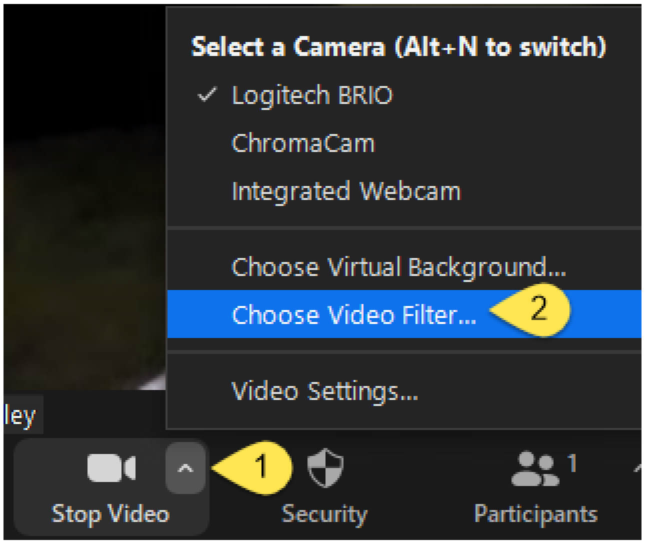
394th Judicial District Court

Recording of this hearing or live stream is prohibited.

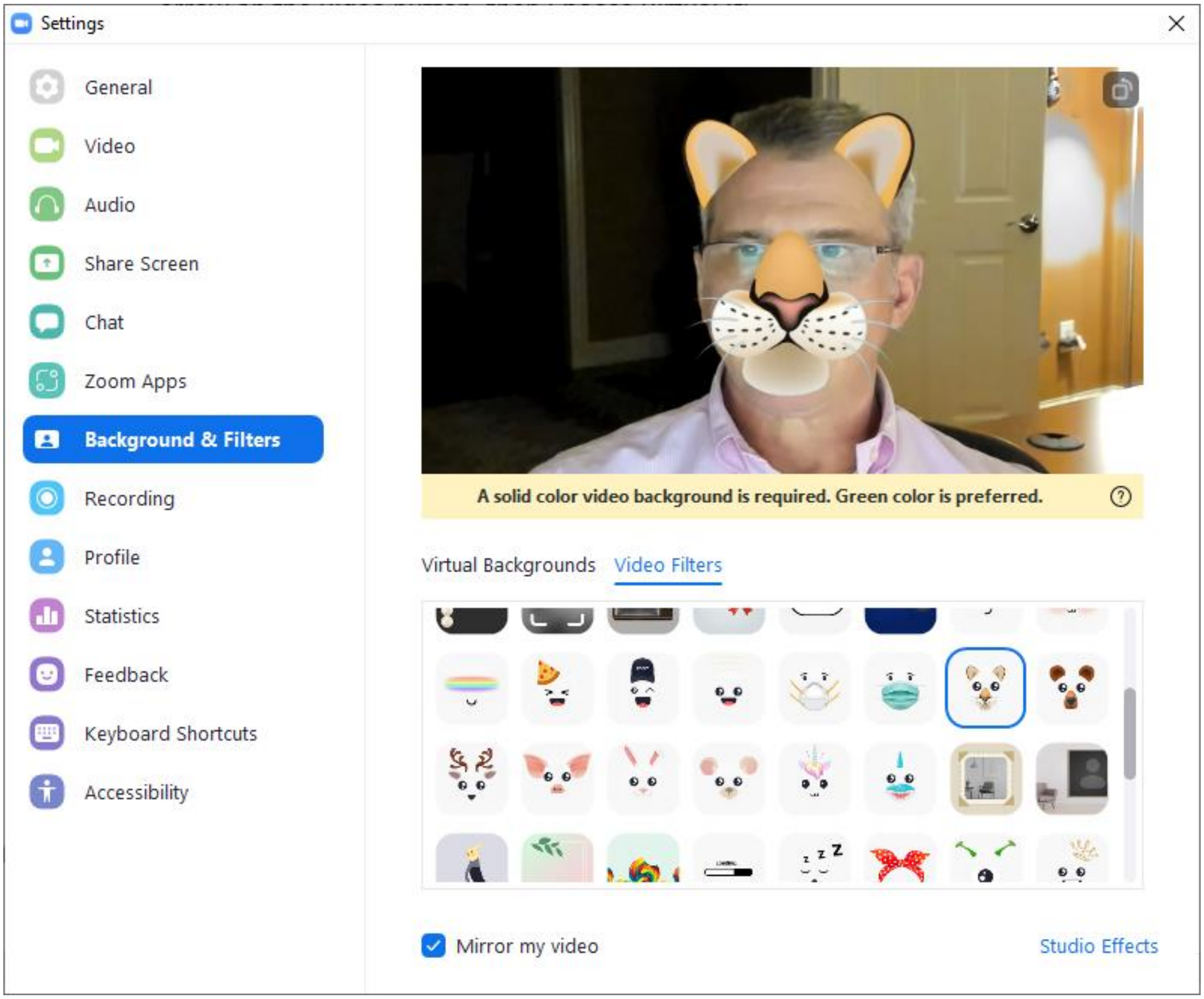
Violation may constitute contempt of court and result in a fine of up to $500 and a jail term of up to 180 days.

394th Judicial District Court
Jerry L. Phillips
H. Gibbs Bauer
rod ponton
zoom

In the event you WANT to add a filter while in a Zoom meeting, you click the up arrow on the Video button, then Choose Virtual :


Select a Camera (Alt+N to switch)
✓ Logitech BRIO
ChromaCam
Integrated Webcam
Choose Virtual Background...
Choose Video Filter...
2
Video Settings...
ley
1
Stop Video
Security
1
Participants

Now click on Video Filters and you'll see that you have many choices that would be suitable for a court appearance like this one:


Settings
General
Video
Audio
Share Screen
Chat
Zoom Apps
Background & Filters
Recording
Profile
Statistics
Feedback
Keyboard Shortcuts
Accessibility
Virtual Backgrounds
Video Filters
Studio Effects

A solid color video background is required. Green color is preferred.

☑ Mirror my video

If you REALLY want to laugh, click on Studio Effects. I think I cried I laughed so hard when I first discovered those settings.

B. **Web Meeting Options**: here's the short list of good services. Zoom is easily my favorite having used all of the following, but if you already subscribe to Microsoft 365, then you probably have Teams included and the free price tag associated with that might be too much to overcome.

1. **Zoom**: https://zoom.us/

2. **Join.Me**: http://join.me

3. **GoToMeeting**: www.gotomeeting.com - I think this is the worst system out there although I realize it's been around a long time. If you're already subscribed to this, almost any alternative is better, Zoom in particular.

4. **WebEx Meetings**: www.webex.com

5. **Microsoft Teams**: https://bit.ly/2KAQXHj - included in most Microsoft 365 subscriptions at no extra charge

6. **Adobe Connect Meetings**: http://tinyurl.com/y8877ncu

7. **BlueJeans**: https://www.bluejeans.com/

8. **ClickMeeting**: https://clickmeeting.com/

C. **What You Should Know How To Do With Your Service**: It's not just enough to have a web meeting service, you should know how to:

   1. Schedule a meeting
   2. Connect to a meeting
   3. Mute/unmute
   4. Turn on or off your webcam
   5. Share your screen
   6. Request keyboard/mouse control
   7. Chat
   8. Record meetings
   9. You should also know how to control the miscellaneous settings such as making people wait to be let into your meeting if that's inappropriate, default attendee web cams to on or off, add Canadian dial-in numbers as appropriate, mute all attendees, etc.

D. **Get A Better Webcam**: The web cams that are built into most laptops are not very good quality and the angle may be unflattering if the laptop is sitting on a desk. Hence, better webcams are always a good investment. For example the Logitech C930e ($86) or Logitech BRIO ($180) are really excellent. I realize the price difference between the 930e and BRIO is significant, but for my money, the BRIO is a no-brainer. Logitech also has a free Logitech Camera Settings application that gives you a lot of control over your camera and the settings you save will work the same in any web meeting service you use.

E. **Better Lighting**: It's hard for even a really good webcam to overcome poor lighting. There are many options for this including lights that can clip on to the top of a monitor or laptop lid (for example, see this for $26 -

https://amzn.to/3yRwZMx), clip on to a desk (for example, see this for $16 - https://amzn.to/2RT8Ogl), and there are many free-standing options as well.

F. **Backdrops**: If you use a web meeting service that supports a green screen (like Zoom), then it's worth getting one and using one of Zoom's "virtual backgrounds." The green screen makes it look *real* and doesn't cut off your ears or make your head look misshapen (which otherwise happens with virtual backgrounds). I have a portable green screen which was $140 (see https://amzn.to/3pz1GjV). Of course, there are backdrops of every size and shape. You can also get complete backdrop and lighting kits for around $130 (see https://amzn.to/34CECIX).

G. **Microphones or Headsets**: Most webcams have microphones built in, but they aren't very good quality in my experience. If you want something that just sits on your desk and sounds amazing, the Jabra Speak 710 is perfect, but it costs $300 (see https://amzn.to/3pexEU6). Of course, any wireless phone headset would work (the Poly (fka Plantronics) Savi line is my favorite); or you could get something wired for $37 (see https://amzn.to/3uGHT4s).

VI. LEARN TO DRAFT COMPLEX DOCUMENTS WITHOUT REQUIRING HELP FROM SUPPORT STAFF:

A. **Legal Drafting Methodologies**: There are six primary methods lawyers utilize when drafting documents. They are broadly classified as follows:

1. **Find, Rename and Modify**: When creating new documents, most lawyers simply start with the last document they created for a similar client and then modify it (cut-and-paste, search-and-replace) to suit the new client. Although this is the most common approach, it has several significant disadvantages:

    a. **High Margin for Error**: The margin for error (and therefore malpractice risk) arises from the fact that Find, Rename and Modify is unstructured, relies on memory, assumes the word processor will "catch" all of the items in need of replacement and requires many steps. Memories fail, word processors don't catch everything and more steps create more mistakes and slower drafting.

    b. **Slow**: Transcribing voice recordings or hand written notes and cobbling together provisions from other documents makes the process slow.

    c. **Errors of Omission**: It's easy to leave something out you should have added to the starting point document.

d. **Errors of Inclusion**: It's easy to leave something in that you should have taken out.

e. **Compromised Documents**: In adversarial areas of practice, it's likely that the last document you drafted of a particular type was compromised during the negotiation process. Unless you have a photographic memory and can recall every single change that was made, the document you're starting with is fundamentally flawed.

As a result of the foregoing, Find and Fix is characterized by disorganization, mistakes, and inefficiency; and should be avoided whenever possible. This seminar is all about good alternatives to this approach.

2. **Gold Standard Templates**: A much better approach than "Find, Rename & Modify" described above is to pull together the best of what a law office knows into precedent forms. These forms are thereafter always used as the starting point when drafting new documents. The Gold Standards identify changeable text and contain every optional provision in the order they could occur, fully annotated. This approach is vastly better than Find, Rename & Modify and costs nothing but time to create.

3. **Gold Standards + Word Processor Automation**: Some lawyers take the Gold Standards they've built and then improve them by adding in automation features available in their word processor (typically WordPerfect or Word). This can mean utilizing merge functions, "prompt" or "fill-in" fields, macros to expedite the insertion of optional language, and/or better use of Word's AutoText or Quick Parts features or WordPerfect's QuickWords feature. It's fairly easy to create templates and utilize the tools that Word or WordPerfect provides you for automating those templates. Automating the fill-in of names and the like is fairly easy. However, unless you're a programmer, gathering lists (beneficiaries, trustees, personal representatives, etc.), making language conditional and calculating things (such as he/she, him/her, verb conjugation, list punctuation) is extremely difficult, particularly in MS Word. This approach also assumes that you have a mastery of your word processor and know, for example, how to utilize automatic paragraph numbering, auto-calculating cross references, automatic tables of contents and other higher-end features. If these things aren't built into your templates, then you end up spending a lot of time wrestling with formatting issues and paragraph numbering which can significantly off-set any efficiencies you may have otherwise gained by utilizing word processor automation features. Having said all of that, you should be utilizing this approach at a

minimum. This approach is far superior to Find, Rename and Modify and a nice improvement on Gold Standards.

4. **Gold Standards + Case/Matter Management Software**: Case Management software primarily aids lawyers in organizing case information and items related to a case like documents, emails, and phone calls. A sometimes overlooked fact is that most case management vendors offer integration options for your Word or WordPerfect templates. In Amicus Attorney, Practice Master and Time Matters, for example, you can store your templates within the case management system. When a document is created within a specific matter, the equivalent of merge codes grabs key information (client names, pleading captions – indeed nearly any of the case related database fields). For high volume practices such as Social Security or Workers Comp, a library of word processing templates with linked case or document management fields can streamline workflow, and make document generation take just seconds.

5. **Subscription Drafting Systems**: Having become frustrated with the inefficiency of Find, Rename & Modify, or the amount of time necessary to develop and maintain the Gold Standards or the Gold Standards Plus approaches, some lawyers simply subscribe to a commercial system.

   Subscription systems are widely divergent in terms of sophistication. For example, there are estate planning drafting systems which enable the user to generate incredibly complex, customized documents which are valid in all 50 states[19]. On the other end of the spectrum, I have seen systems which are nothing more than the most basic and simple forms with fill-in-the-blank technology. In my experience, there's no real link between price and sophistication when it comes to subscription systems. I've seen powerful systems that are fairly inexpensive; and I've seen simple systems that are pricey. Most Subscription Drafting Systems contemplate that you enter information about your client and in return, the system generates customized documents for that client. Some work in Word or WordPerfect; and some utilize their own custom-built word processor environment.

6. **Gold Standards + Document Assembly Software**: Finally, some will take the Gold Standard Templates approach and raise it to another level by utilizing third-party document assembly software in conjunction with their word processor. In effect, these individuals are creating their own commercial drafting systems. In fact, many of the Commercial Systems

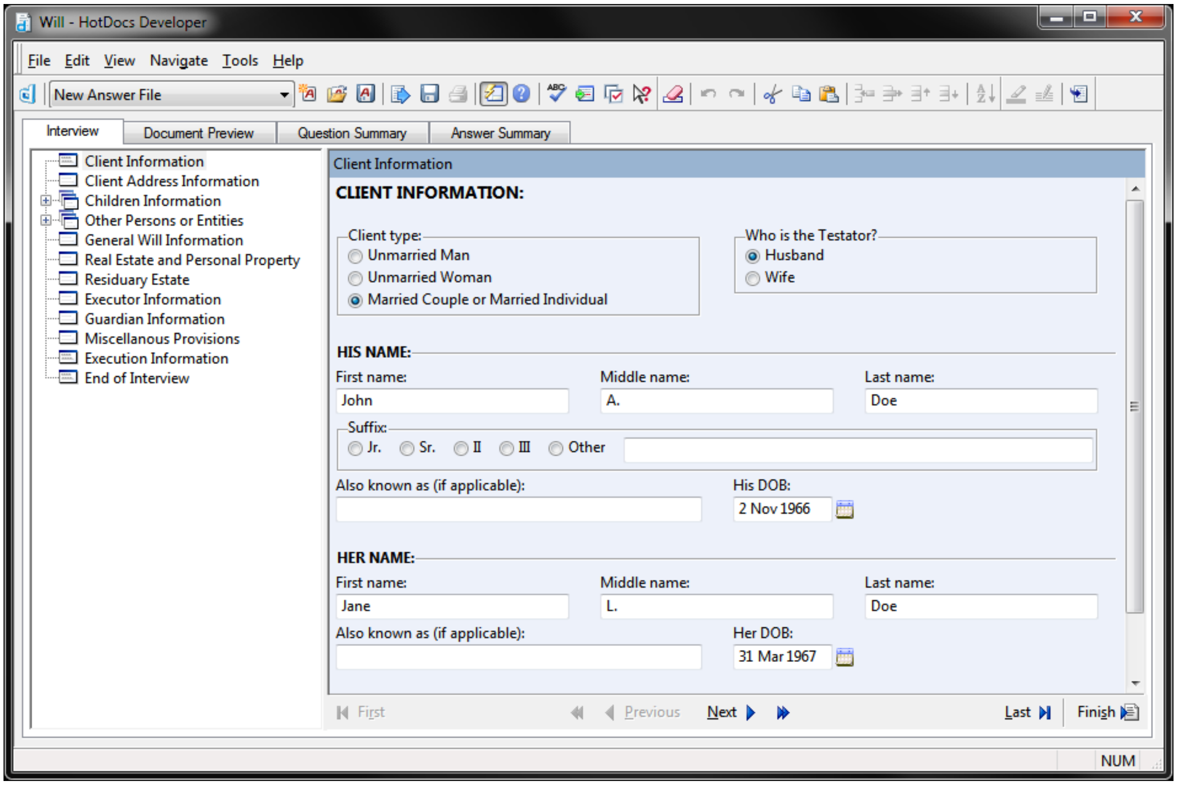
---

[19] For example, see https://www.wealthcounsel.com/software-for-attorneys/wealthdocx

available are exactly that: a combination of Word and/or WordPerfect and a home-grown or commercially available document assembly program.

a. **What Is Document Assembly?** Most document assembly programs integrate with your word processor and enable you to create sophisticated templates. Those templates typically generate an interview (series of questions) presented to the user. Upon answering the questions, a customized document is instantly generated. In addition to simply filling in blanks, document assembly programs support conditional logic (i.e., include the guardianship paragraph if the client has minor children or adult disabled children), infinite lists, and the ability to calculate text, numbers and dates.

The on-screen interview is quite powerful because the template designer can control everything about the sequence and content of the interview. With practice, you can reproduce your entire decision tree in the template and build in safe-guards that walk even novice users through the assembly process. An example of how an interview looks is shown below:


Will - HotDocs Developer
File Edit View Navigate Tools Help
New Answer File
Interview
Document Preview
Question Summary
Answer Summary
Client Information
Client Address Information
Children Information
Other Persons or Entities
General Will Information
Real Estate and Personal Property
Residuary Estate
Executor Information
Guardian Information
Miscellanous Provisions
Execution Information
End of Interview
First
Previous
Next
Last
Finish
NUM

Client Information

CLIENT INFORMATION:

Client type:
○ Unmarried Man
○ Unmarried Woman
● Married Couple or Married Individual

Who is the Testator?
● Husband
○ Wife

HIS NAME:
First name: John
Middle name: A.
Last name: Doe
Suffix: ○ Jr. ○ Sr. ○ II ○ III ○ Other
Also known as (if applicable):
His DOB: 2 Nov 1966

HER NAME:
First name: Jane
Middle name: L.
Last name: Doe
Also known as (if applicable):
Her DOB: 31 Mar 1967

b. **How It Works - Big Picture**: Using HotDocs as an example, the program allows users to replace changeable text with variables (i.e., «Testator Name», «Testator Street Address»), make the inclusion of text (words, sentences, paragraphs, etc.) conditional, gather (infinite) lists, and automatically calculate dates, text and numbers.

By "lists", I mean that the template can gather and process multiple records. This is particularly important with legal documents because there are almost always parties and you never know how many there will be. For example, in a deed, you have grantors and grantees. There could be more than 1 of each. In estate planning documents, there may be multiple children listed, executors/personal representatives, beneficiaries, guardians, or trustees. All of those things are lists. Good document assembly software lets you enter as many parties as necessary and based upon how many you enter, the template will produce correct language. For example, depending upon what the user enters into a list of children in a Will, the document may say:

"Barron Henley has no children." or

"Barron Henley has one child, Ariel, age 20." or

"Barron Henley has two children, Ariel, age 20 and Alexis, age 18." or

"Barron Henley has three children, Ariel, age 20, Alexis, age 18 and Rylee, age 16."

The point is that whatever the user enters, the template produces the correct language and verb conjugation; and it doesn't matter how many there are.

With each new variable, you create a corresponding question (prompt) which is presented to the user during the assembly process. Generating a new document is a simple matter of answering the questions presented by the template. After the questions are answered, the completed document appears on the screen (in Word or WordPerfect), ready edit, save, print, etc.

After a document is assembled, HotDocs allows users to save the *answers* entered for one document so that they can be used to assemble other documents which use the same information. In this manner, users simultaneously decrease the margin for error while eliminating time wasted on redundant data entry. The document produced by HotDocs is a plain word processor document and can be edited and stored like any other document.

c. **Document Assembly Options**: There are several available document automation applications and while each has its own unique way of handling the task, they all are very capable and able to achieve the objectives we discuss below. Each of them work with Word or WordPerfect or both. Some provide the ability to automate PDF forms. Because HotDocs continues to dominate the market and both of us are most familiar with it we refer to and show examples from HotDocs throughout this article but we could just as easily be referring to any of these applications. It is highly recommended that you explore the various options and decide for yourself which application best meets your practice needs in terms of availability, functionality and cost. Here are some options:

   i. HotDocs - www.hotdocs.com

   ii. Contract Express - http://contractexpress.com

   iii. XpressDox - http://xpressdox.com/

   iv. TheFormTool & Doxserá - www.theformtool.com

   v. Rapidocs - www.rapidocs.com

   vi. Pathagoras - www.pathagoras.com

   vii. Perfectus - www.dpa-technologies.com

   viii. ActiveDocs - www.activedocs.com

B. Why Template Building is Critical for All Law Offices: In order to capture your office's intellectual capital and put it into a usable form, you need to spend time creating "gold-standard" templates which represent the best of what your firm knows.

1. **Self-Reliance**: The straight fact is that if the document you start with when drafting is set up correctly from a Microsoft Word perspective, the formatting will just work. You'll never have to figure out why the formatting is messed up because that never happened in the first place. If you don't believe this, email me at bhenley@affinityconsulting.com and I'll set up a free web meeting during which I prove it to you.

2. **Word Processor Based (Inexpensive and Easy)**: You want your templates to be word processor documents so they can easily be edited and updated later.

3. **Error Reduction**: Building Gold Standards eliminates all of the potential causes of error described above under Find, Rename and Modify.

4. **Drafting is a Mission Critical Function for Most Lawyers**: There are many practice areas in which drafting is the primary task engaged in by the lawyer; and in many cases, the service rendered is primarily a set of documents (estate planning, etc.). The Find, Rename and Modify drafting method described above is incredibly inefficient, slow and has a high margin for error. One could argue that it is inappropriate to rely on such inadequate drafting methods considering the importance of the task.

5. **The Hyper-Competitive Legal Market Penalizes Lawyers Who Work Slowly**: For many years, the legal industry had little incentive nor ability to change the inefficient Find, Rename and Modify method of drafting. With hourly billing predominant, one who takes a bit longer to get a set of documents together isn't penalized (in fact, they might be rewarded). Furthermore, there were few alternatives from a technological standpoint.

   However, the emergence of flat fee billing and other non-hourly methods began creating an incentive to generate documents more quickly. Competition has increased significantly in the legal industry in the last 25 years; and technology has enabled firms to handle much higher volumes than they could in past decades thereby forcing administrative tasks like drafting to become more efficient. The paradigm shift is that lawyers are now *looking* for ways to generate documents in a quicker fashion without sacrificing accuracy. Sophisticated form building is a great way to achieve those objectives. Document assembly technology allows you to take it even further in terms of efficiency.

6. **Something You Can Improve Over Time**: When you draft a new, custom provision for a client or case that might be useful in the future, a template is a place to store it for future use. Otherwise, those things are usually lost. A template is also something you can update with improved language, and new language to address changes in the law. Further, from a Word structural perspective, the formatting can be improved so it works better when editing.

7. **Speed Gains**: Imagine a tool that could save you hours each day. If you're buried in drafting and it's a primary stressor in your work load, then template building can make a big difference. Here's an example regarding Will drafting:

   a. **Draft a Will Using Find, Rename & Modify**: This can easily take an hour depending upon complexity and has a high margin for error.

b. **Draft a Will Using a Gold Standard Template**: This can take half the time (30 minutes) and improve accuracy.

c. **Draft a Will Using Document Assembly**: This may take 3 - 5 minutes and offers the highest accuracy.

8. **Templates Allow You To Share What You Know With Others**: Knowledge Management is the ability of a lawyer to share what she knows with others in her firm. Unfortunately, a lot of what most lawyers know is wrapped up in documents they've created. Processes and drafting methodologies are often never written down anywhere. However, building templates allows you to take much of what you and your colleagues collectively know about a practice area and perform a "brain dump" into an expert drafting system. For example, assume you have 5 lawyers in your real estate department and they collaborate to build sophisticated gold standard templates for leases. New associate Jim needs to draft a lease in which your firm represents the landlord of a strip mall and the proposed new tenant is a restaurant business. The templates and drafting guides could skillfully guide Jim through the process, making sure that he a) is using the latest and best form your firm has prepared; and b) addresses all issues that should be addressed in a lease of this type (strip mall, food service tenant, your firm is representing the landlord, etc.). Review by the partner takes minutes instead of hours because the first draft was so well done, even by a relative rookie. The drafting system ensures that the firm's collective knowledge is utilized in every deal; even though the documents are generated in much less time than the old Find, Rename & Modify method.

VII. **HOW TO BUILD A RELIABLE ELECTRONIC FILING SYSTEM WITH REMOTE ACCESS**: No one can really work remotely if your office is dependent upon paper files. The approach here is to use a scanner to add incoming documents to your digital file. What you want is an accurate representation of what the original document looked like. However, you also want the scanned documents to be full text searchable. This does not mean that you want to convert your scanned documents into Word or WordPerfect files. You simply want to scan for archival purposes. HOWEVER, you need to be able to find those documents again in the future. The following steps are discussed in greater detail below, but here's the general road-map.

A. **Pick a System Approach**: You have three basic options for an electronic filing system and which one you choose will impact the rest of the steps you must take.

1. **Simple Document Management**: This is more accurately phrased as document management without using a document management system (see next paragraph). The biggest benefit of this approach is that it is inexpensive. It's biggest drawback is that it is *voluntary*. In other words, there's no way to force users to follow the system unless someone is

policing what everyone does and isn't afraid to crack the whip if someone falls off the wagon.

2. **Document Management with a Dedicated Document Management System ("DMS")**: A DMS is designed to manage an office's documents and email. As we will discuss, it offers extensive functionality in that regard and can be set up so that it is not voluntary (in contrast to simple document management above).

3. **Document Management with a Case Management System ("CMS")**: A CMS offers a variety of functionality, including document management. The functionality is more advanced than what we'll describe below under simple document management, but it is still voluntary.

B. Ensure You Have Redundant Backup Systems and Security: Obviously, you need to have confidence that you're not going to lose your electronic file or you'll never be able to rely upon it.

C. Required Hardware:

1. **Desktop scanners**: One of the common denominators among offices who have had success reducing paper is that they make it easy on users to scan. Relegating everyone to using a copier for this is generally inconvenient. Desktop scanners are personal scanners for each user and are therefore much easier and more convenient to use.

2. **Monitor Configuration**: Another hardware element that seems to be common among offices who successfully reduce paper are dual monitors and monitors that rotate to portrait. In order to minimize injecting paper into the workflow, users need to see 2 things simultaneously (such as electronic research and the word processor). Further, reviewing documents on screen (without printing them) is much easier if monitors rotate to portrait so that users can see an entire page of text at once. A 22" or larger monitor rotated to portrait will not only allow users to see an entire page of text, but it is roughly twice as large as if it were printed and sitting on the desk in front of them.

3. **Laptops or Tablets**: There must be a way for users to take an electronic file with them to meetings, court, etc. As such, notebooks or tablets are an essential part of the equation. If users can't take the electronic file with them, they'll never be able to rely upon it.

D. Scanned Documents Must Be In Searchable PDF Form: PDFs are the preferred file format and specifically, the PDFs must be searchable. This will be explained in greater detail below.

E. **Requirements If Using Simple Document Management**:

1. **Consolidate Folder Structure**: There must be one folder per matter and users may not build their own, personal filing systems.

2. **Establish File Naming Conventions**: There must be file naming conventions that everyone adheres to.

3. **Search Utility**: A search utility is a software application that allows users to locate any document based upon the words it contains, regardless of what the file is called, its file type, or its location. DMSs and CMSs have this essential functionality built-in; so if one wants to use simple document management, this capability has to be acquired separately.

   a. **Windows Search Options**: Even if you've created a good file naming convention, you'll still need help finding some documents. Now that you've created searchable PDFs, you can search through all of them at once, quickly, by searching for particular words. Here is a survey of your options:

      i. **X1 Search**: This is easily the best search utility we’ve tested. See https://www.x1.com/products/x1-search/

      ii. **Copernic Desktop Search**: See www.copernic.com. You can get a free trial.

      iii. **dtSearch**: See www.dtSearch.com - $199 - one of the most sophisticated and fast search engines I've ever seen. It provides the most search options and file types that it can recognize. If you need industrial strength search capability involving enormous numbers of documents, this is your program.

      iv. **Windows Instant Search** (Windows Vista, 7, 8 & 10): This is free and is included with Windows.

   b. **Apple/Mac Search Program Options**:

      i. **HoudahSpot**: $24 - see http://www.houdah.com/houdahSpot/

      ii. **Spotlight Search (Mac OSX)**: This is included with the Mac OSX operating system. For more information, see http://support.apple.com/kb/HT2531.

      iii. **EasyFind**: Free - see http://tinyurl.com/d6se856

    iv. **Path Finder**: $40 - see http://www.cocoatech.com/pathfinder/

F. **Requirements If Using DMS**: Obviously, you'll need a DMS for this option. Here are a few of the best.

1. **NetDocuments**: NetDocuments provides a document management via the web, so you store your documents on their server and basically pay a monthly fee for the utility of the software. Since you pay by the user, this solution can work for a single lawyer up to thousands of users. For more information, go to https://www.netdocuments.com.

2. **Worldox**: WORLDOX's unique SQL-free software is installed in more than 2300 companies worldwide, 2000+ of which are law firms and legal departments. For more information, go to https://www.worldox.com/.

3. **iManage Work**: Access your work product from anywhere, on any device, in a single user experience. Designed by professionals for professionals, iManage Work 10 features dozens of new enhancements to make you more productive and makes it easier than ever to collaborate with your team and stakeholders in a secure and governed manner. See https://imanage.com/product/imanage-work/.

4. **Laserfiche**: Although not terribly common in the legal world, Laserfiche is a legitimate offering and contains all of the functionality you would want in a document management system. See https://www.laserfiche.com/.

G. **Digitize Incoming Documents**: Everything received in hard copy form must be scanned into the system. This includes paper generated internally such as notes written on a legal pad.

H. **Email Must Be Stored Electronically Outside of the Email Program**: With a DMS or CMS, email can be linked directly from an email program like Outlook to a case file. The DMS/CMS makes a copy of the email so that it is accessible to others even though the original email may still be in someone's inbox or other email folder. With simple document management, users must follow a protocol which stores individual emails and attachments into the common folder system everyone will work out of.

I. **Collaborative Technology**: If you want to rely upon an electronic case file, then there must be ways of sharing it with others. Email is often inappropriate for this or simply can't be used due to the size of the files involved. Alternatives include services such as ShareFile by Citrix, Dropbox Pro or Dropbox Business, Box, Spideroak, SharePoint, Google Drive and OneDrive. For collaboration, web meetings are essential so consider Zoom, GoToMeeting, WebEx and the like.

J. **Write Down Your Office Protocols**: It is very important that whatever your office decides to do with respect to managing documents and email, it should all be reduced to writing and made available to all employees.

K. **Provide Training for all Lawyers and Staff**: If users aren't properly trained, even the best system will likely fail.

VIII. RECOMMENDATIONS FOR COMMUNICATION AND KEEPING EVERYONE CONNECTED WHEN THEY'RE WORKING REMOTELY

The following are internal and external communication recommendations for managing a remote workforce. With remote workforces, active management is always better than passive management. It's important to be proactive in reaching out, facilitating communication, and making sure everyone knows what is going on from company and departmental perspectives.

A. **Consider An Employee Performance/Talent Management Platform**: There are some great web-based tools that allow you to more easily manage the human resources function, provide performance reviews, give continuous feedback to employees, establish and measure against goals, provide social collaboration, survey employees, reward and recognize employees. For this, we use a service called **Engagedly.com**[20] and it is pretty fantastic. As an example of what these platforms can be used for, our Engagedly account holds:

1. Accountability/organizational chart (who reports to who, departmental information, etc.)
2. Information about our client gift program
3. Information about our wellness program & relevant forms
4. Employee time zones, contact info and home addresses
5. Personality test results of all employees - We put all employees through a DISC assessment. DISC is an acronym for (D)ominance, (I)nfluence, (S)teadiness and (C)onscientiousness. "DISC is a personal assessment tool used to improve work productivity, teamwork, leadership, sales, and communication. DISC measures your personality and behavioral style. It does not measure intelligence, aptitude, mental health or values. DISC profiles describe human behavior in various situations, for example how you respond to challenges, how you influence others, your preferred pace and how you respond to rules and procedures."[21]
6. Anonymous suggestion box

---

[20] See https://engagedly.com/

[21] See https://bit.ly/3wSBaWN

7. Links to purchase Affinity logo clothing from Land’s End

8. Insurance information (health, dental, vision, short & long term disability, AFLAC)

9. Retirement plan information (401K)

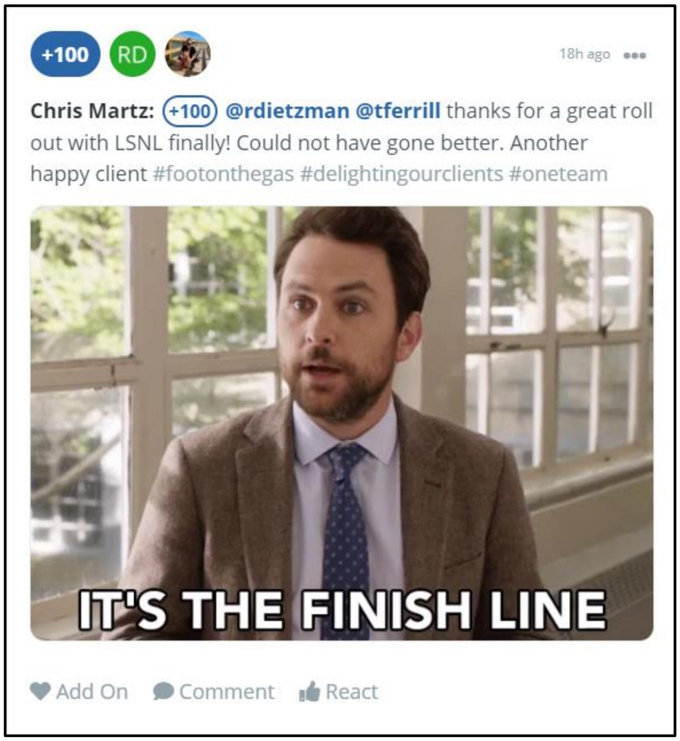
10. Financial information about the company

11. Employee feedback

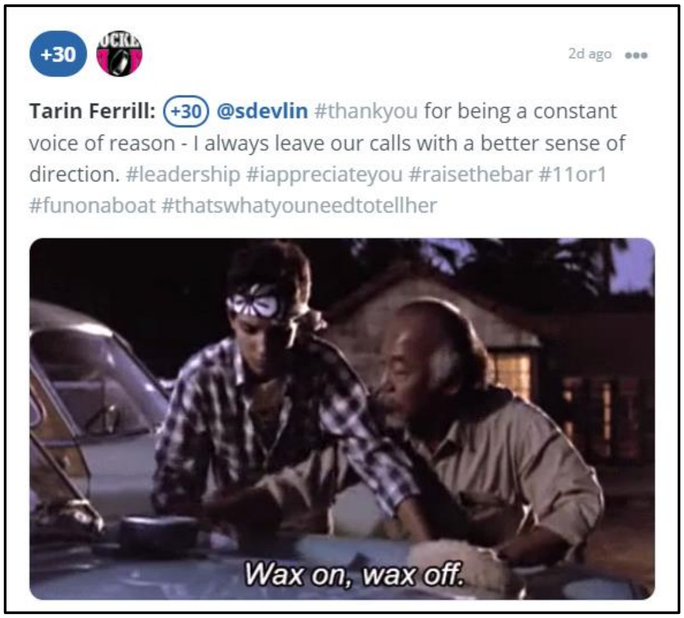
12. Annual reviews & self evaluations

13. Check-ins with supervisor

B. **Consider A Recognition and Rewards Platform**: For example, in order to provide more feedback and recognition to our employees, we implemented https://bonus.ly/ which is a peer-to-peer recognition program. It works like this: we give every employee 750 points to give away every month. 10 points equals $1. The only thing an employee can do with the points is give them away as a thank-you to another employee, as a happy birthday or anniversary, etc. The points are use-it-or-lose-it, but every month, everyone gets another 750 points. For example, here are a few sample posts on our feed (they can be very entertaining):

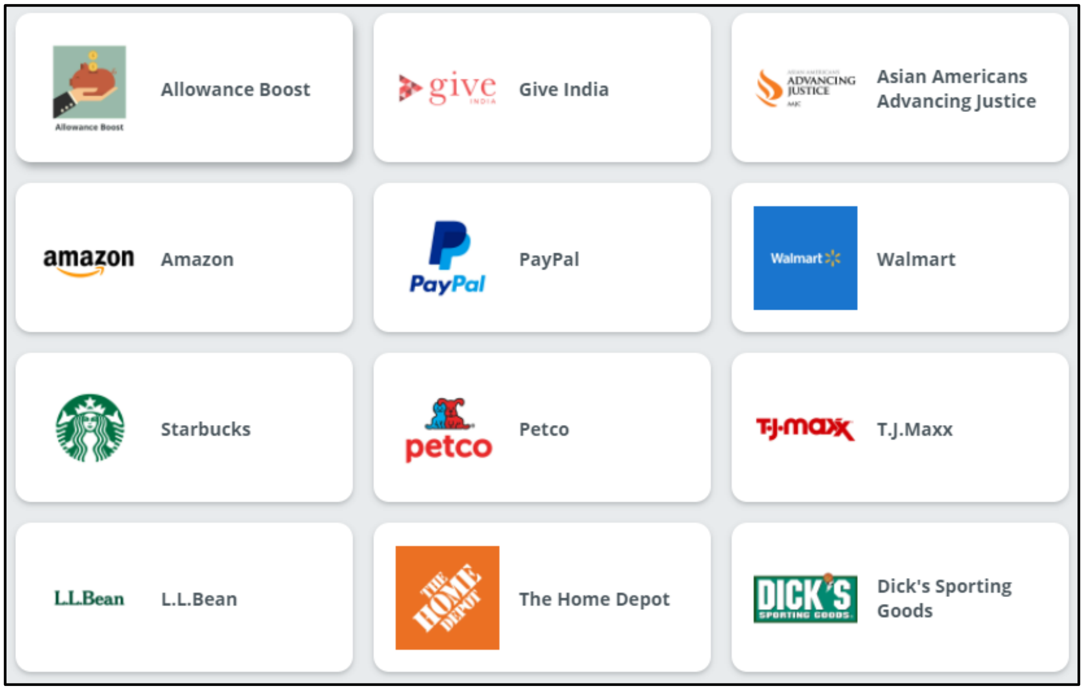


Chris Martz: +100 @rdietzman @tferrill thanks for a great roll out with LSNL finally! Could not have gone better. Another happy client #footonthegas #delightingourclients #oneteam



Tarin Ferrill: +30 **@sdevlin** #thankyou for being a constant voice of reason - I always leave our calls with a better sense of direction. #leadership #iappreciateyou #raisethebar #11or1 #funonaboat #thatswhatyouneedtotellher

The points giveaways are emailed to all employees in a daily digest and many employees have received thousands of dollars in bonus money through this. The points can be redeemed for cash, gift cards for hundreds of vendors, or charitable donations. For example:



Allowance Boost	Give India	Asian Americans Advancing Justice
Amazon	PayPal	Walmart
Starbucks	Petco	T.J.Maxx
L.L.Bean	The Home Depot	Dick's Sporting Goods

I admittedly initially thought the Bonus.ly idea was stupid, but I was wrong. It makes you *think* about thanking people (you can't be angry when you're being thankful), and our employees love it (not just the bonus money, but also the company-wide recognition).

C. **Meeting Recommendations**: Yes, I'm aware that everyone hates meetings, including me. However, here are some recommendations for meetings that work and for which their usefulness far outweighs the annoyance factor associated with *any* meeting. I also recommend that everyone keep their webcams on for all meetings so that everyone can see each other. Being able to read facial expressions and body language goes a long way to improving overall communication.

1. **Traction Meetings**: At Affinity, everyone was required to read two books that cover the same subject matter: Traction by Gino Wickman and Get A Grip: How to Get Everything You Want From Your Entrepreneurial Business by Gino Wickman and Mike Paton. We implemented the principles outlined in those books into our own business and it has paid great dividends. A full discussion of that is beyond the scope of this seminar. However, one of the results of it was what we call Traction Team Meetings. They last exactly 60 minutes and here's how they work:

   Every 2 weeks, my department has a meeting. We begin by going around the room and everyone offers up one piece of good news personally and one piece professionally. Then we write down highlights and achievements (anything good that happened business-wise since our last meeting). Next, we identify issues (this can be anything). We don't discuss or belabor the issues, we just record them in a document that everyone can see on the TV in the conference room. At that point, everyone votes on which 3 issues they would like to work on this meeting. We tally up the votes and whichever issue received the most is worked on by everyone in the room. Assigned tasks usually arise from trying to solve the issues and problems and those are also written down. Then we go through the existing list of tasks and everyone is only allowed to respond either "done" or "not done." If it's not done, you are not allowed to defend yourself. Finally, we rate the meeting 1 - 10 and adjourn.

   I dislike meetings in general, but these have proven to be incredibly powerful in terms of improving communication, solving problems and eliminating issues. Prior to this, we all knew what the issues were, but we never actually had a forum for trying to resolve them. As a result, they would remain unresolved for literally years at a time. After a couple of years of Traction meetings, we often have no issues left to resolve and we use it as an opportunity to learn/educate, brainstorm on new ideas, talk about what everyone is working on and help each other. When an issue does arise, it is quickly resolved.

2. **1-On-1 Meetings With Staff and Lawyers Who Work For You**: Particularly in view of how COVID has physically separated people from each other,

scheduling brief touch-base meetings with important people in your operation every 2 weeks is a great way to help stay connected. In some cases, we end up talking about things that have nothing to do with work, but it's a way to connect with people the way you might do through casual conversation if everyone were in the same office.

Many managers argue that they don't have time for 1-on-1's. Without pulling any punches, just remember that if you aren't doing 1-on-1's, you probably aren't really connecting with your people, and if they don't feel connected to you, they likely don't feel connected to the company. If you aren't doing regular check ins, you also aren't managing your people – or at a minimum you aren't managing them the way they need you to. Working from home can be lonely and you might not get as much feedback from your manager when they aren't standing over your shoulder or a stones throw away in their office. I'd also like to note that the 1-on-1's made it on the list for another important reason – when I interviewed each of my team members, it was the one item they all mentioned as important to them feeling connected.

3. **Regular Case Meetings**: No one likes meetings, but regular meetings during which case statuses are discussed can be really important for making sure everyone is on the same page. They can be timed and it should be someone's job to ensure that meetings stay on track.

4. **Monthly All Staff Meetings**: Monthly staff meetings are a great way to let everyone know what is going on with your office - what cases are underway, and what challenges and opportunities your office is dealing with. We also use these meetings to provide financial transparency in terms of the company's performance, where we are with the bonus pool (more on this later), introduce new employees, and explain new projects.

D. Consider a Business Communication Platform: For this, we use **Microsoft Teams**, but a similar service would be Slack. Teams is included in most Microsoft 365 plans and can be used for the following:

1. **Instant messaging** - see paragraph VIII.G. below.

2. **Web meetings** - see paragraph VIII.F. below.

3. **Share Procedural Information and Announcements**: Within each team are channels. You might have a team for each practice area and channels for sub issues. You might also have a team for administrative items. For example, we have a team called Affinity Resources and its channels include General, Affinity Gives Back (our charitable efforts), Cybersecurity, Staff

Meeting Updates, HR Announcements, Birthday Announcements, Marketing, and Microsoft Teams Q&A.

For a legal example, an estates and trusts lawyer could put procedural information for a release/relief from probate process and a full probate administrative process. Much of the “what you do and how you do it” can be recorded in Teams.

E. **Voice Over Internet Protocol (VoIP) Phone Systems**: If you’re not already there, getting a VoIP phone system is critical for practice portability because it will follow you anywhere and works from anywhere (as long as there’s an internet connection).

1. **Explanation and Benefits of Hosted VoIP**: As opposed to an on-premises VoIP system which requires a lot of hardware and software up front, hosted VoIP is better, costs dramatically less, and insulates you against a mishap or internet disruption at your office. The following is from www.VoIP-Info.org which is the most succinct explanation I've come across:

   Hosted VoIP: Hosted VoIP is another term for Hosted PBX. "Hosted" means to say that the hardware and PBX is hosted at an off-site location from where the VoIP telephone service is being used. An office can have VoIP telephone service that powers their phones in the office, but their PBX could be hosted at their VoIP providers data center, thus the term: hosted VoIP.

   Benefits of Hosted VoIP: There are many benefits to using Hosted VoIP rather than a traditional phone system, or an on-premise VoIP system. The main benefit is cost- a Hosted VoIP system costs much less to set-up than an on-premise PBX. In many cases, there are no set-up fees for a hosted VoIP system. Hosted VoIP phone systems fall under operational expenditure rather than capital expenditure, which also make hosted VoIP systems attractive to businesses.

   Another benefit to a hosted VoIP system over an on-premise PBX is that hosted VoIP providers will take care of all the set-up and installation, meaning you do not need to be a telecom or VoIP expert in order to get hosted VoIP.[22]

2. **How VoIP Works**: VoIP phone systems simply need an Internet connection in order to work. As such, anywhere you have an Internet connection, you can be connected to your office phone system. You can make and receive

---

[22] See http://www.voip-info.org/wiki/view/Hosted+VoIP

calls; calls can be transferred to you and you can transfer them to others; and voice mails are emailed to you as sound files so you can receive and listen to them anywhere. The list of standard features on VoIP phone systems are so long, you'll be shocked. Further, they're inexpensive.

3. **Sample Budget**: Here's a quote for a completely mobile phone system one of our clients recently obtained from www.RingCentral.com:

    a. Recurring monthly fees for 3 users (unlimited calls): $83.97

    b. Phones & Hardware (one time fees)

        i. Receptionist Phone $159.00

        ii. User phones (2) $238.00

        iii. Shipping fees $18.98

        iv. Discount .... ($90.00)

        v. Total one-time fees: $325.98

    This includes a fancy receptionist phone and two other hard phones which can be used anywhere as long as they're connected to the Internet. Total cost per month is only $83.97 and it doesn't change. Further, the foregoing service includes a **softphone service** which allows you to use your computer (Windows or Mac) or Android or iOS device as your office phone. It has an incredible array of features you can check out here: http://tinyurl.com/mub5xak

    Having helped several clients get service from RingCentral, if you want to contact them, I'd recommend going straight to the incredibly helpful person I worked with there. Her contact information is: Narissa Rocha @ 800.372.7765 x 0187 or narissar@ringcentral.com.

4. **VoIP Providers**: There are many other VoIP providers out there including the following:

    a. **RingCentral** - www.ringcentral.com

    b. **Vonage** - https://bit.ly/3uxDOQ4

    c. **Nextiva** - https://www.nextiva.com/

    d. **8 x 8, Inc.** - www.get8x8.com

    e. **Hover Networks** - www.hovernetworks.com

F. **Web Meeting Services**: You obviously need a good web meeting service and so there's a more meaningful connection with people you're meeting, I'd recommend that you require web cams be turned on for all internal meetings.

1. **Recommended Services**: Anyway, here's the short list of good services. Zoom is easily my favorite having used all of the following, but if you already subscribe to Microsoft 365, then you probably have Teams included and the free price tag associated with that might be too much to overcome.

    a. **Zoom**: https://zoom.us/

    b. **Join.Me**: http://join.me

    c. **GoToMeeting**: www.gotomeeting.com

    d. **WebEx Meetings**: www.webex.com

    e. **Microsoft Teams**: https://bit.ly/2KAQXHj

    f. **Adobe Connect Meetings**: http://tinyurl.com/y8877ncu

    g. **BlueJeans**: https://www.bluejeans.com/

    h. **ClickMeeting**: https://clickmeeting.com/

2. **What You Should Know How To Do With Your Service**: It's not just enough to *have* a web meeting service, everyone in your organization should know how to schedule a meeting, connect to one, mute/unmute, turn on or off one's webcam, share one's screen, request keyboard/mouse control, chat, and record meetings (at a minimum). You should also know how to control the miscellaneous settings such as LOT making people wait to be let into your meeting if that's inappropriate, default attendee web cams to on or off, add Canadian dial-in numbers as appropriate, etc.

G. **Secure Instant Messaging**: For quick chats with employees, this type of service is invaluable. The last thing anyone needs is another email. So if you need a quick answer or want to provide a quick answer, instant messaging is key. We use Teams for this and it's easily one of my favorite features of that program. The resulting conversations are private, and searchable. Here are a few services:

1. **Microsoft Teams** - https://bit.ly/3yQkgcV

2. **Slack** - https://slack.com/

3. **Google Chat** - https://workspace.google.com/products/chat/

H. **Professional Answering Services**: If someone is responsible for answering phones, it's nearly impossible to be productive at anything else due to the constant interruptions. Therefore, consider an out-sourced phone answering service. They can take messages, transfer calls, answer questions about your practice, put appointments on your calendar and a variety of other services. Here are a couple of the best services out there:

1. **Ruby** - https://www.ruby.com/
2. **Smith** - https://smith.ai/

I. **Other Ideas**: In order to foster employee engagement and inclusivity, we have also implemented the following ideas which have been big hits internally:

1. **Virtual Happy Hour**: We hold these once a month on Fridays at 4 PM. It's a giant Zoom meeting and the Ministry of Fun (see next paragraph) always has some activity planned.
2. **Ministry of Fun**: This is effectively a committee of 5 people whose job it is to come up with ideas for ways of making working at Affinity more fun.
3. **Annual Retreat**: The last time we did this was before COVID, but we flew everyone to Chicago and had a weekend of fun, group activities, team building and the like. This was extremely well-received by the employees.
4. **Affinity Gives Back**: This is another committee that finds a charitable cause to get behind each month and then invites everyone to participate.

IX. REMOTE EMPLOYEE MANAGEMENT RECOMMENDATIONS:

A. **Track Time**: Lawyers are typically keeping track of their time already, but administrative support people are not. However, you can't establish productivity goals and fully understand what someone is doing if they're not tracking their time. Further, you don't know what your true costs are for a particular service unless you can see *all* of the time involved in rendering the service. For example, we did a project for an estate planning department within a larger firm several years ago. From start to finish, the average amount of time invested by support staff on a typical estate planning engagement was 10.5 hours and the average lawyer's time was 5 hours. Further, all of the estate plans were priced as a flat fee. Without factoring in the time spent by staff, it's impossible to calculate whether a particular flat fee is yielding an acceptable, effective hourly rate. Today's legal accounting and billing systems make time entry easy from anywhere. If you need suggestions, send an email to me (bhenley@affinityconsulting.com).

Finally, there must be **accountability** on time entry. If someone has fallen off the wagon and has no time entered into your system for a week, then you must address the issue with the employee, no matter how uncomfortable that makes you. Further, you must set a good example on time entry because you have no right to admonish someone else for not doing it if you're not doing it.

B. **Set and Manage Expectations**:

1. **Define SMART Goals**: SMART stands for Specific, Measurable, Attainable, Relevant and Time-Bound (this means time-based, time limited, time/cost limited, timely, and/or time-sensitive). People working from home tend to complete tasks faster, but they need clear, measurable goals.

   An example of an un-SMART goal would be "all emails must be responded to timely."

   A SMART goal would be: Email should be responded to within 24 business hours if possible. If it is not possible to respond in detail within 24 business hours, but someone else on your team may be able to do so, then forward the query to the other person (or to your team) and ask them to respond. If no one else is available or no one else has the skill set to respond, then create a reminder to respond so you don't forget to do so, and send a very brief response to the sender letting them know that you can't respond immediately, but will do so by whatever deadline you have determined is reasonable or possible. If someone internally emails you a request to perform a particular task, please email a confirmation back to the sender that you received the request and the date/time by which you intend to have it completed. If the request has no expressed deadline, then ask the sender for one or if one is applicable.

2. **Provide Assistance with Time Management and Prioritization**: For example:

   a. Time management training (lots of options for this on the web)

   b. Calendaring time to work on specific projects

   c. Utilization of task management tools or software

   d. Sharing information with team members that can help them prioritize

   e. 1 to 1 or team project/work reviews

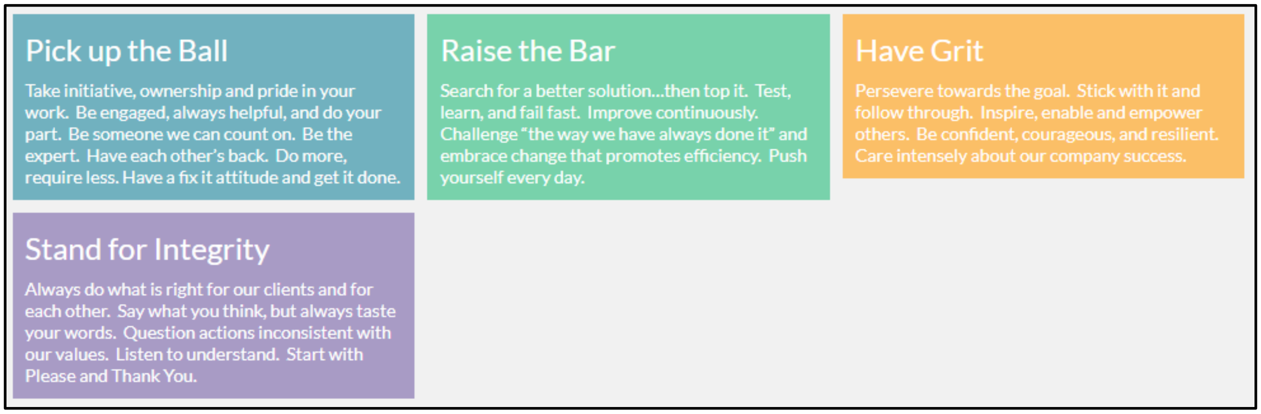
C. **Be Available and Responsive Internally**: We all get buried in work and email, but it's important to be available for people and responsive to their requests for assistance. Ask "How can I help?"

D. **Work To Give Employees A Sense of Belonging**: A sense of belonging is particularly important for remote workers because they often feel more disconnected from the company they work for. One of our employees said “I like that the remote employees aren’t treated as an afterthought like at my old firm.”

Working from home may be a benefit, but if there are added benefits of working in the office that are not enjoyed by those working from home, they may feel resentful. An example is birthday celebrations, which usually only happen in the office. Sending a birthday card with a small gift card or offering to order them lunch on the firm is a relatively inexpensive way to help people feel like they belong in the same was as those in a physical office.

It's also important to get to know your people inside and outside of the office. What are they passionate about outside of work, what makes them tick, what is their family situation (for example, if they have small children at home, it will require some accommodation on the part of the employer).

E. **Promote Collaboration**: It’s a good idea to enable and encourage team members to share knowledge and information. Some of the aforementioned tools like Engagedly and Teams can help with that. It’s also a good idea to put your firm’s vision statements or core values in a public place where people can find them and be reminded. For example, our core values are in Engagedly and we reference them often:



Pick up the Ball

Take initiative, ownership and pride in your work. Be engaged, always helpful, and do your part. Be someone we can count on. Be the expert. Have each other’s back. Do more, require less. Have a fix it attitude and get it done.

Raise the Bar

Search for a better solution...then top it. Test, learn, and fail fast. Improve continuously. Challenge “the way we have always done it” and embrace change that promotes efficiency. Push yourself every day.

Have Grit

Persevere towards the goal. Stick with it and follow through. Inspire, enable and empower others. Be confident, courageous, and resilient. Care intensely about our company success.

Stand for Integrity

Always do what is right for our clients and for each other. Say what you think, but always taste your words. Question actions inconsistent with our values. Listen to understand. Start with Please and Thank You.

By Barron K. Henley, Esq.
bhenley@affinityconsulting.com
Affinity Consulting Group
1550 Old Henderson Road, Suite S-150
Columbus, Ohio 43220
Phone: 614.340.3444
Web: www.affinityconsulting.com