

Client Files Makeover: The Move From Paper To Electronic Files

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April 22, 2006

**American Bar Association
Techshow 2006**

Chicago, IL

THE EVOLUTION OF RECORDED LEGAL INFORMATION

Since the beginning of time, the human being has had a need to record information for later use. We just couldn't remember everything all the time. So, recording information in some type of fixed medium that will allow for later retrieval is an age old problem. Cave men and women drew on the stone walls of their caves. This was not exactly a portable system, but it did have the advantage of being a pretty darn enduring medium. Later, we would move to carving our writings on more portable stone tablets (think Moses, or the Rosetta Stone). But this was still quite laborious, not to mention heavy. Then, the Egyptians invented paper, and the rest as they say was history. Information could be recorded quickly and easily. Paper was lightweight and highly portable. People could now send letters to one another. Paper became the vehicle for transmitting recorded information from one person to another.

We in the legal profession began to use paper to record legal information such as wills, deeds, indentures, etc. We would then take the paper to a central repository such as a court, and "file" the document with the court. Thus insuring its preservation, authenticity and legitimacy.

Lawyers have come to revere paper documents. The older the paper is, the better. The more wax seals and ribbons that adorn it, the greater respect it is accorded. Walk into the conference rooms and reception areas of many firms, and you will find framed examples of really old handwritten paper. We worship the stuff. Attorneys will almost speak in hushed tones when discussing "the original" of a document. The legal profession has been steeped long and hard in the paper tradition.

Law school instilled in us the idea that we can't even begin to talk about a writing without having a copy of it in our hands. Professors would announce the name of the

case to be discussed, and a flurry of paper shuffling would ensue as the class immediately flipped opened their text books, and turned to the case in question. We couldn't even talk about it, until we could touch it.

The advent of the photocopier, and the ability to quickly reproduce paper added fuel to the fire. Now, not only could we have the original paper, but we could make lots and lots of copies of it. Like rabbits, paper documents began to multiply in a firm. More and more room was required to store it all. More and more resources to file it, and keep track of it, not to mention trying to retrieve it later.

But it was the introduction of the computer that has really driven the volume of paper in our offices. Now, we can produce original paper faster than ever before. And we can reuse older electronic drafts to produce newer documents with just a few edits. More paper, faster, more, faster. Now, fax it to others, and received theirs via return fax. Faster, faster, more more. Now e-mail it as an attachment. Faster, faster, more, more. Until now, we are drowning in the paper. We can't keep track of it. There's just too much. We feel overwhelmed by it all.

THE DIGITAL DIFFERENCE

We have only begun to understand the difference that digital information will have on us, and the practice of law. As lawyers we began using digital information as a convenience to help us produce work product. Our computers were glorified typewriters. We didn't need to completely retype that lease or contract, we could just pull up an earlier digital edition, make a few changes and print to paper. Voila!

And then the world as we know it changed, with the advent of the World Wide Web and the Internet. It's no longer about possession of the paper. It's about

possession of the CONTENT of the writing. It's about the information itself, not the medium it is stored in. And more than ever, it's about having access to that content quickly and easily. Digitizing information has allowed us to deliver and exchange information at a speed heretofore unknown. The business expectation of access to information has become one of immediacy. Everyone wants access to the information that they need or want IMMEDIATELY, 24/7/365. This includes our clients as well as ourselves, and our coworkers.

Digital information can be stored, copied, reproduced, and shared far faster and cheaper than paper. Thus it will become an even greater factor in the way we communicate and conduct business in the 21st century and beyond. If you doubt this, ask yourself two questions.

- 1) Do you handle more, or less digital information now than you did five years ago?
- 2) Do you project that you will handle more, or less digital information five years in the future?

DEBUNKING THE MYTH OF THE PAPERLESS OFFICE

A business completely and utterly devoid of paper is not going to happen any time soon. We have too much of a paper tradition, and there are still times when paper is a more appropriate medium in which to record and transmit information. However, we can, and should, begin to explore and plan for ways in which we can substitute digital

information in place of paper. The goal is thus a paper LESS office¹, not a paperless office. The phrase “low paper workflow” which is much more in keeping with tone of change I am advocating here.

Indeed, our offices have already begun to use less paper as we incorporate e-mail and digital document storage into the way we work. However, much of the way we use digital information in our practices has occurred in a higgledy-piggledy fashion with no coherent plan. Thus, there is no “system” of creating, using and storing digital information in many firms. This leads to frustration with trying to use the digital data, and the instinct to revert back to paper.

Using less paper in your office is highly dependent on a unified way of keeping track of the digital data. We all feel comfortable using paper because we know what to do with it. Offices have a set filing system for the paper. However, many firms don't have a coherent digital filing system, and so become disillusioned with trying to reduce their paper use. In devising such a plan for your business, we need to know two things: WHAT are we going to produce/file/store, and WHERE are we going to file/store it.

PDF AS THE MEDIUM OF EXCHANGE

So if paper is out, what's in? There are many forms of digital information: word processing documents, spreadsheets, e-mail, web pages, graphics, photos, text, etc. In the early days of digital data there was no uniform way to look at information. If you had a WordPerfect digital file for example, then the recipient of your digital information

¹No discussion of reducing the amount of paper used by a law firm would be complete without due respect and recognition to Ross Kodner of Microlaw, Inc., one of the first legal technologists to discuss the subject of digitizing paper in this industry.

had to have a corresponding copy of WordPerfect which had authored the file in order to read it. As the authoring programs evolved through their various editions, we learned that we might experience incompatibility between newer items created in newer versions of a software program that were unable to be interpreted by older versions of the same program, and vice versa.

Enter Portable Document Format (PDF). At its heart PDF is a standard that ensures that information can be readily accessed across authoring tools, editions of the same authoring tool, operating systems and computers. It is in fact independent of the authoring tool altogether. Invented by Adobe Systems, Inc. in 1992, PDF has become the defacto standard for file sharing and digital preservation. A huge reason for the adoption of PDF as a standard is the free Adobe Reader. When Adobe made the Reader available for free, it meant that authors no longer had to worry about whether their information recipients would be able to read their digital files. Authors could create PDF files and send them to the recipient who could then open, read and print the information with the freely available Reader. Thus, it matters not which program you author a PDF file in, anyone with the free Reader will have access to the same experience when consuming the digital information.

One of the key concepts of the PDF standard is the idea that information stored in earlier editions of PDF be readable in future editions. I.e., the file you create today, will still be accessible 50 years from now. Indeed, there is a new standard under development called PDF/A, or archive, that has is being developed for this exact purpose.

PDF files preserve the look and experience of the original authoring tool by including the font and other visual elements within the file. Instead of printing the

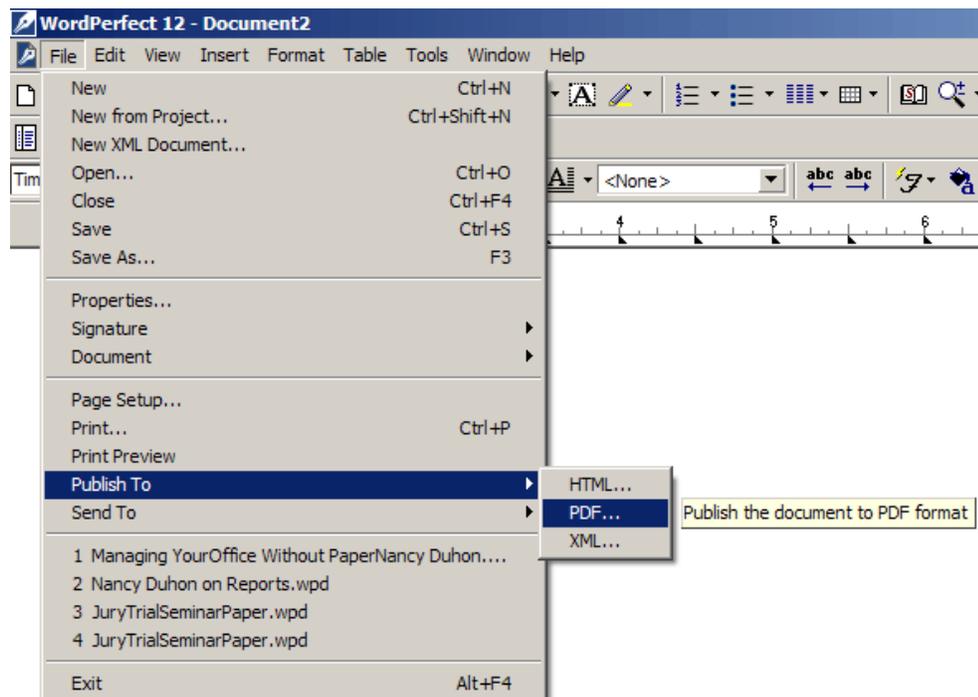
output to the fixed medium of paper, the information is “printed” to PDF which captures how the information would have looked if printed on paper. It is in some respects a picture of what the paper printout would have looked like.

HOW ARE PDF FILES CREATED?

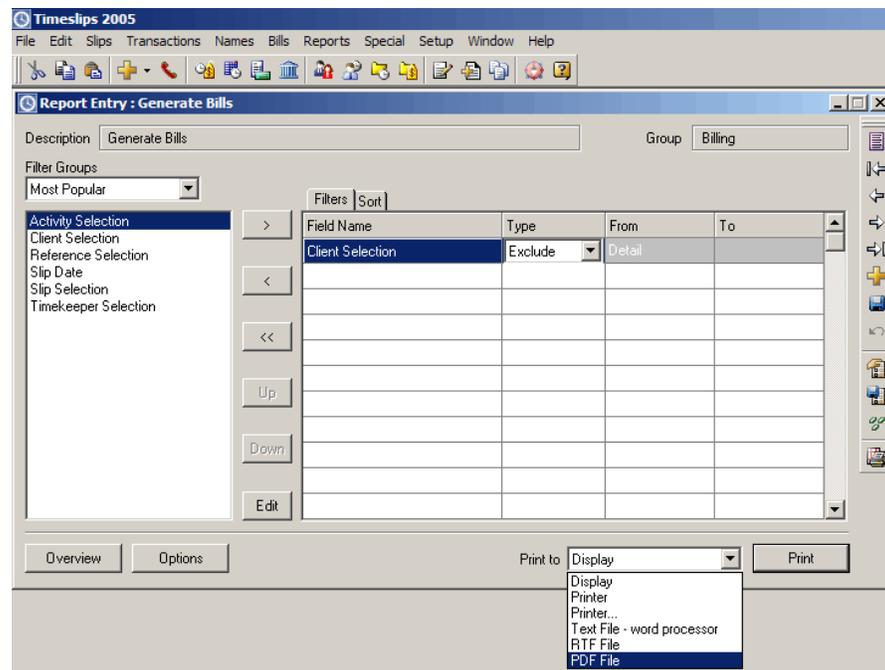
There are three primary ways that PDF files are created:

- 1) Via a program-specific PDF writer that is provided within the authoring tool. For example, both WordPerfect 9 and higher, and Timeslips 11 and higher, have included drivers that allow you to produce PDF files from within the applications themselves. The advantage here is the lack of need for additionally purchased software.

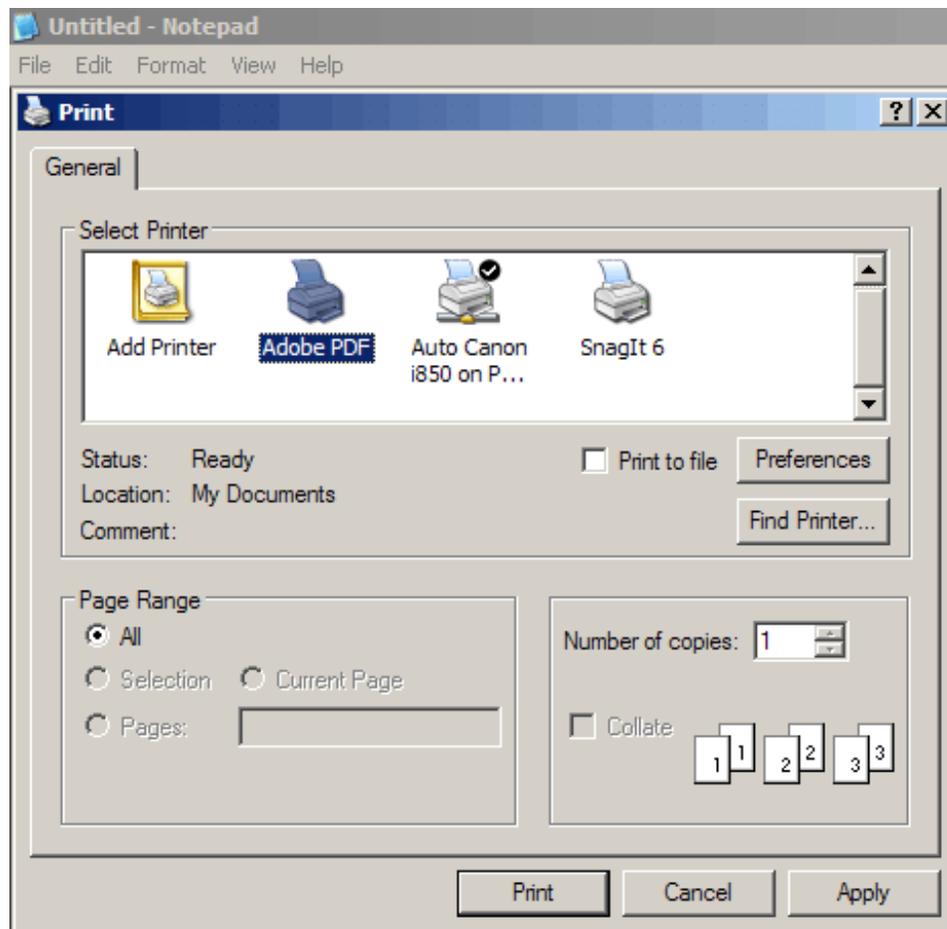
Example of how to produce a PDF from WordPerfect.



Example of how to produce a PDF from Timeslips.



- 2) By using Adobe Acrobat, or other system-wide PDF writer. This is a separately purchased software product that allows you to produce/author PDF files from ANY of the programs on your computer that can print. It installs a new type of printer. In the case of Adobe Acrobat the printer option is called Acrobat PDF and is available from any program's print command. Simply choose to "print" your data to the Adobe PDF "printer," and you will get a PDF file. It is worth repeating that with any of these types of products, you can produce a PDF from ANY program on your computer.



- 3) But what if the item you want to store digitally is in paper form? I.e., incoming paper correspondence, or snail mail. Well, then you will need to scan the paper document to PDF. In which case you will need a scanner that comes with software that will produce a PDF.

TWO FLAVORS OF PDF

Not all PDF files are created equal. The biggest distinction is a file that is written directly to a PDF from an authoring tool, and one that is scanned to PDF. These two methods produce two very different types of PDF.

The first type of PDF I'll call image-and-text. You get an image-and-text PDF when you produce the PDF directly from the authoring program as outlined above. When you do so, the authoring program provides an underlying layer of text, or characters, that go into the PDF along with the graphical image. This text layer can be copied, pasted, edited and searched. Image-and-text PDFs are MUCH more powerful and useful than image-only PDFs.

The scanned PDF I'll call an image-only PDF. It is in essence a snapshot or picture of the page. It is very similar to the older microfiche you may have worked with at a library. It should look exactly like the original, but look is the operative word here. You can read it, but you cannot copy, reuse, search or re-purpose any of the text. It is a bit like a statue in a park, nice to look at, but that's all you can do with it.

So, if all you have is a scanned image, is there anyway to add a text layer to it? The answer is yes, you can OCR (optical character recognition) the scanned image. You will need software to do this. Adobe Acrobat has some basic capabilities to do this, and other software products have been specifically designed to accomplish this function. Basically, the software will attempt to interpret the graphical image as text characters. While OCR technology has gotten better over the years, it is important to note that the results are not 100% accurate yet.

WORKING IN A REDUCED PAPER WORKFLOW

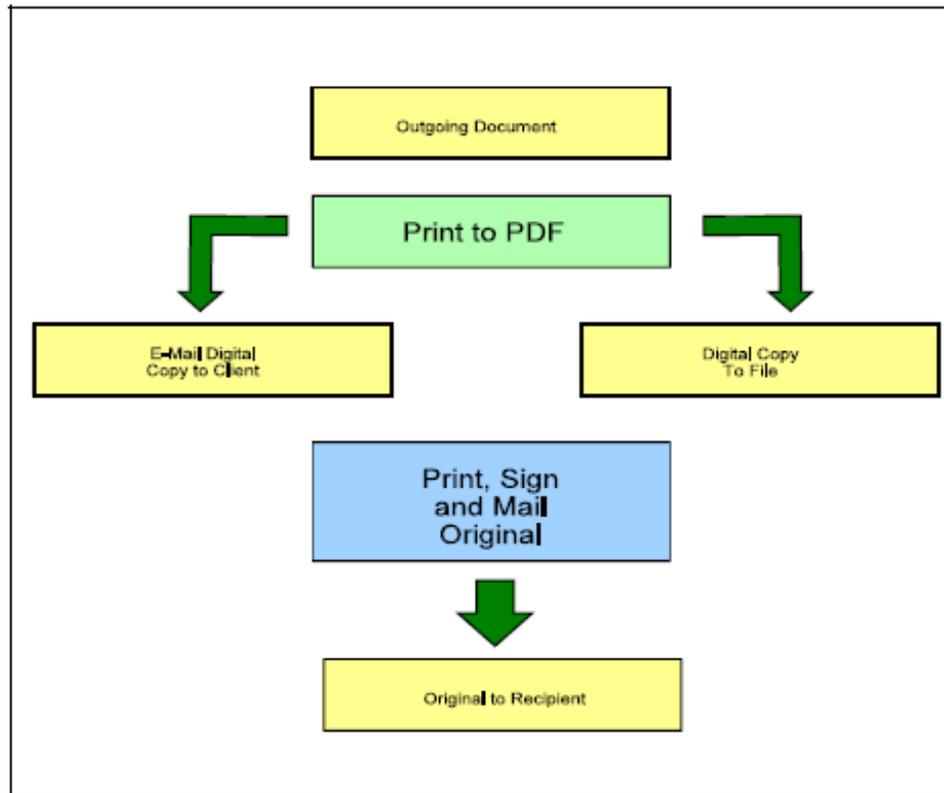
So, what is it like to work with less paper and more digital information? How might your own workflow differ? Let's look at some examples.

To begin, let's divide up all the paper in your workflow into two stacks. The first will be paper that you produce. This will include: paper letters and documents, paper checks, and photocopies. The second stack will represent the paper you receive from others, and need to use in your workflow.

This CLE presentation is a great example of using less paper. I never printed it to paper. I used WordPerfect 12 to draft the content, and then "printed" the document to PDF, and e-mailed it to the American Bar Association. No paper, no dead trees, no toner, no staples, no envelope, no stamps/postage. I have a digital copy of the paper on my hard drive should I need it. Since I produced it in the first place, it is an image-and-text PDF that is searchable and reusable. Indeed, the ABA specifically requested that the materials be provided in digital format in the first place. They didn't want the paper.

So, let's assume you are drafting something that you will ultimately want to print and mail. Go ahead and print the original for that purpose, but then cut out the additional paper elements of photocopying the paper for your file, and for the copy of

the document you send to your client. Your production process would look something like this:



Outgoing Document Print to PDF

Copyright, 2004 David Masters.

How about those monthly reports that you print out from your firm's financial software package and give to the partners. Instead of printing, copying and manually distributing them, try printing to PDF and e-mailing them.

Online banking is a great way to reduce paperwork by handling bill paying and transfers between accounts without producing paper checks. Many banks such as Bank of America are making digital images of your cleared checks and deposits available online. The new Check 21 regulation makes returning your cancelled paper checks to you unnecessary. If you need a copy of a particular cancelled check you can ask your bank for a printout of the scanned check and it will be accepted as an original document.

Many large consumers of legal services have begun using the services of outside legal bill audit houses. If you have such a client, you know that you no longer produce a paper bill for them. You generate a digital file that is uploaded via a website to be analyzed. This is a growing trend, not a receding one. Look for more and more large clients to request this from you.

Online order confirmations are one of my favorite items to reduce my paper flow. I place orders online with several vendors. Inevitably at the end of the process I am presented with a screen that gives me an order number and confirmation. I used to print these out to paper without a second thought. However, more recently, I'm using Adobe Acrobat to capture the web page, and store the data as a PDF. There's nothing "original" about the paper printout. All I really need is access to the content, which is the order confirmation number, etc. I can get that readily from the PDF.

Take up the following challenge in your firm. Whenever you find yourself wanting to make a paper photocopy of something, ask yourself if you need that copy in paper form, or if you just need access to the content. If the latter, you can scan the paper instead of photocopying it. My office recently made the switch to scanning our bank deposits rather than copying them. In essence I have a digital copy rather than a paper copy of something. If I later need a paper copy, I can print the scan, and I have essentially "paper copied" the document. So, I've lost nothing by digitally copying it first and then only paper copying it as needed. Indeed, many of the newer photocopy machines have the ability to scan directly to PDF as well, making them more of a document center for your firm and less of a copier.

If you practice in the personal injury/medical malpractice area, consider producing PDFs of your next demand package. You can have the letter and supporting

exhibits all together in one PDF with bookmarks and hyperlinks that assist the reader in navigating to the supporting documentation.

If you file a pleading or appeal, create it as a PDF with hyperlinks to the underlying citations.

STOP sending drafts of documents in Word/DOC format to people whom you don't want to be able to copy/steal your intellectual property, and who then have access to all the metadata in the document. This is an area where lawyers really have gotten into a very bad habit through lack of understanding and planning. One day they just started attaching DOC files to e-mails, and never gave a second thought to the ramifications of doing so. If you draft a will for someone and e-mail that draft to them, don't be surprised when they never call back to finalize it (and pay you the rest of your fee). You've given them everything they need to make their own edits in Word, and take it to their local notary to finalize. Oh, and by the way, don't be surprised when their brother has a new will, and their neighbor has a new will, and their best friend has a new will, etc. etc.

The malpractice implications of sending DOC files to people who can then access the metadata contained in them is truly frightening. Since so few attorneys ever draft anything from scratch, they are usually pulling up an old copy of a document that is close to what they want, and then making edits to get to their final product. What the vast majority of lawyers fail to realize is that Word can track those changes, and keep them with the document. So when you send that newly edited DOC to someone, they have access to the original content. Please, please stop sending DOC files when you don't intend to share such information. Send them a PDF instead. Even better, send

them a PDF with security features turned on that don't allow them to copy text, or that have watermarks and backgrounds.

Now, for the inbound paper. You open up your snail mail and there are all sorts of important papers therein: letters, pleadings, discovery, bank statements, credit card statements, payroll reports, etc., etc. A workflow that once demanded that you walk over to your photocopier and make a two copies, one for the file and one to send to the client, might now be: walk over to the scanner, scan a single copy, save it in the digital folder and e-mail it to the client.

Much of what we reproduce multiple times in paper can be cut out by reproducing digitally once. For example, the problem of creating copies of copies with degrading quality goes away.

But perhaps the biggest and most exciting thing about digital copies is what we can do with them in Adobe Acrobat and other programs that let us apply tools to the PDFs. Let's take the example of some medical records received as discovery. Now, these are not original documents. They are copies that the firm receives in the mail. Upon receipt, they will be photocopied again and again. A copy will be made for the medical records paper file, for the correspondence received file, to be sent to the medical records reviewer, as a working copy by the reviewer so they can markup and comment on the records, etc., etc., ad nauseam with each copy of a copy losing content clarity until we can barely discern what the content is. If instead of all that paper copying a single digital copy was made, then the resulting records could be reviewed and commented on digitally. Instead of indecipherable handwritten notes, we would have searchable typed text. Many reviewers could comment on the same document in different colors. These comments can then be printed separately as a synopsis. They are another layer to the

file, so they can be withheld from printing as well. Thus, not “corrupting” the original image.

E-FILING AND ELECTRONIC SIGNATURES

The idea of filing documents digitally with the courts is a reality today. In my home state of Georgia, the state Code specifically authorizes the use of digital files signatures in Title 10, Section 12, enacted in 1997 as the Georgia Electronic Records and Signatures Act. Some federal courts such as the Bankruptcy Courts, Patent and Trademark Office and the Federal District Courts REQUIRE digital filing by lawyers who practice before them, and the trend is on the rise. E-filing will be the wave of the future, and PDF will be the standard format for these filings.

KEEPING TRACK OF THE DIGITAL INFORMATION

So, if more and more information will be stored digitally, what can law firms do to keep track of all of it. There are three approaches to this dilemma. The first is to make full use of your computer’s inherent ability to store information in hierarchical folders. This approach requires a large amount of dedication by everyone creating any kind of file in your office. You can create any number of layers or subfolders necessary to attain the level of specificity you need to be able to find what you are looking for.

This approach runs into trouble in larger firms where the discipline of organization sometimes unravels or differs from department to department. There are specialized products that can be implemented to “force” document filers to profile or index any document they wish to save. Worldox, Interwoven Worksite (formerly iManage), docStar and others are examples of these programs. They tend to be a bit

expensive, and can be a bit difficult to divorce from if you are unsatisfied later. They work by building an index of key terms and levels in your document storage system.

The third option is not so much a method of storing files as it is a way of finding files, especially ones that have been misfiled somehow. This option involves the use of desktop search engines such as X1, Copernic, Wilbur, or Google Desktop. These programs work by creating indexes of your files based solely on the file's name and text content. They do not force you to profile the file when you save. They are generally much less expensive than the specialized applications, and should probably be used in conjunction with option one above.

MAKING HASTE SLOWLY

We've covered some fairly radical new concepts for a law firm here. None of this is going to suddenly spring into action overnight. The reduction of the amount of paper used and the increase in digital information will continue to evolve over the next several years. But the time has come to begin, and to try to plan for future growth in this area. The rubicon has been crossed on this issue. There will be no turning back. Firms need to develop a PLAN for how they will be dealing with digital information over the next few years. Those who fail to plan, will be planning to fail.

ADDITIONAL RESOURCES:

Ross Kodner's website: www.microlaw.com

Adobe Acrobat for Lawyers by David Masters, published by the American Bar Association

Materials available via Adobe Systems website and specifically targeted to law firms:
<http://www.adobe.com/products/acrobat/legal.html>

General Acrobat books by authors:

Ted Padova

Adobe Reader 7 Revealed: Working Effectively with PDF Files
Adobe Acrobat 7 PDF Bible

Donna Baker

Adobe Acrobat 7 in the Office
Adobe Acrobat 7 Tips and Tricks: The 150 Best

Online bulletin board community of users at:

<http://forum.planetpdf.com/webboard/wbpx.dll/~planetpdfforum/>

-this bulletin recently added a special section for questions related to PDFs in the legal market.