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Daniel W. Dugan, Ph.D., president, Trial Science Inc.,Reno, Nev.

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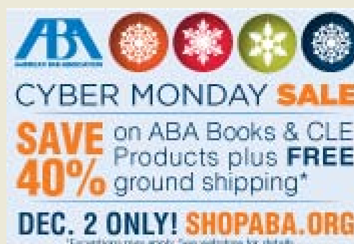

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YOURABA December 2013 e-news for members

Establishing a mobile strategy for law firms

Stephen S. Wu

The world is undergoing a transformation in which people are integrating mobile devices into their work and personal lives, said Stephen S. Wu, author of the new book "A Legal Guide to Enterprise Mobile Device Management." "Let's face it: We love our mobile devices," Wu wrote in the preface of his book.

The guide examines key concepts, considerations and issues in mobile device management from business, legal and technical perspectives. In addition, the chapters provide background information on business drivers and technology, with the goal of aiding lawyers who may be unfamiliar with them — and assisting lawyers in counseling their clients.

Wu, who advises organizational clients on information governance policies, is a Silicon Valley partner in the law firm Cooke Kobrick & Wu LLP. YourABA spoke with Wu recently about his book and the topic of mobile device management.

How does the issue of managing mobile devices touch law firms, both large and small?

Managing mobile devices is relevant to law firms because many of our clients are undergoing a transformation in the way they process information. Our clients are increasingly using mobile devices for day-to-day computing tasks so they can obtain access to work information from multiple devices and from multiple locations. Whether they are traveling out of town or telecommuting, they will frequently need to access information outside their normal office settings. With this new work reality impacting our clients, attorneys will need to be up on the latest legal issues surrounding the use of mobile devices in a business setting.

In addition, law firms are businesses that need to manage mobile devices. Whether in a trial or at a negotiation, lawyers will need to access work information outside the office. In using mobile devices, lawyers will need to safeguard the confidences of their clients by maintaining the security of client data.

What is "consumerization," and how does it affect law firms?

"Consumerization" is hard to define, but it generally refers to an information technology trend in which business users bring

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consumer devices, applications and services into the workplace for use at work. Workers may have become familiar with this technology as a consumer, they may like the technology, they become productive using it for personal applications, and they want to use the same technology for work.

Consumerization as a trend is occurring because workers want to use top-selling smartphones, tablets and other devices with the latest technology, which provide them with more capabilities, more features and greater productivity than older employer-issued devices. Modern consumer technology allows workers to access all of their work information anytime, anywhere and with any device.

Consumerization affects law firms because it is affecting their clients. Attorneys need to understand the legal issues arising from consumerization and how best to counsel clients to overcome their legal challenges. Law firms, as businesses themselves, will also need to decide how to manage the consumerization of technology when it comes to determining which devices and services their professionals will use and how best to manage them.

A law firm has decided to roll out a mobile device program that includes a "bring your own device" policy. What are some ways that firms can manage their risk with BYOD?

I describe in my book a five-part process for implementing a mobile device management program at a law firm, business or other organization.

Conduct a risk assessment to consider:

- The sensitivity of the information managed by the organization
- The security and other threats the organization faces
- The vulnerability of the organization to those threats
- The likelihood of the threats causing harm
- The likely resulting harm from those threats

Managing the risk from these threats involves determining which risks the organization can address through administrative, physical and technical safeguards, which risks the organization will shift through insurance or indemnities from vendors and which risks the organization should accept.

1. Determine whether BYOD is really the best option. BYOD is not right for every organization.

2. Decide critical questions, such as who will pay for devices, which workers should use mobile devices and what devices the organization will support. The organization should memorialize these decisions in documentation of its policies and procedures.

3. Procure the technology to implement the mobile device program. Even with a BYOD policy, the organization may want to procure enterprise software or hardware to manage the mobile devices.

4. Implement the mobile device program as designed.

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Which is preferable: BYOD or employer-issued devices? Why?

There is no one answer to the question of whether BYOD is better than an organization issuing its own devices. Each organization is different and has different circumstances. BYOD frequently yields cost, worker efficiency and worker satisfaction advantages. An organization issuing its own mobile devices has greater control over its devices.

Some businesses will decide that the risk is simply too great to permit BYOD. Or they may decide that some kinds of workers must use only business-issued devices, while other workers may use their own devices. BYOD may not be an all-or-nothing decision. For example, BYOD may be too risky for workers handling very sensitive information in highly regulated industries or government agencies. It may be fine for other workers who don't have access to sensitive information. Each organization will have to weigh the pros and cons and decide the scope of any BYOD policy.

What are some key points about discoverability of information on mobile devices?

Litigation and business attorneys are, by now, well aware of the use of electronic discovery — requesting and disclosing electronically stored information to prepare their cases for hearings and trial. ESI discovery focused mainly on information located on computer hard drives in desktop computers, laptops, servers and portable media, such as external hard disks, diskettes and tapes. Parties also sought information from databases on servers and mainframe computers. Other sources of ESI might include telephone recordings, voice recordings and voicemails, and information sent by pagers. With the increasing use of non-laptop mobile devices, attorneys began requesting, and courts began ordering, discovery of ESI stored on other mobile devices, such as smartphones and tablets.

In addition, the rules of procedure do not distinguish between ESI on desktops, laptops and servers on one hand, and non-PC mobile devices on the other. Accordingly, a party to a lawsuit can request ESI on non-PC mobile devices just as it could request ESI on desktops, laptops and servers. Moreover, general requests for "all ESI" referring or relating to a given topic are broad enough to include non-PC mobile devices. Thus, a responding party must engage in a reasonable search for responsive ESI, including in non-PC mobile devices.

Practices for searching non-PC mobile devices for ESI, and certainly forensic software and protocols specific to non-PC mobile devices, are not as mature as those for searching PCs and their storage media. It may be possible to argue that ESI stored on some mobile devices are not "reasonably accessible" as a reason to object to disclosure, but generally, organizations will have to integrate non-PC mobile devices in their ESI collection and preservation practices and protocols.

What is the importance of information security in a mobile device program?

Protecting sensitive data is a key concern for our clients. Our

clients are seeing data breaches in the news every day and don't want to fall victim to a data breach themselves. Data security is a pocketbook issue for them. Companies sued for sustaining data breaches are paying staggering amounts to investigate and settle the cases against them. For major breaches, the legal fees alone could amount to millions of dollars. Finally, data breaches harm a company's reputation because customers frequently don't want to do business with a company that is unable or unwilling to protect their sensitive information.

What are some tips for managing a security incident, such as a data breach?

I mention a number of steps that an organization can undertake to manage data breaches and other security incidents. The organization should:

1. Plan for inevitable security incidents with defined and documented policies and procedures and assigned roles and responsibilities.

2. Monitor its systems and otherwise take steps to detect security incidents.

3. Implement the previously prepared response plan when an incident is detected.

4. Undertake an internal investigation of the incident and, if appropriate, bring in independent third-party investigators.

5. Preserve evidence relating to the incident in case it is needed for future legal proceedings.

6. Consider whether to obtain law enforcement assistance, understanding that there are pros and cons to law enforcement involvement.

7. Assess its legal posture, considering possible claims it may need to defend, as well as possible offensive claims the organization may have against others.

8. Determine whether it needs or wants to make notifications arising from the incident and then complete the required or desired notifications.

9. Remediate any discovered security vulnerabilities and re-evaluate its risks and the security program undertaken to manage those risks.

What should employers know about their employees' privacy rights as it relates to their mobile devices?

People on the job have privacy rights, both as citizens and as workers. The scope of those rights depends on the laws of the specific jurisdiction in which the workers are located. In some jurisdictions, such as California, citizens have a right to privacy under a constitution or other fundamental legal document. European countries recognize privacy as a human right. State laws also recognize tort liability for intrusion into a worker's

privacy. For instance, workers have a right not to be videotaped in restrooms or dressing areas. Government employers face additional possible privacy liability for unreasonable searches and seizures of their employees in violation of the Fourth Amendment.

When it comes to mobile device programs, liability under a claim of intrusion or a privacy violation generally depends on, first, the nature of the intrusion upon a worker's reasonable expectation of privacy, and second, the offensiveness or seriousness of the intrusion. The second factor takes into account any justification or relevant interests of the employer. Whether a worker has a reasonable expectation of privacy in live or stored mobile device communications or other electronic information in a mobile device will depend on the facts and circumstances in each case.

An employer can significantly reduce the expectation of worker privacy if it communicates a policy that clearly describes the kind of monitoring it plans to undertake and tells workers that they should have no expectation that their monitored conduct will be private. Employers should keep in mind that for unionized workforces and European offices and locations, mobile device surveillance and review policies will likely be deemed a mandatory subject for collective bargaining with a union or European works council.

Any additional important tips to add about your book?

Mobile devices are changing the corporate information technology landscape, but the mobile revolution is just beginning. In the future, businesses will likely see ever-accelerating changes in technology that will raise even more legal issues. The following technology trends will make mobile device management even more challenging:

- Increasing miniaturization of ever more powerful computers, such as smart watches and screenless 3-D devices. With smaller and smaller form factors, it will be easier and easier to conceal mobile devices and use them outside of a business's control or management.

- Increasing internationalization of mobile commerce and computing. International law issues will arise from global electronic commerce, including in many developing countries, and laws applicable to traveling, remote and telecommuting workers scattered around the globe.

- The replacement of paper currency with electronic payments, probably most commonly used with mobile devices. Businesses will need controls in place to address fraud in connection with payments, to protect the privacy of personal payments and to prevent compromises of the payment platform.

- The scope of mobile devices that workers may use in a business setting may expand greatly, leading to even more legal issues. For instance, auto manufacturers are developing in-dash systems that are the equivalent of having an Internet-enabled tablet computer built into your

car. Moreover, Google Glass, a wearable computer in the form of eyeglasses and similar wearable computers will become commonplace in the work environment. Also, employers will increasingly use telepresence and other personal and service robots in their offices, warehouses and other work locations. The robots themselves will be mobile devices that the employer will need to manage. In the future, employers will ask whether they should implement a "bring your own robot" policy for the workplace.

Changes in mobile technologies and their applications are occurring rapidly. The developments in business practices and law will need to keep pace. Attorneys and their clients will need the flexibility to adapt to changes wrought by technology. As a result, attorneys will continue to play a key role in helping their clients account for new technologies, new business practices and new legal issues that are sure to arise from changes in technology.

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Taking the client service interview to a new level

There is no silver bullet to guarantee your practice will grow exponentially each year, but the 80/20 rule is as close as you can get, said Beth Cuzzone, director of business development and client services at Goulston & Storrs. The 80/20 rule is the industry statistic that states 80 percent of your firm's revenue will come from 20 percent of your existing clients. "Client retention, client relations, client satisfaction and client loyalty will drive an increase in your revenues year after year," Cuzzone wrote in a recent issue of Law Practice Magazine.

To add value to the services you deliver, you must learn your clients' preferences about communication, risk tolerance, staffing models, technology and legal services attributes, she said. "Value, in the context of client service, is defined by what is delivered to your client that he or she does not pay to receive," Cuzzone said. "Sound substantive advice, accessibility, responsiveness and up-to-the-minute market knowledge have become baseline standards or table stakes — not added value in today's legal marketplace."

So law firms must dig deeper to learn more about clients' changing expectations. For example, Cuzzone said, ask yourself the following questions:

- Do your clients expect the relationship partner to be the point of contact for every detail of their matters, or do they prefer associates to run with pieces of the deal?
- Do your clients expect weekly or monthly updates, unprompted?
- Do your clients allow an annual increase in hourly rates or must they be preapproved?
- Do your clients have new people at their respective companies who are affecting your clients' jobs?
- Are your clients expanding operations into new geographic regions?

"Each and every answer to these seemingly simple questions could affect the way you change the delivery or pricing strategies of the legal advice you deliver," Cuzzone said. "The 80/20 rule begins to erode when client expectations change or simply evolve, but its law firm's service model does not follow."

To close the gap between changing expectations and legal services provided to the marketplace, lawyers and law firms of all sizes have instituted a best practice of conducting client interviews, she said. "The notion of asking clients about their business and changing needs is not a new phenomenon, but

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formal client service interviews take the basic principle to a new level," Cuzzone said. "No one but you will be able to decide if your clients will be best served by an internal-driven client service interview process or by an independent outside consultant."

Once you decide who will conduct the client interviews, preparing for the interviews and the execution of the process remains similar, she said.

- **Select the clients.** Begin with your firm's largest clients, Cuzzone said. Your finance or billing specialist can provide a top 20 list of your largest clients by revenue for the past few years. Review the list and choose three clients to target. Select clients with whom you have the best relationships.

- **Invite the clients.** The attorney who is assigned as a relationship partner is usually the most appropriate person to reach out to the client and invite him or her to participate in your firm's client service interview, Cuzzone said. "Don't presume clients will see this as 'work,'" she said. "Over the last decade, I have never witnessed a client decline an invite." Your invitation should include an explanation of benefits to the client.

- **Prepare for the interview.** The time you take to prepare for the interview will have a direct effect on its success, Cuzzone said. To be well-prepared, gather the following information:

    - Company profile
    - List of client's competitors
    - Industry trends
    - Client's press releases and media coverage
    - Key decision-makers and/or organizational chart
    - Billing history (three to five years)
    - Billing realization rate (three to five years)
    - Discounts and write-off reports (three to five years)

      Once you have gathered this information, interview your firm's attorneys to understand the nuances of the firm-client relationship.

- **Conduct the interview.** First, remember this is not a pitch meeting or sales call, Cuzzone warned. Interviews should last about one hour. Most of your time should be spent listening to the client and taking detailed notes. Do not ask to record the meeting. "I personally prefer for the interview framework to include both qualitative and quantitative questions," she said.

  Ask your clients about their strategic plan, company direction, change in personnel and their business concerns, Cuzzone said. A portion of the interview should include their thoughts and opinions about your firm, including these attributes:

    - Firm stability
    - Lawyer assignment
    - Legal costs

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- Quality
- International/national/regional service capability
- Responsiveness
- Special requests
- Other items customized for each client

  Be sure to include an opportunity for your clients to rate the firm, Cuzzone said. When creating a rating scale for your interview, do not use a three-point scale (i.e., "On a scale of one to three, with three being the highest …"). It will allow your client to take a neutral position. "I believe you get a more accurate answer when you 'force' the interviewee to select a negative or positive position with a four-point scale: excellent, good, fair or poor," she said.

  The interview will almost always come to a natural end, but if it does not, be sure to end the meeting on time, Cuzzone said.

- **Follow up with the client after the interview.** The most critical stage of the client interview process is the follow-up, and it has several components, Cuzzone said:

  - Formally thank your client for the interview.
  - Prepare a client interview report.
  - Create a list of themes, issues, problems or trends identified.
  - Organize a meeting with the attorney team to discuss the interview.

During your debrief meeting, each item in your report should be assigned a follow-up. Create a strategy implementation plan by determining what actions need to be taken, assigning someone responsible for each task and setting deadlines for completion.

"Now you have a fresh perspective of your client's positive and negative opinions of your legal services, a client interview report and an action list of items that will serve as a road map for keeping and growing your client relationship," Cuzzone said. "Review the road map every three months and make adjustments. The action items will become a client service improvement plan."

Follow the plan and enjoy a continued relationship with your clients as well as revenue that continues to grow.

Law Practice Magazine is a publication of the Law Practice Division.

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Interviewing tips for lawyers

In the ever-changing and competitive job market, lawyers seeking to start or advance their careers must be prepared to interview well if they want to move ahead in the profession, experts said during the American Bar Association Career Center panel "Interviewing Wisely in a Challenging Market."

Research the law firm to which you are applying, and convey competent knowledge about the firm during the interview.

"I advise my clients to really prepare and research like they are studying for an exam. Be prepared to answer tough interview questions, and know what you are going to say in advance," said Evan Anderson, director of BCG Attorney Search's Diversity Recruiting Practice.

"Research and mention recent high-profile cases, firm milestones, anniversaries and accomplishments — all that stuff goes a very long way," he said.

Some common interview mistakes include being late, leaving cellphones turned on and dressing unprofessionally, Anderson said.

During the interview, avoid telling the employer that you view the job as a gateway to future career plans.

"One mistake relates to statements that people make to indicate that this job that they're interviewing for is just a stepping stone to something bigger and better," said Elizabeth Price, a partner at Alston & Bird LLP.

If the employer asks, "Where you see yourself in 10 years?" do not say you would like his or her job.

"I would focus on things you would like to learn and gain while you're with the company. For example, 'I hope that I would have developed a method to budget for a major litigation' or something that shows value to the company without making your boss nervous about his or her job," Price said.

Be careful not to frame comments in a way that is all about what you will gain from the position and not enough about what you will give to the employer.

For example, Price said, avoid statements such as "I am looking for a place that will give me training and support," and instead say, "I want to contribute to a team that thinks creatively to solve a client's problem."

When faced with broad questions such as "tell me about yourself," speak for up to two minutes and lead with something personal.

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"You can look at this as an excellent opportunity to work in your personal narratives in a way where you can make a connection and leave an impression," Price said. "The response should never be, 'Well, what do you want to know?'"

Pay attention to body language. Maintain eye contact, give firm handshakes, and "be engaged but not overly caffeinated," she said.

"If you see someone's eyes glazing over, wrap it up," Anderson added.

For employed lawyers looking to move on from their current job, never paint your current firm or boss in a negative light.

"Often when candidates start to feel a rapport with the employer, they start to kind of unload and discuss the negatives they are experiencing at their current job, and that is just a no-no," Anderson said. "Those things leave an impression on an interviewer."

For lawyers who have been laid off from their jobs, let the potential employer know if the company had to cut employees for budgetary reasons.

"In this market, I don't think employers are surprised that jobs are being cut and people are being laid off, not because of performance but because of capacity," Price said.

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The duty of competence in the 21st century

While mobile devices, the cloud, email, social media and other electronic information have made it more convenient for lawyers to do business, are lawyers doing all they can to keep up with the rapid digital trends when it comes to protecting information?

A conversation by legal ethics experts during an American Bar Association program highlighted the changes the profession has seen over the past 15 years, how those changes affect lawyers' ethical obligations and the various ways competence can be fulfilled in the digital age.

"I don't think you have to be practicing for very long to know that the legal profession is fundamentally being transformed by technology and globalization," Andrew Perlman, director of the Institute on Law Practice Technology and Innovation, said during the webinar "Am I Competent? The Ethical Use of Evolving Technologies." "I graduated about 17 years ago, and the changes I have seen are enormous."

The changes have been so dramatic that in 2009, the ABA created the Commission on Ethics 20/20 to study the rules and policies surrounding lawyer conduct concerning the advances in technology and globalization.

Perlman gave an overview of the commission's findings and said the amendment to Model Rule 1.1 (Competence) in the Model Rules of Professional Conduct has made lawyers around the country "pay attention."

"When the commission was thinking about the ways in which technology has changed the profession, one surprising feature of the model rules that we came upon was that the word technology appeared nowhere," Perlman said. "And we thought it was important that there should be some reference of the role technology is playing in the delivery of legal services."

The result was that the commission added a line to Comment 6 of Model Rule 1.1. The line reads, "… including the benefits and risks associated with relevant technology."

Perlman said the new line "emphasizes that in the course of a lawyer's career, it's not enough to just keep abreast of changes in the law, but when you keep abreast of changes in its practice, that necessarily includes keeping up to date on the benefits and risks associated with relevant technology."

The prevailing issue on lawyers' minds today is the ethical obligation involved in protecting information that is stored on smartphones, other electronic devices or in the cloud. Since the adoption of Ethics 20/20 in 2012, more guidance is

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available to assist lawyers, Perlman added.

He said that Model Rule 1.6 (Duty of Confidentiality) clarifies that "lawyers should take reasonable precautions to protect client confidences from inadvertent or unauthorized access or disclosure."

Some considerations include the sensitivity of the information and the cost of additional safeguards.

"Nobody is expecting lawyers to have the security that you'd find at the Pentagon, but if the costs are relatively small and they would provide a lot of extra protection, then that is something that would be considered reasonable and important," Perlman said.

He said developing a "strong" password of at least 12 characters with a mix of numbers, letters and special characters is a helpful precaution, as is encryption, which scrambles data and makes it unreadable in the event your mobile device is lost or stolen.

"As to the strong passwords, it's an absolute must," agreed Daniel J. Crothers, a justice on the North Dakota Supreme Court. "As to encryption, I don't see any ethics opinion that says that encryption is required. However, I will not be surprised when I see an ethics opinion say that has become the standard."

Crothers said one of the biggest threats to the security of data is the loss of the device. Although strong passwords and encryption are essential tools, the owner or a network administrator should have a way to remotely wipe the device, so data can be deleted before a stranger views it. There are apps and software available to perform this function either automatically or with a command.

"It's not a standard, but something to think about," Crothers added.

The conversation spanned to discuss cloud computing, which most ethics opinions support, but lawyers still must take "reasonable precautions" to protect information.

"There are some factors to consider. You should be aware of where the information is being stored and who owns it," Perlman said. "How sensitive is the information? There is an interesting ethics opinion out of Massachusetts that says that if it is particularly sensitive information, you need to get your client's consent before you use a cloud computing provider. It's the only ethics opinion I know of that has reached that conclusion."

Crothers added that an ethics opinion out of New Hampshire has a list of 10 factors for people to consider before using cloud computing. The list includes questions about a provider's security measures and disaster recovery plan.

According to Ellyn S. Rosen, the moderator for the discussion and the deputy director of the ABA Center for Professional Responsibility, the center is working in partnership with the Law Practice Division to develop a practical website to assist

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lawyers with questions about data security. She said the site will be available in the near future.

The program "Am I Competent? The Ethical Use of Evolving Technologies" was sponsored by the American Bar Association Center for Professional Responsibility and the Center for Professional Development.

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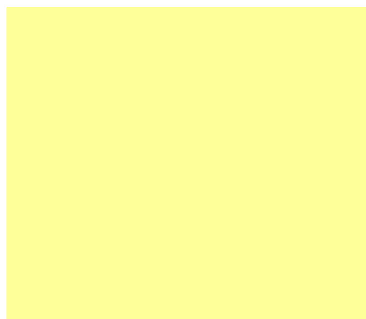

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How to handle a 'Rambo' attorney

Dealing with legal bullies is never pleasant. In an American Bar Association Sound Advice podcast, Mike Downey, a litigation partner at Armstrong Teasdale LLP in St. Louis, offered steps to best handle what he calls "Rambo" attorneys.

The nature of misconduct with such lawyers occurs in a wide variety of ways, said Downey, who is chair of the ABA Law Practice Division. Examples include attorneys refusing to respond to discovery, engaging in harassing behavior, criticizing the lawyer or the lawyer's client during depositions, hearings and other proceedings, and much more.

"These types of circumstances can obviously be very frustrating for a lawyer and create a lot of headaches and problems," Downey said. "Often, I find that lawyers who are dealing with these types of people will become somewhat fixated on them and will really become very frustrated by them. They increase the stress of the practice, they increase the anxiety level, and frankly, what they also do is cause a lawyer to lose track of what they are really trying to accomplish. It becomes a battle where one lawyer feels pitted against the other lawyer or becomes so determined to show the other lawyer up or get the other lawyer in trouble that they lose track of what's going on."

Meanwhile, courts dislike getting involved in fights between lawyers, Downey said. "They don't really feel very good about sanctioning people," he said. "And I've had cases where I've felt like we had done everything right and the other side had made very egregious errors — in one case, refusing to respond to discovery for almost a year … and the court's response was, nobody is really behaving. I do think that it's a natural inclination that courts rarely believe that one person alone is the source of all the problems. With this in mind, it's important to deal with such bullying or Rambo behavior by really being careful."

1. **Do what you can to head off problems early.** "It's good if you're involved in a case and you've got a new lawyer on the other side to find out what that lawyer is like from talking with people," Downey said. "A lot of times, if there is someone who is a problem lawyer, they've been a problem lawyer in a lot of contexts, and you can often find out from these people that this is someone you need to be careful of.

   "The other thing I think is a good idea is to make an initial contact with the person when there's nothing hanging over your head," he added. "If you're the plaintiff's counsel and you file a lawsuit and you get a

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response back from the other side, or alternatively, if you're the defense counsel and you're asked to represent someone on a lawsuit, it's often good to reach out at that time. Make a friendly call: Say, 'Hey, I wanted to let you know I've been contacted to represent this party in this case. We appreciate you getting your answer on file.' Or, 'We think we'll have our answer on file in a few days. Can you tell me a little about the case?' And start to build rapport then. Then if you need to call them and ask them for a favor or if there is some problem later, you've started to build a relationship you can rely upon."

2. **Know the relevant rules.**
   Sometimes when lawyers engage in bullying behavior, they are violating particular rules, including the ABA Rules of Professional Conduct. For example, Rule 3.1 generally prohibits a lawyer from filing frivolous proceedings. Rule 3.2 requires a lawyer with some limitations to seek to reasonably expedite a matter as long as that's consistent with the client's objectives. Rule 3.3 is a duty of candor to the tribunal. Rule 3.4 relates to destroying and concealing evidence. Rule 4.2 relates to making sure that opposing counsel doesn't contact people who are protected by you because you have an attorney-client relationship with them.

   "All of these rules can be very important," Downey said. "It's important to realize, though, that there are some exceptions. So you need to make sure you know what the rules say and what the limits are, and particularly if you think someone has done something wrong, you often need to check and make sure they really have engaged in the violation you think before pressing forward."

3. **Once you determine that there has been some sort of wrongdoing, show, don't tell, what the wrongdoing is.**
   "Too often, I've seen pleadings filed where someone has frustrated opposing counsel, and they basically will say, 'Opposing counsel is a scoundrel, they're a dog, they've filed these horrible things … and the court should sanction it,'" Downey said. "The tough thing about all that is, although I've given you my opinion, I haven't actually told you anything the other person did wrong. It is far better to be able to show what was wrong."

   The most powerful statement that Downey said he has seen on this is someone who filed a brief attacking someone else's pleading as misleading. "What they did was set down the language in the brief in one column and right next to it in another column showed what the case actually talked about," he said. "So it was quite evident that the person had made very selective edits to the case to mislead someone."

4. **Give warnings.**
   If you are in a situation where you think you're headed toward litigation by sanction or a lot of fighting, notify your firm, Downey said. "Let senior lawyers or other partners in your firm know that you're dealing with someone very

difficult," he said. "They may have a relationship with this person and be able to smooth things over. They also may be able to help provide guidance."

Also, it's good to warn your client if, for example, you're going to be accused of a lot of misconduct that you think is undeserved, Downey said. "If the first time the client hears it is out of the mouth of the other attorney, they may believe you have done something wrong," he said. "Also, if there's misconduct going on or you know that this is someone who will call your client or set up hearings that are inappropriate, it's also good to let your client know and let them know that you have a plan. Sometimes clients, when they see the other side being very aggressive, being very Rambo-like, will believe that their own attorney is not doing a good job. If you can say to them, 'We know this judge doesn't like when people are so belligerent. We think our opposing counsel is really hurting his case,' … a lot of times, this will help the client."

For four more steps to dealing with Rambo lawyers, listen to the Sound Advice podcast, sponsored by the ABA Section of Litigation.

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5 lessons lawyers can learn from 'Lean In'

Earlier this year, everyone was abuzz about Sheryl Sandberg's book "Lean In." Much of the talk wrongly surrounded the ever-present question of women in the workforce, aka the "mommy wars," said Sharolyn C. Whiting-Ralston, an attorney with McAfee & Taft in Tulsa, Okla. "Well, the book has nothing to do with the question of whether a person should stay home with their children if the opportunity arises, but rather has everything to do with making smart choices about your professional and personal life," she said.

In the latest edition of GPSolo eReport, Ralston shared five important takeaways from the book. Below are excerpts from Ralston's article.

1. **Fake it 'til you make it.** OK, Sandberg didn't really describe it like this, but that's the bottom line. Being an attorney can be daunting, especially for a newer lawyer. Since I have been practicing, I have seen new lawyers, myself included, suffer from a lack of confidence. The issue does not generally come from a lack of confidence in ability but from a lack of experience, the knowledge that your client is really counting on you to get it right and the fear that you don't know what you don't know.

   What is Sandberg's advice? First, don't hedge. When you are asked to give a legal opinion, give it without hedging. You did the research and you worked hard on it, so give your findings with the confidence you deserve. Second, "sit at the table." When you are at a client meeting, be present — don't sit off to the side. You may not have a lot to say at that particular meeting, but this is your chance to be in front of the client and the other lawyers. You want them to begin noticing you and trusting you as an integral part of the team. They cannot do that if you fade into the background. Remember, clients and fellow attorneys want and need to see and feel confidence from their lawyers. Even if you don't yet have confidence, pretend like you do — eventually you will get there.

2. **Be authentic.** In the chapter titled "Speak Your Truth," Sandberg discusses the old myth that you should have a "work" self and a "home" self and suggests that you will be more productive, more successful and happier having just one self. Traditionally, lawyers were a profession of men wearing dark suits who worked too much and were all business. Let's face it, many of us graduated from law school thinking that we needed to fit into that stereotype. While our job continues to require a lot of work, I agree with Sandberg's suggestion that being authentic makes more successful, productive and happier lawyers.

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I am fortunate to work at a law firm where I genuinely like the people I work with, which I believe is a reflection of the fact that we are encouraged to be authentic and bring to the game whatever is unique to us. Each of us has had ideas or thoughts about strategy or positions that we may want to take in a case, and we are encouraged to use that voice. Your colleagues have to trust you before they will listen to you, and that means letting them know who you are — authentically.

3. **It's a jungle gym, not a ladder.** Sandberg discusses the "jungle gym" concept in terms of the corporate world, but it applies to legal careers as well. Statistics show that people no longer spend their entire careers with one organization, climbing up that ladder. Rather, people are seeking different opportunities throughout their careers, which sometimes means different employers and sometimes means a different job altogether. One great thing about the legal profession is the many different types and fields of law that one can practice. Many of the fields overlap one another.

   Sandberg cautions readers not to shy away from projects or jobs just because they don't meet all the particular criteria or possess that particular expertise. She encourages readers to stretch themselves and go for that job or project that may feel a bit out of their reach. She's right. Stretching and moving around helps us all move up the jungle gym.

4. **Don't leave before you leave.** Sandberg describes how women tend to scale back their careers in anticipation of having a family long before they need to do so. She tells the story of a young employee who was asking her about work/life balance and how she manages it all. So Sandberg asked the woman whether she and her partner were planning to have children soon. The woman said no, and in fact, not only did she not have a partner, but she wasn't dating anyone at the time. As Sandberg pointed out, the young woman was jumping the gun, "big time."

   Sandberg offers a different approach. She suggests that women "lean in" and pursue their career goals in full force, until they have to consider other obligations. The result is that by the time you have a child, you are in a better job where you are more satisfied, which gives you more options when and if you need to take some time or make some adjustments.

5. **Ask for criticism and listen to it.** One of the themes in Sandberg's book is an ongoing desire to be better. But it is often difficult to get better if you don't know what you are doing wrong. Sandberg tells the story that when she went to work at Facebook, she accepted the job on the condition that CEO Mark Zuckerberg would provide her regular feedback so that she could address issues or concerns in real time. He agreed on the condition that she do the same for him.

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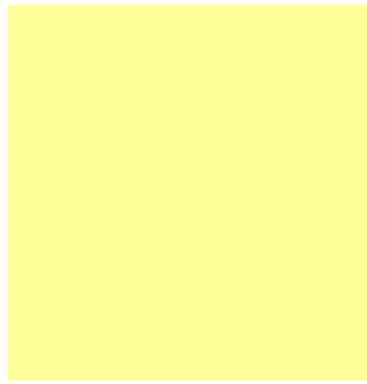
Feedback, or criticism, is one of the most valuable things a young attorney can use to get better and be successful. No question, criticism is sometimes difficult to hear, but taking it in and responding will undoubtedly be a good thing.



GPSolo eReport is a publication of the Solo, Small Firm and General Practice Division.

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A refresher on attorney-client privilege

The attorney-client privilege is the backbone of the legal profession. "It encourages the client to be open and honest with his or her attorney without fear that others will be able to pry into those conversations," Jackie K. Unger, an associate at Seattle's Carney Badley Spellman PS, wrote in a recent issue of Business Law Today. "Further, being fully informed by the client enables the attorney to provide the best legal advice."

The privilege is at play daily, whether litigated in court or serving as a background consideration in how best to advise clients while maintaining confidences, Unger said. Even in business transactions, it is critical to maintain the privilege, as unseen conflicts may result in future litigation where attorney-client communications become of interest to an opponent.

Yet the privilege's many nuances easily result in loss of the privilege when an attorney does not pay close attention to the details of the communication, Unger said. Because it is easy to overlook these nuances, Unger outlined the fundamental requirements of the privilege.

Privilege only protects legal advice

To invoke the attorney-client privilege, the proponent must establish a communication between attorney and client in which legal advice was sought or rendered, and which was intended to be and was, in fact, kept confidential, Unger said. While both communications from client to attorney and from attorney to client are protected, the privilege protects only the fact that information was communicated and does not preclude disclosure of the underlying facts conveyed in those communications.

This means a client can never protect facts simply by incorporating them into a communication with the attorney, Unger said. For instance, a client might provide his attorney with details of transactions with another business over the past 10 years, including dates and costs, to help the attorney draft a new contract with the business. In future litigation, the client would not have to answer any questions about what was said to the attorney or what language the attorney recommended, but the client could not refuse to give the date of a prior transaction simply because that fact was discussed with the attorney.

"Communications will only be privileged if the party sought, and the attorney rendered, legal advice," Unger said. "Because the privilege is contrary to the judicial goal of bringing relevant evidence to light, it is construed narrowly and protects only those disclosures necessary to obtain informed legal advice

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that might not have been made absent the privilege."

For attorneys who may counsel their clients on business matters as well as legal matters, this requirement is not always easy to meet, she said. If the work could have been performed by an individual with no legal training, the attorney has not been consulted in a professional capacity.

The privilege will not apply where information is shared between attorney and client without any request for legal counsel, Unger said. Technical drawings forwarded to an attorney have been found to retain their nonprivileged status in patent litigation, as have emails between a company's executives related to business decisions that copy but do not solicit advice from in-house counsel.

However, where the client seeks legal advice that by its nature relates to business concerns, the privilege still applies, Unger said.

These principles highlight the need for attorneys to be aware of the role they play — the privilege may exist in one conversation as legal adviser and disappear in the next, when business advice is sought, Unger said. "To ensure privilege is maintained, the attorney should try to keep the roles from overlapping by offering legal advice and business advice separately when possible, be clear when legal advice is being rendered, and make sure the client understands that simply forwarding confidential information to the attorney does not make it privileged," she said.

The communication must be confidential

To be privileged, the communications must also reasonably be intended as confidential. This means that they must not be shared with any third party, Unger said. However, with a corporate client, the attorney's discussions with an employee may generally be shared with other nonattorney employees where information is sought at the attorney's direction or the attorney's legal advice is relayed. A party's assertions that the communications were intended to be confidential will not satisfy the burden; the court will look to the circumstances to determine the intent, Unger said.

One important exception to this strict confidentiality requirement is the "common interest" doctrine. The doctrine, an extension of the attorney-client privilege, Unger explained, applies where 1) a communication is made to a third party who shares a common legal interest, 2) the communications are made in furtherance of that legal interest and 3) the privilege is not otherwise waived.

While there must be some shared interest, courts disagree as to the commonality required to assert the privilege, Unger said. Some courts require that the parties have identical interests in order for the doctrine to apply. Other courts apply the common interest doctrine even after acknowledging the parties may have adverse interests in substantial respects. In any event, the shared interest must be a legal interest, not simply a commercial interest, and the parties must cooperate to further a joint legal strategy.

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Finally, because the common interest doctrine is merely an extension of the attorney-client privilege rather than an independent privilege and because the attorney-client privilege logically requires a communication between the attorney and client, Unger said, some courts hold that the common interest doctrine does not apply to communications between two parties when an attorney is not also involved.

Privileged information should be disseminated as little as possible, even by employees within the same company, she said. "Clients who seek to share information with consultants, advisers or other businesses should be informed that doing so will likely waive any privilege as to that information unless it enables them to pursue a joint legal strategy," Unger said. "Further, the client should be warned against disclosing privileged information to third parties when no attorney is present."

Business Law Today is a publication of the American Bar Association Business Law Section.

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Recognizing and dealing with diminished capacity in older clients

With baby boomers entering their 60s and the over-80 population growing, many lawyers will likely work with older clients and be forced to make difficult judgments about their clients' capacity for making decisions. While obvious dementia will impair capacity, some older adults with an early stage of dementia or mild central nervous system damage may also have subtle decisional problems.

"Capacity issues today are ubiquitous, they permeate society, and the legal profession is just one example of that," said Dr. Daniel Marson, who serves as director of both the Division of Neuropsychology and the Alzheimer's Disease Center at the University of Alabama at Birmingham. "The brain ages just like every other organ system in the body. ... Over time, you see cognitive decline over many, many abilities."

The recent American Bar Association webinar "Screening and Working With Older Clients With Diminished Capacity: Practical Tools and Strategies" offered suggestions on how lawyers can determine whether a client has diminished capacity. Sixty-three percent of the attorneys viewing the webinar reported assessing capacity in their practices.

There is no one indicator of diminished capacity in a client, but specific "red flag" signs of diminished capacity include memory loss, communication problems, lack of mental flexibility, calculation problems and disorientation.

Some guiding principles of observation for lawyers are:

- Focus on the client's actual decisional abilities.
- Do not be misled by cooperativeness, affability or social skills.
- Pay attention to changes in the client over time.
- Consider whether mitigating factors (recent illness, bereavement, visual loss) may explain recent changes.
- Beware of ageist stereotypes.

Marson said to bring up the question of capacity with a client in a normative way and not at the outset of the relationship. He suggested saying something such as, "I work with a number of older clients, and one thing I always ask about in the course of my practice is the possibility of diminished capacity."

A lawyer's referral of a client to a clinician for a cognitive evaluation requires client consent. The referral can also be

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expensive (often billed, at least initially, to the law firm), traumatic to the client and unsettling to the lawyer-client relationship.

The risk of legal malpractice points to the need for deliberate attention to capacity issues. For example, a disinherited child could allege in a will contest that a lawyer did not exercise proper care because he or she failed to determine the testator's capacity to execute a will. Depending on the specific transaction at issue, as well as the jurisdiction, legal capacity has multiple definitions, and lawyers must be familiar with individual state-based standards.

"Having a relatively simple system in place for identifying, recording and assessing on a preliminary level signs of diminished capacity is essential to avoiding both malpractice liability and ethical sanctions," said Charles Sabatino, director of the ABA Commission on Law and Aging, which sponsored the webinar.

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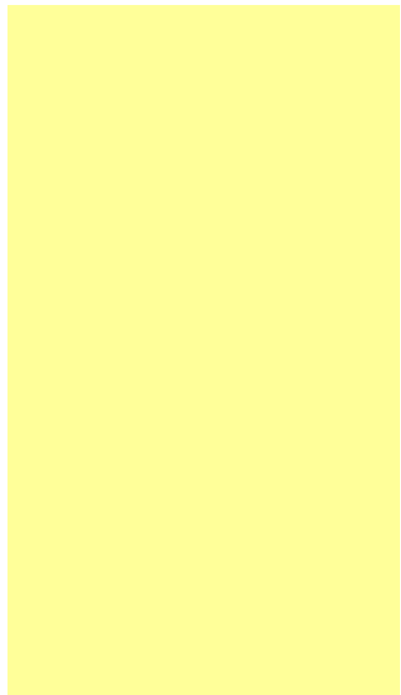

Understanding the professional review process

When starting a new job, young lawyers often neglect to consider a critical part of the job process: the review. "Gaining a clear understanding of this process well in advance of the actual review can make the difference between a stressful and a satisfying experience," Maria A. Maras, a partner at Kirkland & Ellis LLP in Chicago, wrote in a recent edition of The Young Lawyer.

Maras shared four key questions that you should ask before review time rolls around:

1. **When will I be reviewed?** Find out when and how often you will be reviewed. A typical review cycle is six or 12 months long, and some organizations add an extra review cycle for new or lateral hires. Planning ahead can help reduce anxiety.

2. **Who will review me?** Find out who is eligible to review you and whether you or the organization selects your reviewer(s). Usually, the people eligible to review you are those who satisfy certain criteria — typically a specific level of authority combined with sufficient familiarity with your work. If you do not have regular contact with your reviewer, set up a time to discuss your work and tactfully remind those with whom you do have regular contact to make sure they are accurately describing your contributions to your reviewers.

3. **What type of information do I provide?** Find out what information you are asked to contribute to the review process. Attorneys may be asked to fill out a survey or questionnaire regarding their activities (billable or otherwise). The length and nature of these surveys varies, so it can be extremely helpful to see a sample in advance. If you are expected to fill out a summary of your work, keep a running list of your projects, including level of responsibility and outcomes, throughout the review period. You will be surprised at how little you remember in December of the project that consumed you in January.

   Ask someone you trust for advice on what approach to take when answering questions, and, if appropriate, ask to see an example of what he or she has submitted in the past. Your responses provide an opportunity to market yourself and to present your work in a way that highlights your career development.

   Remember, it is important to gauge the organization's culture and to show good judgment in describing your work. No one expects a first-year associate to be running

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the case or deal, and falsely claiming that you did is likely to backfire.

4. **How will I receive feedback?** Find out how the results of your review are communicated to you. You may receive feedback in person or via telephone, verbally or in writing, from one or more individuals within or outside your department. If permitted, ask questions. This is an opportunity for you to ask not just about your work over the past year but also about the skills that you should be developing over the next few years. This shows that you are thinking strategically about your career.

Feedback may include a qualitative and/or quantitative component, such as comments or a rating of some kind. Understand ahead of time what each type of component means for you going forward. For example, all new hires may generally receive the same rating given the difficulty in differentiating among attorneys at the earliest stages of their careers.

Armed with the answers to these questions, you will be well prepared for your first review and the many that follow.

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Virtual law firm basics and benefits

Technological advancements are changing client expectations and evolving the legal profession. In a recent webinar from the American Bar Association Legal Technology Resource Center, experts explained the benefits of providing legal services online and the practical realities of operating virtual law firms.

What is a virtual law firm? It's just like any other law firm, except there's an emphasis on tools and communications between lawyers and clients, said Joshua Lenon, director of communications and outreach for Clio, a provider of Web-based practice management software. "Rather than investing in both a location and the trappings associated with it, you're instead looking at tools that allow you to communicate easily, quickly and efficiently from any location between attorneys in the firm and between clients as well," Lenon said. "In a virtual law firm, lawyers can work in the traditional office setting or they can work from home or from coffee shops and communicate and work effectively with clients from any of these locations."

There are a number of benefits of working virtually, including expanded jurisdictions, Lenon said. "In a virtual law firm setting, it's very easy to expand into another jurisdiction because your tools will allow you to be an effective attorney anywhere within your locations," he said. "So all you have to do is reach out to that jurisdiction, bring on a new lawyer from it, and you're up and running without the investments that traditional law firms have had to undergo."

Another benefit of virtual law firms is the ability to have expanded practice areas, Lenon said. "Unfortunately for most solo and small law firms, the glass is always half-full when it comes to clients," he said. "Normally a client will come to you with a single matter, and you're able to help them, but often they'll come with a matter outside of your specialty or your practice area, and traditionally you've had to refer those clients to another law firm, losing that business and maybe getting a referral fee."

With virtual law firms, the technology allows you to go for a "glass half-full" scenario, where you bring in the tools and resources you need to handle an unexpected practice area by working with new lawyers or contract associates. "You're keeping those clients and focusing on giving them a full-service law firm that you expand or contract as needed," Lenon said.

Lower overhead and lower IT costs compared with traditional firms are two additional benefits, he said.

"With virtual law firms, real estate no longer matters," Lenon said. "It enables you to reach out and speak to your clients from your home office, a rental space that you use on a per-

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needed basis or even meeting at their own locations but still taking the full tools and resources of your law firm with you."

Virtual law firms also tend to use cloud-based services, which means "there's no need to maintain expensive servers within an office space," Lenon said.

A virtual firm also allows you to lower overhead when it comes to staffing, he said. "You're able to reach out to not just clients but to employees in different locations, allowing you to take advantage of competent staff that you can engage on a part-time basis or on a full-time basis from a different area with a lower cost of living," Lenon said.

Lastly, "incidentals" don't tend to exist in virtual law firms because they use online tools, such as voice over IP for phone calls and emails with PDFs for sharing documents, Lenon said. "Instead, you're saving money and you're actually giving better customer service because you're not charging for these incidentals," he said.

Chad Burton, one of the founding attorneys of Burton Law, a virtual firm with lawyers in Ohio, North Carolina and Washington, D.C., said the way he operates is to "take the best of the large and small firm world, in which I've been a part of both, and be able to leverage the good things."

For Burton, a virtual firm offers the solid technology base that larger firms are accustomed to but also the freedom to work remotely and in creative ways that small-firm lawyers know and appreciate.

Burton explained the programs that his firm uses: a system that integrates Google Apps, Box, Yammer and DirectLaw with Clio.

Box is the firm's document management system that allows for internal and external collaboration. "There are features in Box where you can tag people in comments so your team members can see that a draft is ready to review," Burton said. "There's a task-assigning feature in Box. We also set up external shared client portals where we can share documents as well as receive documents.

"A good example is that I rarely, if ever, send an attachment to an email anymore," he added. "Each Box document and folder has a unique link, and I will email that link, whether it's to a client or to opposing counsel or whomever, and they can click on the link and download the document. It allows me to work very easily off my iPad and iPhone. It also creates access stats. If you email a document to opposing counsel and they say, 'Hey, I didn't get it,' you can go back to the stats and see that … actually you did, according to your IP address on Oct. 29, you downloaded it at 2:22 p.m., and here's the proof."

Yammer serves an important purpose in the firm since everyone works in a remote or mobile nature, Burton said. "This is our water cooler," he said. "This is where we share ideas for upcoming events and things that are not necessarily client-related but firm operations-related. The best way to describe it is a social enterprise network. It's Facebook for our firm."

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DirectLaw also serves an important function within the firm, Burton said. He explained that the firm uses it for delivery of legal services to clients online. Clients choose the documents they're interested in having an attorney develop and review, complete a questionnaire, pay with a credit card and fill out "all the forms that typically you would email off or handle during meetings."

"Lawyers on our team can then review the documents, interact with the client either via telephone, Skype, electronic messaging, etc., and finalize the documents," Burton said. "This is the unbundled concept. We're not having a signing party with these clients at the end to finish an estate plan or business setup. The documents are sent back to the client with instructions on how to execute them, and they're on their way."

Burton said this portion of the business will be significant to future growth. "When we talk about moving the firm forward, we know the online delivery component is going to play a significant role because that's where society is going — it's going online, whether it's banking, taxes, buying things," he said. "People are looking at the legal industry in the same way.

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Virtual law firm basics and benefits

Technological advancements are changing client expectations and evolving the legal profession. In a recent webinar from the American Bar Association Legal Technology Resource Center, experts explained the benefits of providing legal services online and the practical realities of operating virtual law firms.

What is a virtual law firm? It's just like any other law firm, except there's an emphasis on tools and communications between lawyers and clients, said Joshua Lenon, director of communications and outreach for Clio, a provider of Web-based practice management software. "Rather than investing in both a location and the trappings associated with it, you're instead looking at tools that allow you to communicate easily, quickly and efficiently from any location between attorneys in the firm and between clients as well," Lenon said. "In a virtual law firm, lawyers can work in the traditional office setting or they can work from home or from coffee shops and communicate and work effectively with clients from any of these locations."

There are a number of benefits of working virtually, including expanded jurisdictions, Lenon said. "In a virtual law firm setting, it's very easy to expand into another jurisdiction because your tools will allow you to be an effective attorney anywhere within your locations," he said. "So all you have to do is reach out to that jurisdiction, bring on a new lawyer from it, and you're up and running without the investments that traditional law firms have had to undergo."

Another benefit of virtual law firms is the ability to have expanded practice areas, Lenon said. "Unfortunately for most solo and small law firms, the glass is always half-full when it comes to clients," he said. "Normally a client will come to you with a single matter, and you're able to help them, but often they'll come with a matter outside of your specialty or your practice area, and traditionally you've had to refer those clients to another law firm, losing that business and maybe getting a referral fee."

With virtual law firms, the technology allows you to go for a "glass half-full" scenario, where you bring in the tools and resources you need to handle an unexpected practice area by working with new lawyers or contract associates. "You're keeping those clients and focusing on giving them a full-service law firm that you expand or contract as needed," Lenon said.

Lower overhead and lower IT costs compared with traditional firms are two additional benefits, he said.

"With virtual law firms, real estate no longer matters," Lenon said. "It enables you to reach out and speak to your clients from your home office, a rental space that you use on a per-

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needed basis or even meeting at their own locations but still taking the full tools and resources of your law firm with you."

Virtual law firms also tend to use cloud-based services, which means "there's no need to maintain expensive servers within an office space," Lenon said.

A virtual firm also allows you to lower overhead when it comes to staffing, he said. "You're able to reach out to not just clients but to employees in different locations, allowing you to take advantage of competent staff that you can engage on a part-time basis or on a full-time basis from a different area with a lower cost of living," Lenon said.

Lastly, "incidentals" don't tend to exist in virtual law firms because they use online tools, such as voice over IP for phone calls and emails with PDFs for sharing documents, Lenon said. "Instead, you're saving money and you're actually giving better customer service because you're not charging for these incidentals," he said.

Chad Burton, one of the founding attorneys of Burton Law, a virtual firm with lawyers in Ohio, North Carolina and Washington, D.C., said the way he operates is to "take the best of the large and small firm world, in which I've been a part of both, and be able to leverage the good things."

For Burton, a virtual firm offers the solid technology base that larger firms are accustomed to but also the freedom to work remotely and in creative ways that small-firm lawyers know and appreciate.

Burton explained the programs that his firm uses: a system that integrates Google Apps, Box, Yammer and DirectLaw with Clio.

Box is the firm's document management system that allows for internal and external collaboration. "There are features in Box where you can tag people in comments so your team members can see that a draft is ready to review," Burton said. "There's a task-assigning feature in Box. We also set up external shared client portals where we can share documents as well as receive documents.

"A good example is that I rarely, if ever, send an attachment to an email anymore," he added. "Each Box document and folder has a unique link, and I will email that link, whether it's to a client or to opposing counsel or whomever, and they can click on the link and download the document. It allows me to work very easily off my iPad and iPhone. It also creates access stats. If you email a document to opposing counsel and they say, 'Hey, I didn't get it,' you can go back to the stats and see that … actually you did, according to your IP address on Oct. 29, you downloaded it at 2:22 p.m., and here's the proof."

Yammer serves an important purpose in the firm since everyone works in a remote or mobile nature, Burton said. "This is our water cooler," he said. "This is where we share ideas for upcoming events and things that are not necessarily client-related but firm operations-related. The best way to describe it is a social enterprise network. It's Facebook for our firm."

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For more information:

The ABA Legal Technology Resource Center has been providing ABA members with legal technology guidance for more than 25 years. Visit these resources for more on legal technology:
ABA Legal Technology Resource Center
Law Technology Today

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4 quick productivity tips for your practice

By Joshua Poje
ABA Legal Technology Resource Center

We're all looking for ways to save a little bit of time in our busy schedules. Whether you use that free time to do extra work, catch up on sleep or spend time with the family is up to you.

Here are four popular productivity tips we've been using recently:

Bookmark Your PDFs

Long documents can become unwieldy and difficult to digest. A thorough table of contents or index can help, but those traditional resources are geared toward print rather than on-screen reading. How can you make your digital documents a little bit more digestible? For PDFs, one answer is to use bookmarks. Located in the bookmarks tab on the left side of the screen, bookmarks allow you to create a digital table of contents that'll jump readers to particular pages or sections of a document with a simple click. Ready to give it a try? A few tips:

- If you select text and click the "create bookmark" button, the bookmark will take the selected text as its name and will jump the reader directly to that text — even if it falls partway down the page. Otherwise, the bookmark will match the location you're currently viewing.
- You can rename, reorder and nest bookmarks in the bookmark pane. Just drag and drop them within the list. This can be a handy way of creating subsections.
- Your bookmarks won't be very useful if nobody knows they're in there. To make them obvious, set an initial view. Just navigate to File > Properties > Initial View and choose to have the bookmarks panel open when the PDF is opened.

Use Office Templates

When we have a document we reuse frequently — a letterhead, a basic agreement — our habit tends to be to find

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an earlier version, duplicate it and update it to reflect the current matter. While this works, it's tedious and presents numerous opportunities for mistakes. Perhaps you forget to remove the name of an old client on a letter, or perhaps you accidentally save over an older (but still important) document with the new copy you're trying to produce.

An easy solution is included in Microsoft Office: template files. Rather than creating a finished document and then modifying that each time you need it, you instead create a *mostly* finished template. It could be a letter with names and addresses left blank or an agreement with certain clauses left blank. In any event, by saving the document (Word, Excel, PowerPoint) as a template rather than a typical document (e.g., as a .dotx rather than a .docx), you'll be able to double click it in the future to generate an entirely new, clean document that includes the language or content you pre-set in the template.

Have Better Meetings

Meetings should be an opportunity to solve problems and push forward projects. In reality, they tend to be wasteful time sinks that eat up your calendar and keep you away from more important work. To make matters worse, the effort invested in planning meetings can be equally time consuming and fruitless. How can you make your meetings better?

- Have a specific purpose for each meeting. Ideally, you should exit each meeting able to point to a specific accomplishment — a document that's been outlined, a plan of action prepared, an angry client soothed.
- If you're using Outlook, *use Outlook*. Make sure your own time commitments are accurately reflected in your calendar and those of your colleagues. That'll make scheduling meeting considerably easier, as others within the firm or organization can easily identify common free times.
- For meetings involving external individuals, especially multiple unrelated individuals, consider using a meeting planning tool like Doodle. Doodle allows you to offer an array of possible meeting times for invitees to choose from, so that you can more easily identify the times when everyone is free.

Be Your Own Teacher

Courses and books can be tremendously helpful and necessary when you're first learning about a new topic and need to build foundational knowledge. But when it comes to learning the day-to-day use of a piece of technology, self-education is generally the most effective approach. Keep a running list of the technology you'd like to learn to use a little bit more effectively, whether it's your firm's specialized case management software, your iPad or a common app like Microsoft Word.

When you have a few spare minutes, experiment with the technology. Open an old Word document and try to convert the formatting to use styles. Open a PDF and add bookmarks. Create a fake matter in your case management system and try using features you may have been ignoring up until now.

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Webinar: Top traits for success on the job

CareerAdvice Live! is a free monthly webinar series that offers practical tips on selected topics — some for seasoned lawyers and others for new lawyers or law students. Experienced career counselor Kathy Morris, an author and speaker at attorney career programs nationwide, will host the 45-minute webinar at 1 p.m. ET on the second Friday of each month.

Coming this month:

Top Traits for Success on the Job
1 p.m. ET, Friday, Dec. 13

Law practice is not a one-size-fits-all endeavor ... and that's good news. But there are commonalities successful lawyers share. Join our prominent presenters who will focus on:

- Traits that "go-to" lawyers evince (confidence) or avoid (indecisiveness)
- Traits that may matter most but that lawyers often overlook (optimism and resilience)
- Traits you can work on developing or deepening ... and ways to work past those that, sadly, could hold you back from having the career you envision.

Featured speakers:

Paula Davis-Laack is an internationally published writer, stress and resilience expert, and positive psychology practitioner who works with lawyers, law students and maxed out professionals to help them prevent burnout and build their resilience to stress. Laack has trained stress management, burnout prevention and resilience skills to thousands of professionals, including educators, lawyers, managers, C-suite executives, students and military personnel in the Middle East, South Korea, France, Australia and throughout the United States.

Jim Lovelace has worked in the legal career development field since 2000. He has served in the roles of associate director for career development at the George Washington University Law School; manager of lawyer development at Miller & Chevalier Chartered; and, currently, director of attorney training and development at Pillsbury Winthrop Shaw Pittman LLP. At Pillsbury, Lovelace has firm-wide responsibilities for training (through Pillsbury University) and talent development initiatives in various areas, including coaching, mentoring, attorney integration and career management.

Kathy Morris, the CareerAdvice Live! series moderator, founded Under Advisement Ltd. in 1988 to provide advice to

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lawyers, law students and legal employers about job search, practice readiness and work performance issues. A former criminal defense lawyer and law school ethics professor, she is also a leader in the lawyer training and development field, a published author and a frequent speaker at legal career programs nationwide.

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Manage your firm's technology needs

With more than two decades of experience in the legal community, Ricoh offers a powerful approach to managing the technology, document and administrative needs of your firm.

ABA members save up to 50 percent on office equipment, including multifunction printers, scanners, copiers and fax machines. Plus, save up to 20 percent on select practice and document management services, including network support that optimizes workflow while ensuring security and cost savings for your firm.

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