Best Practices for Adapting and Transforming

Collected Insights from Law Practice Publications

The ABA Law Practice Division has published many books and articles relevant to the challenges facing legal professionals during the ongoing COVID-19 crisis. We are pleased to make these excerpts from Law Practice books available for free to help our members during this time. For more detailed information on these topics, please refer to the books linked below. For more free content in this area, please refer to our Disaster Resources page.

**Resilient and Ready: Tools for Adapting to Stress and Change in the Law,**
by Paula Davis-Laack
from *The Best Lawyer You Can Be*, edited by Stewart Levine

**Managing a Virtual Law Practice,**
by Stephanie L. Kimbro
from *Virtual Law Practice, Second Edition*

**Managing Virtual and Telecommuting Personnel,**
by Andrew Elowitt and Marcia Watson Wasserman
from *Lawyers as Managers*

**Establish Paperless Protocols and Improve Your Business Practices,**
by Sheila M. Blackford and Donna S.M. Neff
from *Paperless in One Hour for Lawyers*

**Adding Signatures, Initials, and Digital Signatures (Including the Fill & Sign Tool),**
by Daniel A. Siegel and Pamela A. Myers
from *The Ultimate Guide to Adobe Acrobat DC*
THE BEST LAWYER YOU CAN BE
A Guide to Physical, Mental, Emotional, and Spiritual Wellness

Stewart Levine
Editor’s Note: Resilience is a critical skill for the legal profession. Paula gets specific about the unique challenges lawyers face because of the nature of the work. Burnout and substance abuse are endemic and the cause is often the drive to be a better lawyer. Specific proven tools can be powerful lifelines for a sinking professional. That’s why they are included.

Law firms and organizations need lawyers and talent who can think critically, develop business, and solve problems based on the way clients live and work today. Without a fully engaged, high-performing and resilient pool of talent, law firms and organizations cannot grow and thrive. Resilience, the capacity for stress-related growth, and resilience skills provide additional tools that lawyers need to successfully cope with these stressors. Resilience is built through a set of core competencies that enable mental toughness and mental strength, higher performance, strong leadership, and tenacity. Resilient people give up less frequently when they experience setbacks.

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The question I’m most often asked by people is this: “You used to be a lawyer, and now you help busy professionals build stress resilience. How did you go from practicing law to doing that?” The answer is that I burned out seven years into my law practice. During that time, I noticed that I was becoming less effective at managing my stress, was chronically physically and emotionally exhausted, overly cynical, and felt ineffective as I lost confidence about where I fit into the profession. It wasn’t until I left my law practice and began to study the impact that stress has on busy professionals that I realized that this “thing” I had experienced had a name—burnout. In order to fully recover, I had to learn new skills to help me better understand my high-achieving ways, and that included increasing my resilience to stress. Resilience skills helped me to actively grow from the challenges and adversities I experienced and continue to help me today. Here is why resilience is such a needed skillset in the legal profession.

WHY THE LEGAL PROFESSION NEEDS RESILIENCE

1. The Legal Profession Is Different, and It’s Changing
The continuous change that is present in the legal profession is adding to the already high levels of stress that lawyers experience. Clients continue to demand flexible billing arrangements and different methods for getting legal work done, and more attorneys are demanding flexible work arrangements to better integrate work and life. This has given rise to alternative business models like secondment firms and virtual law firms. Firms are also exploring how artificial intelligence—the development of computer systems able to perform legal tasks normally requiring lawyer involvement—can help them complete client work more quickly and cost effectively.

The legal profession is different from other professions. Law is often a zero-sum environment involving high-stakes matters with a winner and a loser; lawyers often have to take on tough clients and ask sensitive questions in court, sometimes in a way that conflicts with their values but is required to zealously represent a client; communication can be adversarial, and even regular conversations are treated as arguments to be won, a style that easily carries over to staff and family with negative consequences; and many firm cultures emphasize profits per partner and extrinsic rewards over meaning and well-being.¹

2. Well-Being Decreases in Law School and Continues to Decrease in Practice
The loss of personal well-being among many lawyers starts in law school. Research shows that before law school, future law students are as emotionally healthy as the general population; however, just six months into law school, levels of well-being crash and anxiety and depression levels increase dramatically.² More troubling, levels of anxiety and depression among law students have been found to remain signifi-
cantly elevated even two years after graduation. Lawyers and law students also have significantly higher levels of stress, stress symptoms, alcohol abuse, social isolation, and marital dissatisfaction. These statistics were again supported in a 2016 study conducted by the ABA and Hazelden Betty Ford Foundation, which found higher than average levels of depression (28%), anxiety (19%), and stress (23%). More troubling were the findings showing that younger lawyers in their first 15 years of practice, working in private firms, had the highest risk of problematic drinking, with 31% of this specific group identified as problem drinkers.

3. Stress and Burnout Are Real Challenges in the Law

Occupational stress has been shown to be significantly associated with both personal and work-related burnout among lawyers. Lawyers who spent the majority of their time working on civil and criminal matters felt more fatigue and exhaustion not only from their legal work, but also from the stressful and negative interactions with their clients. Another study of public defenders found that 37.4% of them scored in the clinically significant range of burnout. Lawyers experiencing burnout were found to be less committed to the organization, reported lower identification with organizational goals, and were less willing to exert effort to achieve those goals.

Professionals who are burning out are more prone to errors, have lower levels of well-being, lower retention rates, higher turnover, and lower morale. One study showed that for each one point increase in a person’s exhaustion score on the Maslach Burnout Inventory (“MBI”), there was a commensurate 5% increase in the likelihood of that person reporting an error; for each one point increase in a person’s cynicism score on the MBI, there was a commensurate 11% increase in reporting an error; and for each one point increase in a person’s personal efficacy score on the MBI, there was a commensurate 3.6% decrease in likelihood of reporting an error.

Resilience has been shown to help prevent and alleviate burnout in a number of studies. Law firms and organizations need lawyers and talent who can think critically, develop business, and solve problems based on the way clients live and work today. Without a fully engaged, high-performing, and resilient pool of talent, law firms and organizations cannot grow and thrive.

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3. Id. at 246.
6. Id.
8. Id. at 449.
HOW TO BUILD RESILIENCE

Resilience is your capacity for stress-related growth, and resilience skills provide the tools a lawyer needs to successfully cope with the stressors outlined previously. Resilience is built through a set of core competencies that enable mental toughness and mental strength, optimal performance, strong leadership, and tenacity. Resilient people give up less frequently when they experience setbacks.

Resilience thrives when you focus on building skills in the following categories, captured by the acronym FOCUS:14

F:  Flexible, accurate, and thorough thinking—what is often referred to as “mental toughness”;
O:  Other people matter—fostering high-quality relationships with others;
C:  Connecting to something bigger—identifying clear sources of meaning and motivation;
U:  Utilize positive emotions—developing a positive emotional balance so that negative emotions aren’t the only emotions utilized; and
S:  Self-care—taking time to recharge your batteries both at work and outside of work.

Each component of the FOCUS model is explained in more detail in the following sections along with a sample skill to try.

F: Flexible, Accurate, and Thorough Thinking

To develop resilience, you have to understand how you think about adversity, stress, and challenging situations. Your “inner critic” drives a number of counterproductive thinking styles, such as catastrophizing (the downward spiral style of thinking you may experience during a stressful event), having a fixed mindset (the belief that your talents and abilities are fixed and aren’t able to be grown in any way),15 and other thinking traps (jumping to conclusions, mind reading, consistently blaming yourself when things go wrong, or consistently blaming other people or circumstances when things go wrong). The good news is that you can learn how to identify and correct counterproductive thinking styles and convert your “inner critic” into your “inner coach” to develop a more flexible, accurate, and thorough thinking style under stress.

SKILL TO TRY: When you are stuck thinking in a counterproductive way, ask yourself one of these questions to help you reframe your thinking:16

1. How will I feel about this a year from now?
2. What specific evidence do I have to support this thought?
3. What would I tell my friend/partner/child if he or she was in the same situation?
4. What impact is this thinking having in my life?

14. This is my own model of resilience after researching the topic for my master’s thesis at the University of Pennsylvania.
15. Fixed and growth mindsets are the work of Dr. Carol Dweck—she summarizes her research in the book Mindset.
O: Other People Matter
Developing high-quality relationships is critical to a happy, healthy, and resilient life. High-quality relationships have four key characteristics (and have been positively associated with feeling psychologically safe at work): they are empowering, they provide a sense of trust, you can be your authentic self, and they are respectful.

Solid work relationships also translate into quantifiable gains in performance. Workplace friendships are one of the strongest predictors of productivity, and those who say that they have strong, supportive colleagues at work get sick less often, are more focused, are more loyal to their organizations, and change jobs less frequently.

SKILL TO TRY: The most basic skill to help you build more effective relationships is the 10/5 rule. If you’re within ten feet of another person, look at them and acknowledge that you see them; if you’re within five feet, say hello. While this may seem silly and even simplistic, try it. I bet you move through work and life either distracted or tethered to some type of electronic device, so I suspect you’ll find this harder to put into practice than you might think.

C: Connecting to Something Bigger
This component of resilience enables meaning and motivation. Engaged employees perform better on a daily basis, and the higher a person’s level of engagement, the higher their objective financial returns. Higher employee engagement translated into higher client satisfaction and loyalty, greater profitability, and more productivity.

The quickest way to get lawyers motivated at work is to provide them with opportunities to experience autonomy, competence, and connection on a daily basis. Law school professor Lawrence Krieger and psychologist Kennon Sheldon have done extensive research on lawyer motivation and well-being. Most recently, they analyzed data from over 6,200 lawyers and law students to discover what really drives and undermines well-being and engagement. What they discovered is that the external factors that are often emphasized in the legal world—grade performance, income after graduation, law school rank, and law journal membership—were either not correlated at all or only very weakly correlated with long-term well-being.

21. Edward L. Deci & Richard M. Ryan. The “What” and “Why” of Goal Pursuits: Human Needs and the Self-Determination of Behavior. 11 PSYCHOL. INQUIRY 227–268 (2000). Deci, Ryan, and their colleagues have researched the building blocks of motivation and engagement for more than three decades. As such, there is a substantial body of science supporting these three psychological needs.
23. Id. at p. 24.
Experiences of autonomy, connection, and competence were found to have the highest correlation with well-being.24

Despite the law firm emphasis on external rewards and profits per partner, adults don’t typically derive long-term meaning from extrinsic goals. In one study, adults with intrinsically motivated goals reported higher levels of life satisfaction and well-being and lower levels of anxiety and depression upon goal attainment. The adults with extrinsically motivated goals reported higher levels of anxiety and depression upon goal completion. They thought achieving these “profit” based goals would make them happier, and in the end, it didn’t.25

Meaning matters in other ways as well. People who believe that their lives have meaning and purpose share a whole host of healthy benefits: they are happier, feel more in control over their lives, feel more engaged at work, and report less depression and anxiety and less workaholism.26

**SKILL TO TRY:** Create a bigger-than-self goal, which can also be done as a team exercise. A bigger-than-self goal is less about the objective goals you have like working a set number of billable hours; rather, it’s more about how you see yourself within your community (which could mean in your firm, family, or larger community). Ask yourself what is it that you want to contribute and how you want to make an impact. When people are connected to bigger-than-self goals, they are more hopeful, curious, grateful, and inspired. Not surprisingly, they also show greater well-being and satisfaction with their lives.27

**U: Utilize Positive Emotions**

Resilient lawyers proactively build their positive emotionality through the use of humor, relaxation techniques, and optimistic thinking.28 Additional studies showed that positive emotions predicted increases in both resilience and life satisfaction, and being able to utilize positive emotions during adversity may help buffer against stress and restore more productive coping habits.29

**SKILL TO TRY:** Set aside time every month for attorneys to share recent accomplishments as a group. Lawyers are trained to think about who’s at fault, who’s to

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24. *Id.* at p. 25. The precise correlations are as follows: the correlation between autonomy and well-being is .66; the correlation between connection and well-being is .65; and the correlation between competence and well-being is .63.


blame, and what to do to mitigate a client’s risk. This constant problem-focused mentality is good lawyering, but can negatively impact everything from well-being to relationships.

**S: Self-Care**

The Ideal Worker culture (the creation of our modern day workplace where people are expected to be totally dedicated to their jobs and always on call, forcing people to choose to prioritize their jobs ahead of other parts of their lives) is burning people out at faster rates and zapping them of the precious energy and engagement they need to sustain their careers over the long haul. The Gallup organization surveyed more than 10,000 people to determine whether they were “fully charged”—getting regular doses of meaning, interactions, and energy at work. When asked to reflect about their day yesterday, only 11 percent of their sample reported having a great deal of energy. Our collective lack of recovery is costing companies more than $60 billion a year.

Daily recovery from work is crucial to maintain high levels of well-being, performance, and resilience. Recovery from work is defined as the process by which a person’s functioning returns to pre-stressor levels and work-related strain is reduced. It’s not enough to go home and take a break. Optimal recovery is a combination of both internal recovery (the short breaks you take while you’re at work) and external recovery (how you spend your time after work, on the weekends, and on vacation).

**SKILL TO TRY:** Become a self-protective giver. Lawyers who frequently give of their time and talents can quickly find themselves confronting generosity burnout, unless they put some boundaries in place around their giving. A recent study found that selfless teachers saw significantly lower student achievement scores on year-end assessments (they exhausted themselves trying to help everyone with every request). Successful givers prioritize requests for help, address their own needs (no more skipping lunch to help someone else), look to help multiple people with a single act of generosity, and chunk their giving into dedicated blocks of time.

**THE BENEFITS OF A RESILIENCE APPROACH**

Resilience doesn’t guarantee that you will be successful in every situation, but your capacity for recovery will be greatly increased such that you shift into adaptive behavior much more quickly when you encounter stress or a challenge.

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35. *Id.*
The benefits of learning resilience skills as a method to become a more complete leader and lawyer, develop better work/life integration, manage challenge and stress, and prevent burnout are many. When you are more resilient:

- You can tolerate change, stress, uncertainty and other types of adversity more effectively than those with lower levels of resilience. You develop healthier coping strategies and are therefore more likely to mitigate the impact of stress and adversity.
- You are more self-efficacious; meaning, you believe that you can produce results, achieve your goals, and feel effective in your life. You have a sense of agency and believe that problems can be solved as a result of your own efforts. This mindset helps to buffer against developing a “giving up” mentality and learned helplessness.
- You are more motivated to achieve in many different areas of life and are flexible in your ability to adapt to challenges, adversity, and changing life circumstances.

RESILIENCE WORKS

1. Success in the Legal Profession
Lawyers and law firms report different types of improvements after resilience training. Several firms I’ve worked with have implemented a gratitude wall: an area within the firm or a specific practice group to track thank-yous and team wins. These firms report that attendance at practice group meetings is higher and the attorneys look forward to sharing recent accomplishments—successes that would otherwise go unreported or unnoticed.

Numerous attorneys have emailed me to report closer relationships, particularly at home with family members. In addition, I have lost count of the number of lawyers who report that they are sleeping better because they are also remembering good things that happen during their day instead of constantly focusing on negative events or what went wrong. As lawyers get better at recognizing counterproductive thinking, they report lower levels of catastrophizing and have a better understanding of their thinking traps and how to reframe counterproductive thoughts. They have reported that they bounce back quicker from stressful situations and feel more confident taking stretch assignments.

2. Success in the Military
We don’t often think of the military as a place for progressive human management tools. It is. For more than three years, I had the privilege of teaching and training resilience skills to drill sergeants, non-commissioned officers, officers, and their

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37. These results are summarized from thousands of emails, evaluation form responses, and personal discussions with workshop participants and professional development executives at dozens of law firms throughout the United States.
spouses as part of the Army’s Comprehensive Soldier and Family Fitness program (“CSF2”)38 in partnership with the University of Pennsylvania. CSF2 is the Army’s program to provide all Army community members with the psychological resources and skills to cope with stress and adversity and thrive in their lives. CSF2 has been able to scientifically validate the importance of resilience to performance and the effectiveness of resilience training for its soldiers. Here are some of the findings to date:39

- Officers who had higher levels of resilience were more likely to be promoted ahead of schedule, assigned the toughest jobs, and achieve the rank of Brigadier General (a one star general) or higher.
- Soldiers receiving resilience training reported higher overall emotional fitness, good coping (“When I get stressed out, I problem solve”), engagement (“I would choose my current work again if I had the chance”), friendship (“I have someone to talk to when I’m down”), and lower levels of catastrophizing (“When bad things happen to me, I expect more bad things to happen”).
- Units with resilience trainers had significantly lower rates of substance abuse diagnoses and diagnoses for mental health issues, such as depression and anxiety (in some cases, the reduction in these diagnoses was as high as 60%).

CSF2 continues to expand its resilience training offerings to include a course for spouses of soldiers, a new executive course for high-ranking soldiers, and a course for teens. Ultimately, the CSF2 course was designed to create more resilient leaders in the military. While the stressors might look different in the law, law firms would be well-served to think about how training programs, like resilience, could enhance the leadership capacity and capability of their lawyers by specifically addressing the challenges lawyers face each day.

3. Success with Adults Generally

Many of the skills in the Army’s resilience training course were adapted from the Penn Resiliency Project (“PRP”). The PRP has been evaluated in more than a dozen controlled studies. While some inconsistent findings have been reported, the studies suggest that PRP significantly reduces symptoms of depression and anxiety and helped participants perform better. In the studies that included long-term follow-ups, PRP resilience skill effects were found to last for two years or more.40 More recent meta-analyses have demonstrated that resilience training is a useful means of developing mental toughness and well-being.41

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38. For more information on the Army’s CSF2 initiative, please visit http://csf2.army.mil.
39. To review a summary of these outcomes, please visit http://armymedicine.mil/Documents/CSF2InfoSheet-Mar2014.pdf. See also the following summary of both the empirical and popular media papers and articles of the CSF2 program at https://ppc.sas.upenn.edu/services/resilience-training-army.
As outlined in this chapter, resilience is built through five specific pathways captured by the acronym FOCUS. Additional quick strategies to build your resilience include:

- Using a mindfulness technique called STOP, an acronym that stands for “Stop, Take a breath, Observe, Proceed.” It’s meant to be used as a quick time out to increase your self-awareness and self-regulation.  

- When you feel stuck or overwhelmed, ask yourself where you have a measure of control or influence in the situation.  

- Track your Job Demands (aspects of your job that take consistent effort and energy) and Job Resources (aspects of your work that are motivational and energy-giving). Do you have enough Job Resources to maintain your resilience and not burn out? If no, what is missing and how can you incorporate it?

Challenge and change are here to stay in the legal profession, and stress is not going away. Building the resilience of your organization—and the lawyers and other professionals in it—makes good business sense.

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42. Bob Stahl & Elisha Goldstein, A MINDFULNESS-BASED STRESS REDUCTION WORKBOOK 60–61 (2010).
43. Supra note 16.
CHAPTER SIX

Managing a Virtual Law Practice

Providing Customer Service for Clients Receiving Online Legal Services

This book includes discussion of professional responsibility and ethical practices for delivering legal services online, but at least one section must be dedicated to providing quality customer service to your online clients. This is not about receiving immediate rewards for your practice. Good customer service is a long-term strategy of building a strong online client base through referrals and recurring clients. Providing good customer service online is about being a smart business owner.

The goals you should strive for in providing good customer service for your online clientele are to (1) build the reputation of your firm’s online practice as a secure, efficient, and affordable site to receive legal services, and (2) build your reputation as a responsive law firm that pays attention to individual online clients’ needs. There are simple steps, most of them taking minimal time, that will help your online clients feel more satisfied from their online transactions with your law firm.

First, establish a response policy for when the online client contacts you through the client portal. Let the clients know that you will respond to their requests for legal services and other actions in their case file within a fixed amount of time. For example, a 24-hour response policy might be reasonable. Even if the message back to the online client is nothing more than a note stating that you have reviewed their message or received their document online and will get back in touch with them later, this will reassure the client that you are paying attention to their legal needs and concerns. Consider letting your clients know what your response policy is.
ahead of time so that they know what to expect. At the same time, avoid being too ambitious and making promises that you can’t keep. Promising to respond to an online request within an hour after it is received may not be realistic unless you are including auto-responders as part of your response policy.

Knowing the limitations of your virtual practice is important to ensuring that you are able to convey to clients adequately what services you can and cannot provide unbundled through your virtual law office. Be prepared to cordially refer a client to a full-service law practice from the beginning. Being polite and helpful to prospective clients that you are unable to assist may earn you respect and build your reputation. The next time that individual has a legal need that may be handled online or has a friend who could use the services of your virtual law office, these simple actions may win you future referrals.

Learn how to convey sincerity and concern in automated processes. For your practice, come up with simple, standard phrases that you may reuse with online clients in auto-responders that will convey personalized care for each type of case. For example, here is an automated response to a newly registered client on the client portal who is seeking guidance with a divorce:

Thank you for contacting our firm. We understand that this is a difficult time for you. In order to find out if we may assist you online with your legal matter, please provide us with some additional information by filling out the form below. The information you provide will allow us to make the determination of whether our firm may be of assistance to you online. If we may assist you, we will provide additional information regarding my representation of your legal matter. If we are unable to assist you in this matter, [one of the lawyers in our firm will make an appointment to meet with you] or [we will refer you to a full-service law firm] that may be able to assist you in your legal needs. If you have any questions or concerns when filling out the form, do not hesitate to drop us a note online at any time [or call our toll-free number at _______] [or sign on to real-time chat to question assistance].

If desired, the law firm could provide a phone number along with the auto-responder at this time, or after determining whether to accept representation. Some law firms subscribe to real-time chat services that show prospective clients when a firm staff member is online to address questions in real time. Once a formal attorney-client relationship is formed, make it clear that the client may access his or her legal case files securely at any
time and should feel free to give the firm feedback and comments on any legal matters. It is still at the discretion of the lawyer handling the case how much of the case file and documents are made accessible to the client online.

Some lawyers may be comfortable with their ability to convey sincerity in writing, so such techniques may be enough to reach out to online clients and further personalize their experience with the virtual law office. For others who are more comfortable with conveying sincerity and concern with their voices, they may want to schedule phone or web conferences with their online clients. This takes longer and consumes more resources than handling the matter completely through the online interface, but this is a decision best left to the individual lawyer based on his or her personal comfort with technology, practice areas, and the needs of the client base. The process of scheduling phone calls with each client may be automated so that the technology prompts the client for this additional communication after the lawyer has run a conflicts check and is ready to proceed to the next step in determining the scope of representation required for the legal need presented. You may also want to consider hiring a virtual assistant or virtual paralegal to respond to simple online requests for legal services or concerns within a client’s case file.

Be flexible and patient with online clients just as you would in an office environment. Your clients may have varying comfort levels using technology, depending on the age, education, and sophistication range of your client base as well as the socioeconomic background. That said, most clients will be retaining the services of your law office because it delivers legal services online and provides them with a convenience. You should take care to deal quickly with any complaints or confusion presented by online clients that relate to the technology you have chosen to provide legal services online. In many cases, frustrations will arise from technology issues that you will have no way of preventing, such as the client’s own hardware malfunctions or problems with Internet access. You might want to provide some basic guidance on your website regarding security and safety for your clients as far as protecting their own computers, backups, and keeping their usernames and passwords secure. Many clients in this day and age have been using secure sites for banking, shopping, and other transactions for many years and are more than aware of these risks and best practices, but it might be seen as good customer service to provide additional guidance and reminders somewhere on the static virtual law office site. You may also wish to create tutorial videos for clients that walk them through different steps of the process, such as registration, requesting legal services,
or paying online invoices. These videos might be posted on the firm’s YouTube account as well as featured on the registration page of the firm’s website for online services. At the end of the process, if the client is extremely frustrated, consider reducing the price of your legal services. It might pay off in the long run to return that client to a positive attitude regarding your business.

After delivering legal services to the client, provide an easy and efficient method of closing the online transaction. For example, when a client is ready to pay, try to be flexible with your payment options. Consider offering payment plans for families, or allow the client to send a personal check with the stipulation that it must clear before you provide his or her completed legal services. Allowing clients to pay online with a credit card often helps them to pay for legal services that they could not afford to pay for in cash. After the transaction is complete, allow them to be able to retrieve information through the client portal regarding their online invoice, charges, payments, or other information regarding the status of their payment for online legal services. This helps the client to feel more in control over the process. This is also the type of action that will help to build a strong reputation for the online delivery component of your law firm.

eProfessionalism When Working with Online Clients

eProfessionalism is the term used to characterize the application of concepts of lawyer professionalism to a lawyer’s Internet activities, including working with clients and lawyers online and delivering legal services online. Unlike the average user of social media, lawyers must take care to conform their online conduct to professional standards and ethical duties. As a lawyer’s use of online methods of communication increases, it can become more difficult to separate personal use from professional use. A lawyer’s ability to conduct himself or herself professionally online will be a function of both the familiarity with the particular platforms and the comfort level with and knowledge of the underlying technology. Separating the professional from the personal in the use of social media applications can be challenging, but it is necessary for a law firm delivering legal services

1For a more in-depth discussion of eProfessionalism, see Essential Qualities of the Professional Lawyer, ABA Center for Professional Responsibility, Chapter on eProfessionalism, by Stephanie Kimbro, June 2013 at http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=213360.
online to engage to market its services as well as engage with prospective clients and network with other lawyers and professionals. Failing to understand how traditional notions of professionalism transfer to online engagement may pose risks for the law firm not only from its own activity online but from that of clients, potential and prospective clients, and other professionals who may reach out to or mention the law firm or its delivery service through a website, forum, blog, tweet, post, or other digital method.

Lawyers delivering legal services online in particular must learn how to behave as professionals when engaging online, or risk potentially serious consequences. A basic first step for lawyers engaging with the public or other professionals online is knowing when it is appropriate to expose a given communication to public access, without restriction, versus when a communication needs to be private. Again, mastering the privacy settings when first setting up any online account or profile is critical to ensure that this decision about engagement can be enforced through the application that is being used. The following basic guidelines may be used to help lawyers maintain eProfessionalism while still effectively engaging with the public and professionals online:

1. When in doubt about posting something or how best to use a platform, find mentors, but don’t limit this to a single mentor in a single generation. Get the advice of lawyers with years of professional experience and of younger lawyers who may have more experience with the online culture of the individual platforms.

2. Don’t copy the behavior of the rogue lawyers you see online. Each online application has a handful of lawyers who have made a name for themselves by behaving in ways that are unprofessional. They may have large followings or fans online, but copying this behavior will not build client development online or increase the lawyer’s ability to network with other professionals.

3. The First Amendment does apply to online activities. However, lawyers should limit online engagement to expressions that are going to be the most constructive and least harmful. Being professional online means making an intelligent benefit/harm analysis before publishing and considering more than just the personal impact the message will have.

4. Lawyers should not publish anything online that they would not want to see splashed across the headlines in The Wall Street Journal.

5. Lawyers should not say online what they would not say in person.
6. Lawyers should stay current on new online methods of communication, from both the security and cultural standpoints. Notice how eProfessionalism evolves as lawyers integrate new and different online methods of engagement into their practices and determine the best strategy for the law firm’s use of these methods.

Terminating the Online Relationship

Do not cut the client off completely after he or she pays for legal services online. The online process may seem cut and dried, and the firm may wish to run the online delivery component like a factory assembly line, but if the firm wants referrals and recurring clients, then consider the value of staying connected to the client. Consider answering a quick online question at no charge, or check back in with clients to make sure the legal documents they purchased were filed correctly or executed properly. This may be a task that the firm chooses to assign to a virtual assistant or paralegal when it becomes too time-consuming for the lawyers in the firm to manage.

At a minimum, provide continued access to the client’s legal file online or a way for the client to contact the firm online, following the payment for online legal services. Set up a policy for when the firm will remove the client’s access to his or her case files. A good date might be the required deadline that your state bar has for client record retention. When the client requests his or her file, be ready to provide export features to remove the files in electronic format.

There is also the question of whether you should provide clients with a paper version of their digital file upon termination of the representation. If the entire file is in digital format, then the client may be able to take the digital version and print it out to paper for his or her own purposes, or, if you wish, you may offer to provide the client with a paper version of the file and add the cost of that to the total fee for legal services. Another best practice is to include in the engagement process with the client and in the terms and conditions for the online-delivered service that only a digital copy of the file will be accessible online and for a specific amount of time. That way the client will have adequate notice of how he or she will be able to access the file and for how long following the termination of the representation.
The law firm may also want to keep in touch with online clients by sending out occasional electronic newsletters or updates to them to keep in touch. If the firm has a blog, it may handle these updates or newsletters by posting there and allow clients the option of subscribing to that blog to receive notification of new posts containing general legal guidance or law office news.

**Daily Best Practices**

The security of the virtual law office is going to depend on the technology that the law firm selects, but just as important, it will depend on how well the members of the law firm abide by daily best practices for the use of that technology. Because legal services are being delivered online, all members of the law firm using the technology—whether to work directly with clients online or to handle administrative matters in the system—must be educated about security threats when practicing on remote devices and how to mitigate those risks. This book cannot cover all of the security best practices for law firms. There are several excellent books on the market specifically to help law firms understand security risks and develop technology use policies that incorporate the best practices for the needs of the individual law firm based on its size, structure, and technology used.

**Securing Mobile Devices**

Working remotely provides great flexibility and opportunity. The use of mobile devices to conduct business online is growing as legal professionals realize the increased productivity that comes with a virtual law practice. The use of mobile devices naturally comes with a word of caution: using mobile devices, such as laptops, iPads, tablets, and other handheld devices, to store digital law office data is not typically a secure method because the data on these devices is often not encrypted, and, depending on the setup you are using, access to the data could be left wide open.

Should the mobile device be stolen or misplaced, sensitive attorney-client data would be vulnerable, placing you at risk for malpractice. Even with regular backup of the data, you would not have control over the misuse of the information if the mobile device were stolen. There are some products out there that may be used to reduce this risk. For example, Find My iPhone is an app that uses GPS to track mobile devices and allows you to
lock the phone and take other security measures if a device is stolen or lost. This application also allows the user to completely erase the data from the device in the event that the device may not be recoverable. Any lawyer using a laptop to conduct business remotely should consider investigating a similar additional security check. Full-disk encryption is also recommended because it encrypts everything on your hard drive rather than just encrypting specific file folders.

A mobile lawyer may be tempted to use the advertised Wi-Fi available in many coffee shops and other public places to conduct business. Any activity conducted online while using a shared wireless connection in a public place (called a “hotspot”) will be wide open to anyone else using that same wireless access. Even if you have firewalls enabled, this only prevents hackers from getting access to your computer and does not prevent them from getting onto your network to view your Wi-Fi traffic. Viewing a secure website with secure socket layer (SSL) may be safe, but a wireless eavesdropper could still view any websites you have visited and acquire any login information used on unsecured sites (non-SSL). It would be like having a conversation in the open; any search terms you typed into a search engine could be seen by anyone attempting to hop onto your network to see what you are working on. If you are visiting a website using SSL, such as your own virtual law office, then any communications will be encrypted and not as susceptible to intrusion. However, unencrypted e-mail and web pages not using SSL are completely visible to an eavesdropper monitoring your network. Any unsecured ports open on your computer are also vulnerable to attacks if there is no firewall at the computer level. In other words, you are not exposing your virtual law office to vulnerability because the virtual law office itself uses SSL encryption, but you may be opening the door for a potential attacker to access other items on your computer.

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3A wireless eavesdropper would use a wireless tool, such as a network sniffer, to acquire data by observing packets that are passing on the network. The hacker then looks for data such as usernames and passwords. He or she takes that information and uses it to impersonate the individual.

4There may also be some interference if the Domain Name System (DNS) is controlled by the attacker. In addition to DNS attacks, there are “packet sniffer attacks.” Both methods of interference may be used together or separately. These attacks may be used against HTTPS via DNS spoofing or other means if a false certificate is accepted by the user attempting to connect to the secure site. Almost all browsers have visual indicators to alert the user that this may be happening. However, these “red flags” on the browser only work when the user takes them seriously and terminates the nonsecure session.
A better option for the mobile lawyer needing Internet access would be to purchase a cellular-based solution from a wireless Internet provider, such as a mobile hotspot. Connecting this personal hotspot to a mobile device allows you to avoid the shared hotspot area that Wi-Fi relies on, and it directly connects you to the Internet in a manner less susceptible to wireless eavesdropping by nearby third parties. With any remote-access device, you should install firewalls and antivirus software on your devices and make sure those safeguards are correctly functioning.

Note that no matter how you connect to the Internet—either by landline, Wi-Fi, AirCard, or wireless personal hotspot—all confidential communications should be done over secure protocols, such as SSL, from end to end. Even if a connection is secure from the laptop to the Internet service provider (ISP), it is not guaranteed to be secure from the ISP to the end user without additional protections, such as end-to-end encryption.

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**Checklist of Daily Best Practices for the Use of Technology**

- Use full disk encryption on all computers.
- Create strong passwords. Change them occasionally. Make sure usernames and passwords are not written down or are not easily viewable or accessible.
- Use a daily backup system.
- Keep antivirus software up to date and a firewall in place.
- Use antimalware protection.
- Use a pop-up blocker, depending on the browser you use. (Firefox is recommended with the use of security add-ons.)
- Have a secondary, backup Internet method, such as a wireless AirCard.
- Secure your wireless.
- Remove metadata before transmitting documents.
- Educate and remind your online clients about protecting themselves using their own hardware.

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5An aircard is a device that may be inserted into a computer, smartphone, or other device that allows it to connect to wireless Internet access provider. Usually this is to connect to a cellular telephone network.
Set Up a Social Media Use Policy for the Law Firm

Whether you are a solo practice or a part of a multi-lawyer law office, establish a social media use policy to protect the law practice and its clients. This is a policy that a law firm should have regardless of whether or not it delivers legal services online. However, law firms that deliver legal services online are engaging in more forms of online communication and marketing and are therefore more likely to need in-depth policies related to their firm members’ use of these online tools. Depending on the extent to which a law firm uses social media, the social media use policy may be incorporated into the law firm’s larger technology use policy or a standalone policy to accompany the firm’s other policies and procedures.

The key to marketing online legal services, which is discussed more in the next chapter, is consistency in the online image that your firm presents to the world. However, the law firm also needs to make sure that it has an understanding with the firm’s clients about how it will communicate with them over different forms of social networks. Having a policy in place helps you to maximize the law firm’s efforts to build a consistent brand and online presence and to avoid sending the wrong image to other lawyers and prospective online clients. It also helps clients understand how members of the firm will and will not communicate online to ensure that there are no expectations by the clients that are not met.

For example, it might not be safe for clients to send confidential messages to members of the law firm through Facebook or Twitter Direct Messages because these methods may not be the most secure. By writing this as a policy that is shared with law firm members and also with the firm’s clients in its engagement agreement, you can be sure that everyone working with the firm is aware of the expected forms of communication and the reasons why these policies are in the best interests of the clients and the law firm.

A Starting Point for Developing Social Media Use Policies

There are different forms of online social networking. I would recommend categorizing the most popular online social networking tools in terms of those that are going to be limited to legal professionals (internal social networking) and those that are accessible by the general public (external social networking). Any policy for social networking that you establish should reflect the varying degrees of security and malpractice risks that the different social networking methods provide. Understand the benefits of each form and weigh them against the risks. Build the policy around the
methods of online social networking that your law firm will be committed to using to build its online presence.

Internal social networking includes social networking that is limited to legal professionals or members of your virtual law office, such as associates, virtual assistants (VAs), and virtual paralegals. It is not open to the general public. This is going to be safer and more secure but also more time-consuming because it may require administrators and moderators to set up and maintain. It would not be practical for the solo or small firm to implement, but these lawyers may wish to participate in other private networks of legal professionals. Some examples might include forums, such as those offered by the state bar, or that are specifically created for lawyers in your specific practice areas. The benefit is that the discussion is limited to only the audience you want, and it requires confirmation and registration to post, so there are few security risks. The disadvantage is that lawyers are not often interested in taking the time to contribute to a website forum. Listservs such as the ABA’s Solosez or legal professional communities such as JDSupra and Legal OnRamp, and other websites where lawyers may share and collaborate with other legal professionals, are all forms of internal social networking.6

External social networking is any social networking method that is available to the general public. It is going to have more risks as far as security. For example, with this form of networking you will have to avoid having members of the general public provide confidential information or ask for legal advice that will be viewed publicly. But these methods will also have more results as far as marketing your services, building your brand, and networking with other legal professionals. External social networking includes blogging, which may be used to create and control the online presence for your organization. It provides an opportunity to educate the public regarding your virtual legal services. You may control who posts and who comments, but you must be careful what is written on the blog, realizing that the general public is the audience. You will need to create adequate disclaimers on the blog as you would on any website to advise the public to seek out the services of a lawyer to evaluate their unique legal circumstances. (See the section above with tips about blogging for your virtual law practice.)

Twitter is another example of an external social media tool. It is discussed more as an online marketing tool in the following text. It is a quick way

6ABA Solosez (www.abanet.org/soloseznet); JDSupra (www.jdsupra.com); Legal OnRamp (www.legalonramp.com); see also Martindale Hubbell Connected, www.martindale.com/connected.
to create relationships and networks with other lawyers and legal professionals. But it may be more time-consuming than blogging because for it to be effective and to acquire a number of followers, the posts must be more regular and contain useful and interesting content. The big risk here is that the general public and existing clients may request legal advice online when there is no private or secure transmission of the confidential information.

Again, the creation of a social media use policy helps to set the stage for the law firm’s use of these online tools with clients and other members of the firm. It is the responsibility of the law firm to provide all of its members, lawyers and staff, with the policy, but also make sure that everyone in the firm is trained in the creation and management of social media applications, including privacy settings and security issues that come up with each individual application. Many members of the firm will have their own individual social media profiles and accounts, so it will be necessary for these individuals to set the appropriate boundaries between the professional and the personal.

The firm may want to appoint an individual who is fluent in the use of different social media applications to take the lead in drafting, implementing, and enforcing the social media use policy for the firm. Provisions that might be included in this policy are as follows:

1. A clear goal for the firm’s use of social media. For example, the firm may intend to use it for client development and marketing purposes or strictly to connect with other professionals who may serve as referral resources.

2. Restrictions on firm employees’ use of social media applications. This would include reminders to firm members about the importance of protecting client confidentiality and even refraining from posting hypothetical situations publicly that might be recognized by the client or someone who knows the client’s situation. Additional restrictions might also include requests that employees refrain from posting any of the firm’s IP on any social media applications or in their profiles without the express permission of the firm. (Note any rights your employees have to free speech and any laws regulating your ability to restrict their personal use of social media applications. There is an evolving debate in some countries about an employer’s right to have access to its employees’ social media accounts for purposes of monitoring.)

3. Required disclaimers or statements for firm members and employees to use in any social media profiles or posts.
4. Requirements for law firm members creating professional profiles on social media sites, such as contact information for the firm, website and blog links, services the firm provides, etc.

5. Determining the online “personality” or presence that the firm intends to have across social media platforms—for example, if the firm will have a single profile-sharing content on behalf of the firm or if the firm will have designated lawyers in the firm who will be sharing content on behalf of the firm.

6. Deciding which social media platforms the firm will have an active presence on, such as LinkedIn, Twitter, Google+, and/or Facebook, and for which purpose it will be creating profiles on each. For example, if the firm is creating a firm page on LinkedIn, it may wish to cultivate more professional contacts, whereas if the firm is creating a page on Facebook, it may be intending to connect more with clients and prospective clients.

7. Creating a process for sharing content using social media. For example, the firm could set up a schedule for posting on its website blog and then disseminating the posts using a social media management tool, such as Hootsuite, to post the content on its other social media platforms.

8. A strategy for building contacts, fans, and followers on each platform. For example, a firm providing estate-planning services may wish to focus on building LinkedIn contacts with regional wealth and investment advisors who might become potential referral sources for client development.

9. A policy setting out how the firm will respond to clients and prospective clients if contacted via its social media profiles.

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Create an Online Network of Lawyers for Referrals and Support

There are many wonderful opportunities to collaborate with other lawyers online both in your jurisdiction and across the country. Here are a few to consider:

1. ABA’s Solosez listserv. Often this listserv is like an online office water cooler for solo and small-firm lawyers, and the large volume of e-mails means you have to be comfortable with the “delete” button. But there is a wealth of knowledge on here if you know how to ask the right questions. Sign up with a separate e-mail account or
have your e-mail filter out all the Solosez e-mails into a separate folder for daily maintenance. There are other ABA listservs online that might be useful, but Solosez is one of the most active.

2. Your state bar association’s general/small firm practice section listserv or online forum. Depending on what your state bar association offers, this could serve as a great source of information from peers on state-specific laws and also as a source of referrals from lawyers across the state.

3. LinkedIn is a networking site for professionals that permits you to join professional groups and connect with others for potential referrals and business collaboration. Your LinkedIn account allows you to link to your website and blog and to join similar groups of lawyers interested in virtual law practice and the use of technology in law practice, as well as the areas of law in which you practice.

4. Legal OnRamp is a networking site focused on larger law firms. Lawyers may register by invitation only and, once inside, may join a number of groups that focus on specific practice area and law firm issues. Members are able to share articles and information as well as network with other lawyer members in a secure environment.

Many lawyers are also now joining Facebook and creating law firm Facebook pages. If it decides to engage with Facebook, the law firm should create a Facebook account in the name of the law practice rather than using any one lawyer’s personal Facebook account. The security and features of these public social networking sites change quickly, and new forms of networking are always on the immediate horizon. Keeping current on the most used applications by legal professionals is the least time-consuming strategy for your practice, rather than trying to join and keep up with each new online community. For more online marketing methods and strategies that include more popular social media applications, refer to Chapter 7: Marketing Your Virtual Law Office.

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Keep Your Clients Updated

Rather than mailing out holiday cards in bulk once a year, consider sending out quarterly e-mail blasts in the form of either announcements or short newsletters with basic legal information. The cost to do this would be

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7LinkedIn ([www.linkedin.com](http://www.linkedin.com)).
about the same or less than ordering holiday cards with your business name printed on them.

Avoid sending out mass e-mails to clients who are registered on your virtual law office. This will most likely result in placing your e-mail address on a blacklist, which means that anything you e-mail to those clients from that address will be marked as spam, and chances are they will never see it. iContact, AWeber, MailChimp, and Constant Contact are examples of companies that will help you to send out e-mails that comply with the anti-spam regulations. This method is affordable and also offers other useful tools to store your clients’ e-mail addresses and to track who has opened your e-mail, how many times, and when. It also allows your clients to unsubscribe from your updates or newsletters if they choose.

**Working with Virtual Assistants and Virtual Paralegals**

As the online legal services component of the law firm grows, consider retaining the services of a virtual legal assistant or a virtual paralegal. A virtual assistant, often shortened to VA, is a professional who provides office administrative services remotely through the use of technology. A virtual paralegal also provides support for the lawyer remotely using technology, but he or she is also a licensed paralegal and will be able to provide assistance more closely related to the creation of legal services. VAs and virtual paralegals are typically technology-savvy professionals who are capable of advising a virtual practitioner as to the most efficient methods of handling the tasks that the lawyer would like to outsource. These professionals must sign confidentiality agreements with the law firm and go through adequate training before beginning work so that they are aware of the law firm’s policies and procedures for working with clients online or handling administrative functions of the online legal services arm of the firm.

A virtual paralegal will be more of an asset to the law firm by working on tasks that are specifically related to legal projects and may involve working directly with the law firm’s clients. For example, a virtual paralegal might be employed to work directly in the law firm’s online delivery system to onboard and interact with prospective online clients. The virtual paralegal could help streamline the online delivery process by managing the incoming online clients to determine which ones are appropriate for unbundled, online delivery and which would best be directed to a lawyer in the firm for in-person, full-service delivery or referred out to another law firm. The virtual paralegal would be responsible for protecting the firm by managing all of the incoming requests for legal services as well as documenting the
online response that was given to each, whether that was to onboard them as clients or to decline representation. Rather than having the lawyers in the firm handle these administrative tasks, the virtual paralegal could be responsible for these tasks as well as the basic communication with the client and hand-holding them through any online system, such as a document automation and assembly program where the online client must input his or her information.

Some of the tasks that a virtual assistant might handle for the law firm are not as closely related to working with the firm’s online clients but might include the following:

1. Bookkeeping and accounting
2. Creating letterhead, business cards, or other administrative templates
3. Ensuring standardization and proper keywords and tagging of the digital files for the lawyers using the firm’s policies and procedures manual (a modern version of filing)
4. Researching basic information for the lawyers, such as finding the best prices to purchase technology or best-rated services to use or best locations for law firm events
5. Managing interactions with the law firm’s vendors
6. Updating contact information for the law firm’s practice management system making sure that e-mails are current
7. Scanning documents and loading them into the firm’s database management system
8. Working with snail mail when necessary
9. Transcription services
10. Simple marketing services, such as keeping up with the law firm’s Facebook page, Twitter handle, or LinkedIn page to notify the firm when there is a comment or tweet to respond to or pushing out a law firm news or update from the firm’s press release to the firm’s other social media networks
11. E-mail management for lawyers in the firm

Other Resources for Outsourcing

There may be projects that do not require the services of a skilled virtual assistant or paralegal, but that could still be outsourced to streamline work
for the lawyer. For example, there are several cloud-based companies that provide different levels of assistance or ways to hire freelance workers for projects. The following is a short list of companies to review for freelance workers.

1. Fancy Hands (https://www.fancyhands.com/)—a virtual assistant company where you e-mail requests but do not work with any one specific individual, so this is not for confidential firm work.

2. Odesk (https://www.odesk.com/)—a site that allows you to research and retain freelance workers as well as pay for and manage those projects securely online. Odesk merged with eLance in 2013 but still maintains a separate site. Freelance work might include hiring a graphic artist to update the law firm’s logo for its website or a freelancer who handles SEO for the firm’s website. The author has also located on these sites licensed lawyers listed as freelance ghostwriters who may be retained to write website and blog content for law firms.


Case Study: Virtual Assistants

Tina Marie Hilton, Owner/Virtual Assistant of Clerical Advantage Virtual Assistance Services (http://clericaladvantage.com)

Clerical Advantage provides virtual assistant services to solo and small businesses, with a focus on business creatives (writers, coaches, speakers, and teachers) and legal professionals.

What technology do you use to work with lawyers online?

I use a combination of technologies depending on what my clients prefer. Online secure file-sharing sites like Dropbox, secure project-management sites like MyClientSpot, and e-mail all play a large part in my work with lawyers. I also frequently use the password feature in Adobe Acrobat to secure files transferred via e-mail. I’ve found that working online allows for a much more secure atmosphere than a traditional office. No files lying open on desks or conversations overheard by clients in the waiting area are just two items that working online eliminates.
What projects or tasks do you handle for the virtual law practice?

At the beginning of my virtual assistant career, I provided more traditional legal assistance, including processing and preparation of real estate closings. Over the course of time, my knowledge of WordPress, blogging, and Internet applications has transformed my services to focus more on blogging assistance, PowerPoint presentation assistance, and information product development. I do, however, still have several clients whom I assist with scheduling meetings, document formatting, and preparation as well as other tasks that would be considered more traditional types of legal assistance.

How is that work handled differently through the use of technology?

Many of the meetings that I’m scheduling for clients now are teleconferences, and the contact I make with the participants is done through e-mail and the use of the online scheduling application WhenisGood.net. I’m also preparing documents for electronic filing and submission in many cases.

How has the technology made traditional tasks more efficient?

Traditionally, scheduling meetings would require multiple phone calls or e-mails, trying to find a date and time that works for everyone. This can take days or even weeks to finally decide on a suitable schedule. When using the online scheduling application, an e-mail is sent to all recipients directing them to a web page where they are given a choice of dates and times to choose from. They can then input the dates and times that work best for them. As a virtual assistant, I compile all of the responses to determine the best choice for the meeting and then send out the scheduling information. All of those back-and-forth e-mail exchanges between multiple participants are now pared down to two e-mails. Less time spent equals lower cost for that task to be completed as well.

Are there any projects or tasks you have found that cannot be handled as well for the law practice through the use of technology?

It really depends on how “computerized” the practice is. If they are already pretty much paperless, scanning all documents into electronic format, etc., then the use of technology is going to be a natural extension of the practice. But those practices that haven’t started really using electronic documents and files will still require more traditional in-office help for organizing and filing.
For example, many real estate lawyers or title companies might think that title processing would be something that must be done in house due to the many parties involved providing documents, etc. In the past, I have successfully provided processing services easily, using e-fax to receive supporting documents from parties involved. Most lenders now provide closing packages electronically, and with the use of a good processing program installed on a network that can be securely logged onto, everything that is available in office is also available remotely. Phone calls for the processor can easily be redirected to their own phone number without clients ever knowing the processor is remote.

*Have you ever worked with a lawyer who has operated a completely virtual practice, or have most practices been operated in conjunction with a brick-and-mortar law office?*

To date, I’ve had a mix of those that are strictly virtual and those that maintain a brick-and-mortar office as well. Even those with the traditional office spaces do much of their work outside the office.

*How long have you been a virtual paralegal or virtual assistant?*


*What are the benefits for virtual paralegals and virtual assistants that you have seen from this form of law practice?*

A virtual law practice is a perfect fit for a virtual assistant. The fact that lawyers are practicing virtually means they already are open to using technology to run their practice, which can be a big stumbling block with other potential clients. They are also going to see the natural wisdom of teaming up with a virtual assistant rather than having to provide equipment, benefits, and the space that hiring a traditional assistant or paralegal would require.

*Do you work with the lawyer’s clients online or communicate only with the lawyer? If you have worked with the lawyer’s clients online, what have the clients’ responses been to using the technology?*

My business has evolved so that currently most of my communication is with the lawyer only due to the nature of services I’m providing. In the past I have communicated extensively with lawyers’ clients online. My experience was that clients embraced the use of technology, as it generally made things easier for them as well.
Are there any concerns that you have working with a virtual law office as a form of law practice management?

I certainly have to keep all of those concerns uppermost in my mind when working with a lawyer. Separate backup of files and making sure my system and network are secure are important concerns. And when required to communicate with lawyers' clients, I never lose sight of my need for the same professionalism and ethics that I operated with during my years as an in-office assistant.

If you could share any advice with virtual paralegals or VAs considering offering their services to a virtual law practice, what would it be?

Be professional. When you keep professionalism at the forefront, you are just naturally going to make sure that ethics, security, and other concerns are addressed appropriately. Just because your desk may now be in your living room, never lose sight of the fact that you are a professional businessperson.

If you could share any advice with lawyers considering practicing law online and working with a virtual paralegal or VA, what would it be?

Take the time to determine exactly what your needs are. That applies to both the work and the personality of the assistant you are looking for. Even if a virtual assistant or virtual paralegal possesses all of the skills you need, if his or her work style and personality don’t match yours, it’s not going to work well. And be willing to spend some time in the process.

Where do you see virtual law practice headed in the future of the legal profession?

I think virtual law practices will eventually be the norm rather than the exception, especially for solos and small firms. Meeting with clients won’t require a brick-and-mortar office with the advent of more “virtual office spaces,” which offer rental of professional offices for meetings on an as-needed basis. And much like the medical field is doing now, the legal profession is going to move eventually to requiring electronic files rather than traditional paper documents. Courts will require electronic filing rather than simply offering it as an option. It will just make sense for law practices to be virtual as well.
The technology that the law firm uses to deliver legal services online might have permissions allowing the back-end law office to be accessed by a VA or virtual paralegal and also allow the lawyer to lock those functions of the practice to which he or she may not want the support to have access. Some of the platforms for online delivery automate the process from the client side, such as with the registration process and filling out the initial prospective client intake information. However, some of these clients might need a little hand-holding through that initial online onboarding. In this case, a law firm might want to use a VA who could monitor the progress of any new online clients and track their ability to progress and offer assistance with basic registration steps. The VA in this case is not providing legal guidance or assistance, but is merely helping with onboarding of clients and has the ability to hand off that prospective online client to a lawyer in the firm if the issue that they need help with exceeds the VA’s job function. A virtual legal assistant working online for the law firm to handle online legal services with clients may be retained on a per-project basis, or a more permanent working relationship may be established, depending on the law firm’s needs.

The VA or virtual paralegal could be located anywhere in the United States or even in another country, depending on the type of work the lawyer needs handled. If the legal work involves state-specific law, then a virtual assistant with paralegal experience in that state would be advisable. On the other hand, if the project is transcription or other administrative tasks, the virtual assistant’s home state would more likely be irrelevant, and the focus on hiring would be the virtual assistant’s level of experience and referrals from other lawyers.

With any virtual assistant relationship, the lawyer must comply with his or her state bar’s rules of professional conduct or other regulations regarding management of nonlawyer assistants. Appropriate instruction and supervision should be given to any virtual assistant hired to work in a virtual law office. One of the safest methods for the law firm to protect itself is to keep good digital records of communication of instructions to the virtual assistant from the beginning of the relationship. If the virtual assistant will be working online through the technology platform, the lawyer needs to

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9See Chapter 8 regarding potential ethics issues that may arise from the use of virtual assistance, specifically compliance with ABA Model Rule 5.3, Supervision of Non-Lawyer Assistance.
emphasize the importance of nondisclosure and security for the online clients and that the virtual assistant should closely guard his or her username and password to permissions-based technology systems owned by the firm.

Again, most professional virtual assistants, especially those with legal training and experience, are more than aware of these issues. Many of them will even provide the law firm with a confidentiality agreement from the beginning of their services, which the assistant will have signed, ensuring the law firm of his or her knowledge of and concern for this critical aspect of providing online legal services. You may also wish to visit the website for the International Virtual Assistants Association (www.ivaa.org). This organization provides educational resources for businesses interested in retaining the services of a virtual assistant and contains a code of ethics and best practices for its members as well as a member directory.

Case Study: Virtual Paralegals

Denise Annunciata, Owner of Virtual Paralegal Services, Inc. (http://www.virtualparalegalservices.com/)

Virtual Paralegal Services, Inc. has a team of senior-level paralegals that provide on-demand paralegal services to lawyers and their clients.

What technology or methods do you use to work with lawyers online? Virtual Paralegal Services uses MS Office Suite and MS Sharepoint. What projects or tasks do you handle for the virtual law practice?

Virtual Paralegal Services has a team of paralegals specializing in general corporate, transactions, real estate, intellectual property/trademarks, securities/blue sky, and litigation. We generally provide full service to lawyers from more clerical projects to junior associate–level assistance.

How is that work handled differently through the use of technology?

Other than sharing documents via a virtual server, our work is handled and feels very much like it did when we worked for large firms/companies. We correspond mainly via e-mail and phone.

Can you give an example of a traditional task and how technology has been used to make it more efficient, secure, cost-effective, etc.?

There are a few examples. One is using Google, LeapLaw, or some other Internet services to obtain information. Information and forms that can be
obtained via the Internet make a world of difference in costs and efficiency. And diligence and large projects are easily handled via online deal rooms or via our virtual workspace.

Are there any projects or tasks that you have found cannot be handled as well for the law practice through the use of technology? Why not?

That largely depends on the client. If the client is willing to send original documents or minute books to us, we can handle anything. In cases where clients need on-site assistance, we can provide it only to local companies/clients. For the most part, this hasn’t been a big problem.

Have you ever worked with a lawyer who has operated a completely virtual practice, or have most practices been operated in conjunction with a brick-and-mortar law office?

Our clients are both—completely virtual, and some have a brick-and-mortar law office.

How long have you been a virtual paralegal or virtual assistant?

Virtual Paralegal Services was incorporated in 2006. I was a virtual paralegal for two years before that.

Do you work with the lawyer’s clients online or communicate only with the lawyer? If you have worked with the lawyer’s clients online, what have the clients’ responses been to using the technology?

We have communicated directly with some lawyers’ clients. It’s completely up to each lawyer how he or she handles our communications. When we do communicate with them, although we are virtual, the communication is either via e-mail or phone.

Are there any concerns that you have working with a virtual law office as a form of law practice management?

Security is a concern, but when that issue arises, we will work through our virtual, secured workspace.

If you could share any advice with virtual paralegals or VAs considering offering their services to a virtual law practice, what would it be?

I guess I would just say that being a virtual paralegal probably isn’t best suited for entry-level paralegals. And any virtual paralegal should be technically savvy and keep abreast of technological advancements.
If you could share any advice with lawyers considering practicing law online and working with a virtual paralegal or VA, what would it be?

Just like in the brick-and-mortar legal world, all paralegals are not created equal. So lawyers should be careful whom they choose to work with, particularly when it’s a virtual relationship. But, of course, most lawyers would know that. And, as I mentioned already, I think an experienced paralegal is going to work out better than an entry-level person, mainly because experienced paralegals bring more to the table.

Where do you see virtual law practice headed in the future of the legal profession?

Since the early 2000s, virtual law has grown significantly, and I would expect that with vast technological advancements it will just grow exponentially over the next decade.

Case Study: Virtual Secretarial and Paralegal Services
Laurie Mapp, Owner of Halo Secretarial Services and Virtual Legal Assistant

Halo Secretarial Services is a virtual assistance practice specializing in providing virtual legal assistant and paralegal services (http://halosecretarialservices.com).

What technology do you use to work with lawyers online?

My main technology is a project-management system with SSL encryption (Teamwork PM), through which my clients and I upload and download files for sharing. I also have clients who send work simply by e-mail.

What projects or tasks do you handle for the virtual law practice? How is that work handled differently through the use of technology?

I do very similar tasks to those I performed working in a traditional law office. I draft court and client documents and then upload the final versions to my project-management site. I do dictation, using Express Scribe software. I think one of the main efficiencies my clients see is that they are only paying to have work done on an as-needed basis. I’m not sitting in their office filling my day until they actually need me—they send work when they are busy, and I complete and return it within a specified time frame. Costs are reduced for the client, as I maintain all of my own sys-
tems, software, and hardware. An example of this would be when a client uploads a digital audio file to my secure project site. I download it, transcribe the material, and then upload it for them to access the completed work.

Are there any projects or tasks that you have found cannot be handled as well for the law practice through the use of technology?

Certainly there are some tasks that cannot be managed by a virtual legal assistant. For example, I have a client who puts together bound material for sending to a client. I can draft, edit, and even send the digital file to her printer for her, but I cannot physically put the package together. It could be done, but time and cost of sending would have to be factored into the equation.

Have you ever worked with a lawyer who has operated a virtual law practice?

The lawyers I work with have brick-and-mortar law offices with virtual components.

How long have you been a virtual paralegal or virtual assistant?

Close to a year and a half. I worked as an in-house legal assistant for over ten years before starting my virtual legal assistant business.

What are the benefits for virtual paralegals and virtual assistants that you have seen from this form of law practice?

There are so many benefits! Most paralegals and legal assistants are employees, but virtual paralegals and assistants are able to be self-employed, giving them the opportunity to work in the areas of law that they prefer and giving them a great deal more flexibility in their work arrangements. I am able to work when my children are sick without missing a beat, and I no longer have to waste any of my day commuting.

If you could share any advice with virtual paralegals or virtual assistants considering offering their services to a virtual law practice, what would it be?

My biggest piece of advice is always to be ready to run a business! It’s not enough to be good at being a paralegal; you absolutely must be ready to do all of the related business tasks like marketing, bookkeeping, etc., or you must at least be prepared to hire help in areas you are not able to take on yourself.
If you could share any advice with lawyers considering practicing law online and working with a virtual paralegal or virtual assistant, what would it be?

A virtual legal assistant or paralegal is a wonderful option in so many ways. We can assist when there is a temporary need, we can assist with overflow work that in-house staff can’t keep up with, or we can be your main support person. A virtual assistant will be more invested in your practice than most in-house staff, as we need your practice to grow and be busy in order for you to want to continue partnering with us.

Where do you see virtual law practice headed in the future of the legal profession?

I think there is going to be incredible growth in the area of virtual law practice, as it provides a wonderful opportunity for both the lawyers and their clients. It reduces travel by allowing the lawyer to avoid his or her commute, and allows the client to schedule meetings online without having to travel to the lawyer’s office. It reduces the restrictions of geography and allows people to work truly with someone who is the best match for their needs.
LAWYERS AS MANAGERS
How to Be a Champion for Your Firm and Employees

Andrew Elowitt and Marcia Watson Wasserman
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Managing Virtual and Telecommuting Personnel

BENEFITS AND CRITERIA FOR TELECOMMUTING OR WORKING VIRTUALLY

Based on the latest statistics from a GlobalWorkplaceAnalytics.com survey (2016) on the work-at-home/telework population in the United States, 50 percent of the U.S. workforce holds a job that is compatible with at least partial telework and approximately 20 to 25 percent of the workforce teleworks at some frequency. In addition, the survey says that 80 to 90 percent of the U.S. workforce would like to telework at least part-time. The most prevalent model is one in which employees work at home for two to three days a week.

The definition of a remote or virtual worker covers a broad range of situations, from a full-time employee
allowed to telecommute from home a few days each week to employees who work virtually all the time in geographically dispersed locations. It might even mean a firm that is entirely virtual with no brick-and-mortar office or a very small presence in an executive suite for client meetings and depositions.

Telecommuting is increasing in law firms because technology exists to enable employees to work anywhere and at any time. Though these arrangements are more frequent, law firms are challenged with developing telecommuting policies, effectively managing off-site employees, and also ensuring that the technology used is secure and confidential client information is protected. The first obstacle you and your other managers may have to overcome is the philosophy that attorneys must be seen sitting in their office chair in order to be working. Shifting that mindset will significantly improve your ability to manage a virtual workforce. As a champion manager, it is your job to implement and oversee virtual and telecommuting policies so that they benefit the firm, your employees, and your clients.

In its report on “Leveraging Workplace Flexibility for Engagement and Productivity,” (Kossek, Hammer, Thompson, & Burke, 2014) the SHRM Foundation recommends that before adopting a telecommuting arrangement for individuals or work teams, you should discuss and evaluate:

- How work will get done and how meetings and joint projects will be handled.
- How communication with co-workers, supervisors and managers will continue within core hours.
- How much time will be spent in the office and when.
Managing Virtual and Telecommuting Personnel

• What equipment and technical support will be needed and who will provide it.
• How the arrangement will be supervised and evaluated in comparison with onsite workers to ensure equity.
• Which employees or teams should be available during core work hours.

To assist you further in implementing a telecommuting policy, the federal government’s website for small businesses (FindLaw, 2016) suggests that you:

• Identify jobs best suited to telecommuting—Determine which positions are compatible with a remote working arrangement, keeping in mind that telecommuters typically work in the office one or more days per week.
• Choose the best candidates for telecommuting—Not all employees are well-suited to working from home, while others prefer the camaraderie of working in an office.
• Check state and federal incentives—The cost of establishing a home office sometimes can be offset by incentive programs at both the state and federal level (often through the state’s environmental protection agency).
• Set up a trial period—Start a six-month or one-year pilot program with a small group of employees, keeping track of successes and failures.
• Adjust management techniques accordingly—Use the trial period as an opportunity to both acclimate supervisors and test new management techniques with respect to telecommuters.
• Track results—At the end of the pilot program, review the results; interview employees who participated in the program and determine how it worked or didn’t work, (determining and implementing) ways to improve the program.
• Set goals for expansion—(Determine the feasibility of a) Plan for a firm wide implementation of the telecommuting program (based upon pilot outcomes and a strong risk/benefit and cost analysis).

Your job as a champion manager is to determine which people are the best candidates for virtual work and telecommuting. To assist you in reaching your decision, consider people who:

• Are self-directed, able to productively work by themselves and without close supervision.
• Are self-motivated and independent.
• Manage their time well.
• Are comfortable working alone for long periods of time.
• Have a low need for in-person social interaction.
• Have the communication skills necessary to effectively interact with co-workers, clients, supervisors, and subordinates while working remotely.
• Perform tasks that are well suited for telecommuting such as telephone-intensive tasks, computer-oriented tasks, rigorous thinking and writing tasks, project-based work, and document review.

As a champion manager, before you grant any telecommuting requests, you might want to ask your firm members who seek an opportunity to telecommute to
complete a self-assessment like the “Telework Employees Self-Assessment” below (and also in Appendix E). It allows them to be interactive and introspective about their work preferences and support their case to you. As a best practice, you should complete the assessment as well to see whether an employee’s self-assessment matches your expectations for a successful telecommuting experience.

Telework Employees Self-Assessment

A good telecommuting arrangement starts with a good self-assessment. Employees are encouraged to consider the following factors in making an honest determination about their telework capabilities. Record any concerns you may have and how you will address them in order to telecommute.

General
- Do you have sufficient portable work for the amount of telework proposed?
- Are you comfortable working alone for the amount of days you have requested to telework? Will you miss the social interaction of the office?
- Will your teleworking impact your coworkers? Do they need you in the office to complete work? Will they be doing extra work because you are teleworking?
- (In what ways) are you willing to be flexible about the telework arrangement to respond to the needs of (our clients, your) manager, (your) workgroup, and (your) work?

Self-Management
- Do you have the ability to do work with minimal direct supervision?
- Do you have organized work practices?
Once you determine who good candidates for telecommuting might be, you need to consider whether your policy should be limited to exempt attorneys and staff. Oversight of non-exempt hourly employees is more difficult due to

- Do you have good planning skills?
- Do you have effective time management skills? Are you able to meet schedules and deadlines?

**Technology**
- Do you feel comfortable with the technologies, if any, that will be needed to telework?
- Are you willing to learn any new technologies required to telework?

**Communication**
- Do you have the ability to ensure good communication with your manager, co-workers and clients?
- Will you return e-mails, calls and other messages in a timely manner?

**Appropriate Space**
- Is the telework office space conducive to getting your work done?
- Is the telework office space safe?
- Are dependent care (i.e. child care, elder care, or care of any other dependent adults) arrangements in place?
- Will you be distracted in the telework office space (e.g. by children, friends, television, or other responsibilities)?

(Telework Employees Self-Assessment, 2016)
wage and hour laws that govern overtime, meal, and rest periods. Some firms take a hard line that no non-exempt employees can work remotely at any time and block them from even accessing email after work hours and on weekends.

With the right policies and procedures in place, there may be exceptions made for certain non-exempt employees whose positions and job duties are more independent than others. For example, one boutique family law firm in Los Angeles had a long-time trusted administrative staff person who handled collections. She moved out of state but had the skills and professionalism to do the job remotely without supervision, and she performed it well. The clients were accustomed to dealing with and speaking to her and because of the technology in place, they did not realize she had switched to always working virtually from out of state. For specialized positions like collections coordinators and experienced paralegals in niche practices that are valuable to the firm, you may want to consider bending the rule and allowing them to telecommute or work virtually if they move away. You still need to comply with wage and hour laws and have them keep track of their time the same ways any other non-exempt employee will. If they work in another state, you need to comply with that state’s local wage and hour, tax, and other employment laws, too.

Champion managers establish an approval process so that lawyers and staff are not allowed to grant special telecommuting arrangements on an ad hoc basis. Best practices suggest that employees fill out a written application form to request permission to telecommute and that the Managing Partner, Human Resources Director, someone else in management, or some combination thereof be
charged with reviewing and approving requests. There should be clear approval criteria for determining who can telecommute so no favoritism is allowed and no ADA or EEOC protected categories are inadvertently denied permission to telecommute. The criteria should be based on the job requirements and whether they lend themselves to working remotely (such as extensive phone contact, computer work, document review and drafting), as well as the employee’s work habits, motivation, and ability to work with limited supervision. The policy should be applied fairly and consistently based on objective factors, such as the type of work performed, to avoid any potential claims that an employee was discriminated against.

The firm’s Employee Handbook should include a section on telecommuting that describes:

- What equipment will be provided by the firm to a telecommuting employee;
- Who pays for the business expenses of telecommuting employees, such as mileage, telephone and Internet expenses, supplies, shipping costs, computers, and office furniture;
- Timekeeping, meal, and rest period requirements; and
- Which positions are eligible for telecommuting and the position’s requirements regarding time that must be spent in the office.

Beyond the Employee Handbook, each telecommuter should be given and asked to execute a telecommuting agreement that identifies the responsibilities of both the telecommuter and the firm. The terms of the agreement should include at a minimum:
• Scope of agreement, stating that employee agrees to telecommute on a voluntary basis and that the agreement may be terminated at any time by either the employee or the firm, with or without cause.

• Term of agreement: the effective date and duration of the agreement.

• Termination of agreement, stating that telecommuting is available only to eligible employees at the sole discretion of the firm and that either party may terminate the agreement with or without cause upon reasonable notice in writing to the other party.

• Salary, job responsibilities, benefits, and performance reviews.

• Work hours, overtime, sick time, and vacation.

• Work schedule, stating that the daily work schedule for days spent working at home is subject to negotiation with and approval by the firm and that the employee may be required to work certain fixed hours and be accessible by phone and/or email during those hours.

• Equipment, including whether the firm will provide computer, software, Internet access, and other equipment needed for telecommuting.

• Office, including that the telecommuter will designate a workspace within the employee’s home for the equipment to be used when working. That the employee agrees to maintain the workspace in a safe condition and that the employer can make on-site visits with reasonable advance notice for the purpose of determining that the site is safe and free from hazards and to maintain, repair, inspect, or
retrieve firm equipment, software, data, or supplies. If an employee uses an office outside their home, such as renting space in an executive suite, then state who authorizes this and who will pay for it.

- Office supplies, including who will pay for them.
- Workers’ compensation, including that the firm will provide workers’ compensation coverage to the employee for work performed in the designated work area.
- Income tax, noting that the employee is responsible for determining any income tax implications of maintaining a home office.
- Employee must comply with all of the firm’s policies and procedures contained in the Employee Handbook and the terms of this agreement.
- If the telecommuter is fully working virtually, then the terms of the specific working arrangement need to be spelled out as well.

COMMUNICATING WITH TELECOMMUTING AND VIRTUAL EMPLOYEES

When managing remote employees, a champion manager establishes a system for how to best communicate with them. How often do you need to connect? What method works best? Do you and your virtual worker prefer to communicate by phone, email, texts, video, or some combination of all four? A champion manager recognizes the importance of routinely reaching out to telecommuters and virtual employees to stay connected with them since they do not have the opportunity to casually run into their virtual colleagues in the office.
It is important to build trust between yourself and your virtual employee. Frequently staying in touch will build that trust over time. Try not to micromanage your virtual worker by checking in too often to see if they are actually working, since that is potentially disruptive and counter-productive for both of you. Build trust by being transparent with one another about expectations, work hours, and accountability.

**Team Meetings**

A best practice is to include telecommuters and virtual employees in regular team and department meetings. The use of video conferencing like Skype, GoToMeeting, Google Hangouts, or more advanced video conferencing systems for those meetings will improve the working relationships among virtual employees and team members who are physically at the meeting. Meetings and conversations become more personal when you can see someone rather than just hearing them over the phone or communicating by email.

Consider using the beginning of each team meeting to casually catch up with one another before launching into the meeting agenda. Publish a meeting agenda in advance and designate a start and end time so everyone can come to the meeting focused and prepared. As with any meeting, end it by summarizing actions taken and putting in place next steps and expectations in advance of the next team meeting.

Participation by video conference keeps everyone more engaged in the conversation and discourages multi-tasking that might occur if the meeting were held over a conference call, provided the technology is robust and works well. It encourages information sharing and builds a team esprit de corps.
Security Concerns

It is important to minimize or completely restrict remote employees’ use of personal devices, personal servers, or personal e-mail while conducting firm work to reduce the risk of possible security breaches. If your firm has a BYOD (Bring Your Own Device) policy and allows employees to use personal devices, make certain that adequate controls, software, and procedures are in place to protect the firm’s online security. If your system is difficult to log onto remotely or is too slow when working from home, your creative associate is likely to email a confidential client document he or she plans to work on at home to a personal, unsecure email address. Have the right protocols and procedures in place to prevent that from happening.

Require telecommuters to follow the same password protection and encryption procedures that are used when they work in the office. To the extent that you still maintain paper files for clients, instruct them to keep client files and other paperwork in a secure place with the understanding that these files are firm property and must be returned immediately when their employment terminates. Remind them that work equipment must be used for work only and that the telecommuter must follow the same firm policies and procedures set forth in the Employee Handbook as if they were working in the firm’s office.

CHAPTER SUMMARY

Telecommuting and virtual workers are increasing in law firms due to available technology and employees who want
flexibility in their schedules to enhance work/life balance. As a champion manager, you are charged with developing policies to enable employees to work virtually, effectively managing off-site employees, and ensuring that the technology used is secure so that confidential client information remains protected.

Before implementing a telecommuting policy, you should do some advance planning that includes reviewing recommendations from the SHRM Foundation and the federal government’s business website (business.usa.gov) on what to consider. Further, you should think through the job functions, skills, and motivation levels of people who seek out virtual work. Encourage them to complete the Telecommuting Employees Self-Assessment from www.telework.gov (see box in this chapter) to assist you in selecting individuals who are most likely to succeed as virtual or telecommuting employees.

You should establish a fair approval process with specific criteria for determining which lawyers and staff are eligible for telecommuting. Include a section on telecommuting in your Employee Handbook and have each employee execute a written telecommuting agreement that sets forth the terms of his or her individual agreement.

Communication with remote workers can be tricky unless you establish a system for how best to communicate with them and make them part of the process in determining that system. Include virtual workers in team meetings through the use of video conferencing. Implement policies and procedures to ensure client confidentiality and minimize the risk of security breaches by remote workers.
REFERENCES


Establish Paperless Protocols and Improve Your Business Practices

We all have procedures for how we accomplish tasks in our offices. Protocols describe the precise manner in which these tasks must be consistently performed by everyone. Having protocols for handling your law office’s important paper and electronic documents should help you improve your business practices.

You will likely not want to waste time and money converting documents in closed files or even current files to PDF. Instead, choose a specific date and put your time and effort into converting all new files from that date forward.

If you want to scan closed files to reduce storage costs, investigate whether a local copying/scanning company will do this on a more affordable basis if they can have a long period of time to complete the work. Some scanning companies will give you a better price if they can have the flexibility to complete your project during downtime between their bigger jobs.
**Converting Documents to PDF**

You will need to develop a protocol for converting paper documents and electronic documents from other formats to PDF. Develop a written process that, at a minimum, outlines when a document will be converted to PDF, who will do it, and what will be done with the original.

You should always convert documents to PDF when they arrive at your office so you won’t be overwhelmed by the volume to be converted and abandon your plan to become paperless. Although the whole office team should be comfortable converting documents to PDF, appoint one or two people to have the primary responsibility—usually these are the staff who handle all incoming documents. Other team members will need to know how to scan, name, and store various documents they work with, including e-mails, in PDF.

Create and use a colored stamp to indicate that a document has been scanned so anyone looking at an original can quickly determine whether it has been scanned.

**Ensuring Quality Control**

It is important to have a quality control system to ensure scanning is done accurately. While most scanners are remarkably reliable and accurate, none are perfect, and there are no do-overs once a paper document has been shredded. A frequent problem is missing or skewed pages from operator or machine error. A quality control system can catch these errors and the document can be re-scanned to rectify them.

In Donna’s firm, their centralized scanner attaches the scanned document to an e-mail that is sent to the staff person who will be working with the document. To reduce errors, the person doing the scanning must
include the total page count of the document being scanned in the subject line of the e-mail so the recipient can verify that all pages were included.

Other firms have a team member assigned to verify scanned documents by comparing them with the originals. This is a fast process of sitting in front of a monitor and quickly ascertaining that all pages have been captured and are readable and that the scanned document is named properly. Anyone who has been involved in quality checking document coding will be helpful in working out a quality control checklist and protocol for scanning.

**Storing Before Shredding**

Store paper copies for a specific length of time to verify the accuracy and quality of their scanned digital format. As previously mentioned, Donna uses a Day Box to temporarily store paper documents and has an official policy that the contents will be shredded six months after the day the box was used. This provides considerable peace of mind for everyone, especially for those who were hesitant to give up paper.

Your protocol should have a consistent period of time to hold on to original documents after they have been scanned. It would be prudent to retain the originals for at least thirty days. A system similar to the one Donna uses would be very helpful as a safeguard against accidentally destroying a document before it has been properly preserved.

**Creating a File-Naming System**

Every electronic document, once scanned or converted to PDF, must be named in a standardized, consistent manner. You’ll want to devise a file-naming system that makes sense for the number of staff in your firm, and the documents worked on. The filename should contain just enough
details so any team member knows what a document is without having to open it. In the Appendix, we share two sample document-naming systems, but there are many ways to approach this.

Document management systems you buy as installed software or subscribe to as a cloud-based SaaS usually have a standardized file-naming convention built into them, which serves as a great starting point for your office’s own system. However, depending upon what DMS you adopt, file-naming protocols may be helpful.

**Organizing Document Storage**

For your firm to benefit from going paperless, you need to network all of its computers; in other words, all files should be stored on a central server that everyone can access. Most law firms set up their electronic filing cabinets to mimic their traditional filing cabinets. Your protocol should specify how your files, folders, and subfolders will be named and organized.

It is best to always open a new matter file for returning clients. If you organize by client and matters, it will be easier to manage your document retention and destruction procedures (if you don’t create a super client file spanning several years and several different matters). If you set matters up as subfolders under a single client folder, you will want to designate the destruction date on each matter subfolder and indicate this on your file inventory.

When deciding how many subfolders you need, aim for only a screen’s worth of files in any subfolder. If the list will exceed a screen, consider whether an additional subfolder is needed. The extra scrolling time you avoid may not seem like a lot, but when multiplied by the number of times a day you encounter it and by the number of staff in your firm, the lost time adds up quickly.
When naming subfolders, pay attention to how they will be sorted. For example, beginning all correspondence folders with “Corr” will allow them to be grouped together when displayed in the index. (See the Appendix for further details.)

**Use Templates to Ensure Consistency**

Once the folder structure is determined, create a “folder template,” or a set of standard folders and subfolders, for each type of matter handled by your firm; this saves time and ensures consistent naming. Keep your folder templates where they can be easily found and copied.

To protect a template file from being accidentally changed, make it read-only. To make a Word document read-only, open the file and follow these steps:

1. Click **File**, then **Save** (or **Save As** if previously saved).
2. Click **Tools** (near the bottom of the screen to the left of **Save**).
3. Click **General Options**.
4. Click to put a check in the box beside **Read-only recommended**.
5. Click **OK**.
6. Save the file.

**Backing Up and Test Restoring**

A paperless office should have multilayered, reliable, and frequent backups, including incremental and full backups, and on-site and off-site backups. Technology is a wonderful tool, but nothing is fail-safe. The integrity of your backup system should be checked by regularly performing a test restore to ensure your data is preserved in a usable form and restorable with minimum delay and difficulty.
The best way to determine how often you should back up your data is by asking yourself what you can afford to lose. At a minimum, you will want to back up more than once a day; many systems (both on- and off-site) will provide for more frequent or continuous backups. Your system should allow for this.

The safest course is to have multiple backup redundancies. Back up your data on your computer hard drive because software applications can freeze up, resulting in lost data. Back up your data on your firm’s server because it is a more powerful storage center. Back up on something away from your physical office, especially secure Internet or cloud-based storage, in case of a natural disaster.

Part of your law firm’s disaster plan should be to have your data backed up and accessible to you when you reach safety. The devastation of powerful storms such as Katrina and, more recently, Sandy caused many law firms to use safe, secure storage on the Internet; if a firm’s infrastructure is lost or inaccessible, the data can still be accessed through a secure Internet connection from anywhere. The post-disaster stories of lawyers accessing their law firm’s data from the Internet once they relocated to safe areas illustrate that the cloud can be a valuable component of a backup plan. Lawyers who had this accessibility resumed their practices sooner. We will discuss cloud-based storage in more detail in Lesson 5.

If your firm has only your stand-alone computer, you’ll want to back up to an external storage device that plugs into one of your computer’s USB ports and use a secure cloud-based storage system as well.

Why all these layers? If something happens to the first layer, you can still get back your data from the second, and so on. Although they are rare, we have all heard the horror stories of people needing their backup only to find it has gone awry in some fashion. Don’t tempt the odds. We’d much rather have a backup we never need than need one and not have it available.
Managing the Size of Data Storage

As you accumulate more and more electronic files, backups can become unnecessarily huge, which slows down the process and requires additional space, costing time and money. Here are some suggestions to reduce file size and maximize the capacity of data storage:

- Set the scanner to a lower resolution, such as 200 or 300 dpi.
- Set the Adobe Acrobat function to reduce file size.
- Set the scanner to black-and-white scanning.

Closing and Storing Files

For paper client files, a good file closure process goes through the complete file, looking for and removing

- original documents belonging to the client,
- sample documents from other matters, and
- duplicate copies.

You should review a digital file prior to storage with the same level of care you would use for a paper file. Focus on storing the file in a manner that will best preserve it for the length of time it must be saved. Essentially, you are archiving your file. As discussed elsewhere, the safest format in which to store digital files is PDF (or PDF/A), which is the international standard. If you don’t think this is important, consider that opening a document stored in its native format, such as Microsoft Word 98, would require having a computer capable of reading or running Microsoft Word 98. Using PDF will save you headaches should you need access to a digital file or document.
Creating a File Retention Schedule

Your jurisdiction or governing body will have guidelines for how long client files should be retained. Some files may need to be kept for set periods of time based on your jurisdiction’s equivalent to ABA Model Rule 1.15 (Safekeeping Property). This rule requires preservation of client property for five years from the date the matter is closed.

Most jurisdictions define client property as including not only all client trust account records but also the actual client file. Others conclude that if you provide your client with a full copy of the client file, then what you hold in the office is the law firm’s property.

Do your due diligence and check your jurisdiction’s rules. Does your jurisdiction require that the law firm maintain a complete paper file for the duration of the client matter? If so, then your protocol will need to be paperless upon completion. How long should you preserve a digital version of the client file? Arguably, for the same length of time you would preserve the paper version. How long this needs to be will depend upon various factors, such as ethical, legal, and professional considerations and economic and practical issues.

Find out if your jurisdiction has a statute of ultimate repose on a legal malpractice claim. This is the outer limitation on when a malpractice claim can be brought. It makes sense to hold on to your client file for the duration of this period in case you need it to defend yourself. If you don’t have insurance, be even more careful to preserve the client file. Check for any guidelines or policies from your state bar or law society and your malpractice insurer, if you have one.

Finally, it is now considered best practice to disclose to clients that your office is paperless and to explain what your firm’s storage protocols are. In addition, you should disclose that if a client requests a copy of the client file, or a portion of it, you will provide the information electronically. If
you don't do so, the rules in your jurisdiction may require you to print the file.

Destroying Electronic Records

Storage space for digital files is affordable; however, adopt a unified business practice of safeguarding both paper and digital files for the required time period and then safely destroying them. Remember that when you delete an electronic document, it is still there. To destroy digital data on a local storage device, use a software program such as Darik’s Boot and Nuke, which completely obliterates the data. Before storing digital data on a third-party site, find out how destruction can be completed. At some point, your law practice will come to an end due to retirement, incapacity, death, or some other reason. While you may be required to preserve your client data (in whatever form), you still need to set a specified time for it to be destroyed or wiped from any remote server.

Developing Knowledge Management

Give some thought as to how you will organize your resource and research materials, which may contain a vast amount of documents, including e-books and e-publications. You might want to copy and scan the tables of contents from your physical books and include them in your knowledge management system as well.

Training Your Staff

This seems like it would be obvious, but anecdotal evidence suggests otherwise. Ongoing training of staff members ensures your future team is as much onboard as your original team. You should also spot-check client
files to determine whether your staff is following procedures and complying with protocols.

Well-trained staff should never have to guess how to name a document or where to save it. If this happens, it usually means a protocol needs updating or isn’t clear enough. Guessing could result in the document becoming lost amidst all of the other files.

**Reviewing and Revising for Efficiency**

Review and revise your paperless protocols as your firm changes or as processes appear to be working less efficiently than planned. Initially, you will likely want to conduct reviews of your protocols at thirty, sixty, and ninety days. Once you are satisfied with your system, an annual review will keep it running at peak performance.

When developing protocols, take advantage of all available resources. Your state bar association or law society will likely be able to assist you in developing policies for the closure, retention, and destruction of client files, including paper and digital documents, and may have a practice management adviser to answer your specific questions.

Do not allow shortcuts on established protocols. They are set up for the firm’s safety.

Now that you know what it takes to establish the paperless protocols you need, and are planning your backup redundancies, you’ll want to look closely at using storage services on the Internet.
The Ultimate Guide to Adobe Acrobat® DC

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Chapter 16

Adding Signatures, Initials, and Digital Signatures (Including the Fill & Sign Tool)

You can electronically sign or initial a document by placing a signature or initials on it, making it easier to email rather than mail or fax. There are two types of digital signatures, electronic signatures and digitally signed signatures.

An electronic signature (or initials) merely places a signature on a document but is no different from placing an image or watermark on a document. An electronically signed document can be changed by the user or recipient, and the signature can be removed in most cases with little difficulty.

A digitally signed document, on the other hand, contains added security that makes it more difficult to modify or remove the signature and is designed to assure the recipient (and any other persons or businesses that must rely upon the document) that it was signed and is legally binding. Thus, you may choose to place an electronic signature on a letter that you are sending digitally; you would use a digital signature on a contract or other legally binding document.

Advantages of Digital Signatures

*Whenever possible, it is highly preferable to use a digital signature, which, unlike an electronic or nondigital signature, meets various legal requirements.*

By using a digital signature, a user is in essence placing an electronic “seal” on the document. The recipient of the document containing a digital signature, therefore, knows that a known sender created the document and that the document was not modified after it was signed. In addition, although it is possible to change a digitally signed document (depending upon the settings used when the signature was applied), you are able to track any changes made after the digital signature was added, as well as remove any changes or revert the document back to its form before any changes were applied. Digital signatures can also
contain additional information, such as the date and time when the document was signed, as well as why the document was signed.

- **Authenticity:** A digital signature helps to verify that the person who signs the document is who the person says he or she is.
- **Integrity:** A digital signature helps to verify that the content of a document has not been changed or tampered with after the document was digitally signed.
- **Nonrepudiation:** A digital signature helps to prove the identities of all parties who signed the document and reduces the possibility that a signer will repudiate or deny having signed the document.

**Creating Electronic Signatures or Initials (Not a Digitally Signed Document)**

To electronically sign or initial a PDF document or form, you can type, draw, or insert an image of your handwritten signature or initials. You can also add text, such as your name, company, title, or the date. When you save the document, the signature and text become part of the PDF.

You can customize Acrobat’s default signature options by going to Edit>Preferences. You should customize these settings before creating a signature.

- When you select Identity, you can specify not only your name, but also the information that appears when creating digital signatures. (This dialog also specifies the name that appears when creating comments or reviewing documents [Figure 16-1].)

![Figure 16-1](image-url)
When you select Signature, the dialog allows you to specify your preferences for signatures, including Creation & Appearance; Verification; Identities & Trusted Certificates; and Document Timestamping (Figure 16-2).

Next, create your signature or initials. Select Tools, and then select Fill & Sign. On the Fill & Sign toolbar, click Sign to display the option to either Add Signature or Add Initials (Figures 16-3 and 16-4).
If you select Add Signature, a window appears showing the name of the logged-in user and how the signature will appear (Type); you can modify how the signature will display by selecting the Change style dropdown on the right end of the signature line to view the various options. You can click into this box and modify the signature (Figure 16-5). From this window you can also select Draw to hand-draw your signature; however, it is likely not to appear much like your actual signature. Alternatively, you can choose Select Image to upload an image file that you created by scanning your actual signature (Figure 16-6). When you are finished creating the desired signature, click Apply. By default, Acrobat saves the created signature; you can deselect this option.

Figure 16-5

![Figure 16-5]

Figure 16-6

![Figure 16-6]

Next, drag the created signature to the location in the document where you want to place the signature. (Note that Acrobat has saved the signature for future use.)

When you left-click to place the signature, a box appears displaying the signature. You can make the signature smaller or larger by selecting the smaller or larger “A” in the dialog. Once the signature is the correct size and in the correct location, left-click elsewhere in your document. If you
select the trash can, Acrobat removes the signature from the document (Figure 16-7).

**Figure 16-7**

If you select Add Initials, a window appears showing the initials of the logged-in user and how the initials will appear (Type); you can modify how the initials will display by selecting the Change style dropdown on the right end of the initials line to view the various options. You can click into this box and modify the initials. From this window you can also select Draw to hand-draw your initials. Alternatively, you can choose Select Image to upload an image file that you created by scanning your actual initials as you would write them. When you have created the desired initials, click Apply. By default, Acrobat saves the created initials; you can deselect this option.

❖ Next, drag the created initials to the location in the document where you want to place them.
❖ When you left-click to place the initials, a box appears displaying the initials. You can make the initials smaller or larger by selecting the smaller or larger “A” in the dialog. Once the initials are the correct size and in the correct location, left-click elsewhere in your document. If you select the trash can, Acrobat removes the initials from the document.

**Creating Digital (Digitally Signed) Signatures**

This is essentially the same process used to Certify a PDF and works on most documents and forms in the identical manner. To digitally sign a PDF document or form, go to Tools and select Certificates. On the Certificates toolbar, select Digitally Sign.
If you are digitally signing a form with a previously created digital signature box, you will click on the little “Sign Here” flag that appears in the upper-left corner of the signature box. If you have previously created and stored a digital signature on your computer, Acrobat will display the Sign Document dialog, which allows you to select a previously created signature (Figure 16-8) or add a new digital signature (Figure 16-9). If you have never created and stored a digital signature on your computer or if you select New ID from the Sign Document dialog, Acrobat displays the Add Digital ID dialog (Figure 16-10).

**Figure 16-8**

![Image of Sign Document dialog](image)

**Figure 16-9**

![Image of Add Digital ID dialog](image)
If no signature field exists, you must click the Digitally Sign option on the Certificates toolbar. Acrobat will display a dialog advising you to drag your mouse to create the signature area on the document (Figure 16-11). Click OK and drag your mouse to create the signature area on the document (Figure 16-12). After you create the signature area, Acrobat will display either the Add Digital ID (see Figure 16-10) or Sign Document dialog (Figure 16-13), depending on whether you had previously created a digital signature on your computer.
If you are using an existing signature, select it from the Sign As dialog (Figure 16-13) and follow the prompts to sign the document. You must know the password for an existing signature to complete the process of digitally signing a document.

- To create a new digital signature, select “A New digital ID I want to create now” from the Add Digital ID dialog (Figure 16-10) or select “New ID…” from the Sign Document dialog (Figure 16-13). Regardless of which method you use, Acrobat will ask, “Where would you like to store your self-signed digital ID?” (Figure 16-14).
You can store your self-signed digital ID file either on your computer or in the Windows Certificate Store. Because most users will create their own Digital IDs and store them on their computers, you should select New PKCS#12 digital ID file (Figure 16-14).

When you click Next, Acrobat opens a dialog that allows you to fill in your name, organization name, email address, and so on (Figure 16-15). In general, the default 1024-bit RSA will suffice for Key Algorithm. Complete the dialog and click Next (Figure 16-13).

**Figure 16-14**

![Figure 16-14](image1)

**Figure 16-15**

![Figure 16-15](image2)
The next window displays the default location for the digital ID. You can store it in that location or browse to store it in another location on your computer; generally, you should store signatures in Acrobat’s default location. Next, type your password. Acrobat will rate the strength of your password. Then retype the password in the Confirm Password dialog. Click Finish to display the Certify Document dialog (Figure 16-16).

Figure 16-16

Acrobat will then display your name and allow you to have the signature appear as Standard Text. You can also modify the signature’s appearance by selecting Create New Appearance, which will allow users to use graphics and other custom features. (In most cases, using Standard Text is sufficient.) (See Figure 16.17.)
You must then enter the password you had previously created in the “Enter certificate password and click the ‘Sign’ button” box. Then click Sign.

Acrobat will then display the Explorer window so that you can select the location for and name the certified document. In general, you should create a new name for the document rather than merely saving over the original.

If you have selected “My existing digital ID from” option (Figure 16-10), you will select where Acrobat can locate the digital ID.

Acrobat will then allow you to locate the saved digital ID. Generally, if you store your signatures in Acrobat’s default location, it will display them automatically. After selecting the desired file, type the password into the dialog and select Next. Acrobat will then list possible digital IDs. Select the appropriate one and click Finish. (See Figure 16-9.)

Acrobat will then display the Certify Document window, which displays your name and allows you to have the signature appear as Standard Text. (See Figure 16-16.) You can also modify the signature’s appearance by selecting Create New Appearance, which will allow users to use graphics and other custom features. (In most cases, using Standard Text is sufficient.)
You must then enter the password you had previously created in the “Enter certificate password and click the ‘Sign’ button” box. Then click Sign.

Acrobat will then display the Explorer window so that you can select the location for and name the certified document. In general, you should create a new name for the document rather than merely saving over the original. You will then see your digital signature on the document.

Creating a Separate Copy of Your Actual Signature

One of the ways you can sign a document (either electronically or with a digital signature) is to insert an image of your actual signature onto the document (although this is not required for a digital signature to be valid). You can also capture a picture of your signature on a mobile device using the Adobe Acrobat Reader DC mobile app, and save it in the Adobe Document Cloud so that it is synchronized and available for use across your desktop and other mobile devices. See Chapter 19 for further information.

There are many other ways to create a copy of your actual signature to use in Acrobat and other programs. You can simply search the Internet for “create a transparent signature stamp.” We have also found the following two methods easy to use:

- Rick Borstein’s Acrobat for Legal Professionals blog post: http://blogs.adobe.com/acrolaw/2007/02/creating_a_trant_1/
- Catherine Sanders Reach’s YouTube video: https://www.youtube.com/watch?v=sBrfsVMN0GI (Courtesy of the Chicago Bar Association)

Validating Digital Signatures

By default, Acrobat verifies the validity of digital signatures. However, you should review Acrobat’s default signature options by going to Edit>Preferences. Select Signatures, and click on More in the Verification section (Figure 16-18).

![Figure 16-18](image)
To require Acrobat to validate all signatures in a PDF when you open a document, select Verify Signatures When the Document Is Opened. This should generally be your default setting.

Generally, Acrobat's default settings are acceptable for most users. However, if you have more detailed needs, use Acrobat's Help function and search for “Validating digital signatures.”