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THE LAW PRACTICE MANAGEMENT ISSUE

Managing Your Way to a Rewarding Career

By Joel W. Christiansen

Lawyers are managers. Every single day we manage our clients' liberty, liability, risk, freedom, and finances. Yet all too often, we fail to allocate the time and effort necessary to effectively manage our practices and ourselves. This April issue of *TYL* is intended to get you, the busy young lawyer, thinking about how you can work *on* your practice instead of just working *in* your practice. The management articles you will read will not explain how to craft a more persuasive brief or how to achieve a larger verdict. Rather these articles offer a few practical suggestions on how to make each day a little less stressful so you can focus the important things: doing well for your clients and spending more quality time with your loved ones.

Joel W. Christiansen is a plaintiff-side employment attorney in Portland, Oregon. He can be contacted at joel@oregonlitigation.com.

Keep It? Delete It? Forward It?

START E-MAILING SMART

By Alan Brill

It seems like every day we get more e-mail than the day before: more urgent client messages, more firm communications, and more offers for questionable prescription drugs. E-mail can easily eat up your whole day if you let it. Here are some tips for streamlining your e-mail communications.

1. Too much "spam" at work? Check with your IT department. They should be running software that removes most of these annoying messages before you see them. It's not unusual to have the filters kill 95–97 percent of all e-mail arriving at a company. Not having to delete these e-mails or decide whether it's safe to open them can be a huge time saver.
2. If you don't need it, don't keep it! Mailbox inflation is a real problem. If you don't need a message, read it and delete it. The same holds true for replies. Most e-mail systems retain every message you send. You should regularly go through your sent mail folder and delete what you don't need. Set up folders in your e-mail system to sort the messages that you do keep so you can find and delete them later.
3. Not everyone needs copies of everything. E-mail systems are clogged with endless duplication of documents, particularly e-mail chains that get longer and longer with every version. Perhaps one person could be assigned to be the "custodian" of messages relating to a matter, and everyone else could delete the messages after reading them.
4. A lot of e-mails should never be sent in the first place. E-mail is not a particularly secure way of communicating. Sending sensitive information from any computer, let alone from your laptop in an Internet café or from a computer in a hotel business center, is risky. For example, in one particular airline lounge, every computer was infected with a key logger that revealed sites visited,

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Dictation Made Easy

By Tonya L. Johnson

Despite the DIY philosophy prevalent in this uncertain economy, dictation is still an efficient use of a lawyer's time and resources. If you talk faster than you type, then dictation still makes sense. Until speech recognition software becomes more reliable, digital dictation offers an easy and efficient solution for busy attorneys.

Digital dictation consists of hardware, such as a portable handheld digital dictation unit or a microphone connected to a PC to record the dictation and software to receive the recording. The user uploads the recording to a computer typically as a .wav or .wss file and makes it available to a transcriptionist. Using similar software and headphones, the transcriptionist listens to the recording and can play, stop, rewind, and fast forward using a foot switch to create an accurate document.

Ideally, your digital dictation solution will accommodate a variety of input devices in case your primary recording device is unavailable. Digital dictation gives you the freedom to record dictation while commuting to work, traveling for business, or during any downtime. Some personal digital assistants (PDAs) and smartphones can serve as digital dictation devices and allow users to immediately upload files to a transcriber.

A comprehensive digital dictation system has reporting and workflow capabilities for managing large or widely dispersed teams of transcriptionists. These enterprise systems often require a dedicated server and software to manage and distribute work and may integrate with an existing document management system. You can completely outsource this type of system or hire a firm or consultant to develop an in-house solution or administer a remote solution with third-party hardware and software. There also are pay-as-you-go options ideal for the solo/small-firm practitioner or occasional dictation projects.

Digital dictation applies the best of modern technology to a proven medium and frees up your time without adding a lot of overhead to your law practice. To find software and hardware service providers and to learn more about digital dictation, please see below.

Scalable digital dictation software solutions

- BigHand Digital Dictation
- Crescendo
- DictaNet Software AG
- DPS Software plc
- FLOvate
- G2Speech
- Lexacom
- nFlow
- Peapod Solutions Ltd
- Quikscribe
- V7 Technology Ltd
- Verdatum
- WinScribe Inc.
- Digital dictation consultants
- HDI Technologies Inc.
- SRC
- The Speech Centre

Remote dictation and transcription services

- Quiksek, Inc.
- SpeakWrite (formerly Cybersecretaries)
- idigital
- Work in Progress

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Balancing the Briefcase and the Babies

By Bridget Penick

As a young lawyer and mother of three young daughters, I am often asked by other young lawyers who are contemplating starting a family about how I balance my work and family. The truth is that I have no secret formula. I am certainly not the first to do this juggling act and am admittedly not the best at it. But, I cannot imagine my life without both my family and my career. In fact, I believe each helps to balance me.

Below are a few suggestions for achieving a balance between work and family.

Love what you do. One reason I choose to continue the daily balancing act is that I truly love my job. Obviously, my family comes first. It is much easier, however, to leave my children each morning when I know I am going to an office where I am surrounded by intelligent, fun people and where I am able to help clients solve their legal problems.

If you doubt whether it is worth the sacrifices and effort to maintain this work/life balancing act, it is time to reevaluate your career choice. If you are not in love with your job, then find one you do love. The sacrifice imposed upon your family is not worth it if your job is just that—a job.

Make time for yourself. No matter how much you love your family and your job, every person needs to have personal interests and time away from work and family obligations. This is a very delicate balance to maintain.

Some days, the only "me" time I get is the 5 a.m. trip to the gym, which does not seem terribly enjoyable at the time! Sadly, I consider it an indulgence when I can watch something on TV that is not on the Disney channel. How can I find the time to focus on me? That leads to the next point.

Prioritize and organize. Each year, many people resolve to get organized. Some succeed, but many put it off. Those of us balancing demanding work schedules and hectic family lives have no choice but to get organized.

I admit there are days when I leave a document sitting at work that I meant to take home and edit that evening. I also have forgotten to send snow pants to school on a snowy day. Dinner consists of fast food and eating out far more often than I would like because I have not planned far enough in advance. I hereby resolve to become more organized, make more lists, and plan meals in advance.

Get over the guilt. As the product of a "traditional" working-dad/stay-at-home-mom family, I sometimes feel guilty for telling my daughters that I just cannot go to all of their school events and after-school events.

I rationalize my career choice by reminding myself that it is healthy for my daughters to see me as female professional role model. I hope that the times I do get to attend their school parties are that much more memorable and meaningful for each of us.

Ladies (and gentlemen who may be dealing with the same issue), we just have to let go of the guilt. The more it eats at us, the less successful we will be at either of our careers—parenthood or the law.

My secret weapon. I was not completely honest when I wrote that I do not have a secret to successfully balancing work and motherhood. My husband makes it much easier for me to juggle, as he is a stay-at-home dad who works part time as a baseball scout.

While he does not do everything a "traditional" stay-at-home mother may do, I know I could not maintain the balance without him. Even if you do not have the luxury of a stay-at-home spouse, I do encourage you to build a reliable support network, whether it is a day-care provider, family, coworkers, neighbors, or friends.

Writing this piece has cut into my "me time," so I am off to watch David Letterman before I go to bed and start the crazy cycle again tomorrow. I would not have it any other way.

A version of this article appeared in the February 2008 issue of The Iowa Lawyer.

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READY RESOURCES

- *Women-at-Law: Lessons Learned Along the Pathways to Success*. ForeWord Magazine Book of the Year Award Finalist! 2004. PC # 5110509. Law Practice Management Section.

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Liability Insurance 101 for Business Litigators

By Christine Spinella Davis

If you are a new litigator and work as a solo practitioner or in a large firm, there is a good chance that you will be asked to work on a liability insurance dispute. You even might defend a client in an underlying lawsuit where the client is seeking coverage from its insurance company ("carrier") for the underlying suit; for example, you may defend a client in a negligence action who is also seeking to establish insurance coverage for the action, whether in that action or another lawsuit.

As the policyholder's lawyer, your actions in the underlying litigation could affect the policyholder's ability to recoup insurance. Be prepared for your first liability insurance dispute by knowing the following key concepts and tips on protecting your clients' rights to insurance recovery.

Insurance policies as contracts

Insurance policies are contracts between policyholders and carriers. They are interpreted generally based on standard contract principles, and the parties look to the policy's language to determine obligations. The important difference between the interpretation of general contracts and insurance policies is the doctrine of *contra proferentum* ("against the author or proffer"), which courts follow in coverage disputes: If policy language is ambiguous and could reasonably be interpreted in favor of either party, it will be applied in favor of policyholders.

Common terms and concepts

Insurance terminology is quite easy to grasp. For example, insurance is either "first-party" or "third-party." First-party insurance, such as health and disability insurance, protects the insured from its *own loss*. Third-party insurance is liability insurance, protecting the *insured* from loss arising from *liability to a third party*. Common examples of third-party insurance are homeowners policies, which provide liability coverage to the insured for accidents to visitors on the premises (and even conduct off the premises), and automobile policies, which provide liability coverage to the insured for claims brought by the injured driver of the other vehicle in the case of a traffic accident.

To activate or "trigger" an insurance policy, an event specified in the policy must take place during the policy period. It could be property damage, bodily injury, or the filing of a lawsuit. Usually, an event that triggers insurance policies is either the occurrence that leads to the lawsuit (occurrence-based policy) or the filing of a lawsuit (claims-made policy), which is particularly important for third-party insurance claims. Under the former, the policy is triggered if the underlying harm takes place during the policy period, regardless of when the third-party filed the lawsuit. Under the latter, the policy is triggered if the third party makes the claim during the defined policy period.

Policyholders often purchase multiple, vertical layers of insurance. The first level of insurance and the first policy to be triggered is called the "primary policy." All layers above the primary policy are called "excess policies."

Excess policies protect a policyholder from a catastrophic loss. An excess policy typically "follows form" to the primary policy, which means that it adopts most of the primary policy's terms and conditions. A policyholder might, for a given period, have one liability policy that provides $10 million in coverage, then a policy above that provides coverage from $10 million to $30 million, and then another policy providing coverage between $30 million and $50 million. When defending a client, particularly a corporate client, inquire into its insurance coverage. Sometimes a policyholder may not even be aware of its right to, and amount of, coverage for particular allegations.

Carrier and policyholder duties

Insurance carriers and policyholders have duties under an insurance policy. A liability carrier has a duty to "indemnify" an insured party for liability to a third party if the liability falls within the terms of coverage. This determination requires analysis of all policy language. Liability policies also often obligate carriers to *defend* policyholders against third-party claims. This obligation can be either a duty to defend the insured or a duty to reimburse the insured for defense costs. The defense obligation is much broader than the duty to indemnify. A carrier must defend a policyholder if there is a "potential" for coverage based on a complaint. Courts generally interpret "potential for coverage" liberally to the policyholder's advantage. A carrier generally is then responsible under the policy for all *reasonable* defense costs incurred by the policyholder.

In addition to paying premiums, a policyholder has a duty to provide notice of a claim to its carrier "as soon as practicable," i.e., in a reasonable time. In some states, failure to provide notice in a timely manner may be a complete bar to coverage, or at least a bar to expenses incurred prior to the notice. In most states, failure to provide timely notice prevents coverage only if the late notice *prejudiced* the carrier. Either way, if the policyholder believes there is coverage, the policyholder should put the carrier on notice of the claim as soon as possible to protect recovery rights. If you are inexperienced in such disputes, raise the notice issue with the client or partner with whom you work to ensure preservation of the client's insurance rights. You may even want to offer to assist the client with the formal notice.

A policyholder also has a duty to cooperate with the carrier defending a claim on its behalf. The policyholder must keep the insurer informed of all major case developments, respond to the carrier's reasonable inquiries, notify the carrier, and attempt to obtain its consent before settling an underlying lawsuit. Failure to do any of these could result, in extreme cases, in the loss of the policyholder's rights. As counsel, you should work with the client to keep the carrier in the loop and provide it with requested information; you also should consider and address with the client any potential waiver implications by such disclosures.

Knowing these principles will make it easier for you to jump onto a coverage case, research and analyze a coverage issue, and protect your client's right to insurance recovery.

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Digital Dictation

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Dictation and transcription hardware

- Grundig Business Systems
- Olympus
- Philips Speech Processing

Articles

- "Beyond Digital Dictation," ABA Law Practice Management Section's *Law Technology Today* (Amy Clevidence, Apr. 2007)
- "Voice Productivity Comes of Age," ABA General Practice, Solo & Small Firm Division's *Technology eReport* (Steve Butterworth, May 2007)
- "Legal Dictation Needs to Talk Digital," Law.com (Enrico Schaefer, Sept. 12, 2008)
- "'Auld Lang Syne'" for Dictation," Law.com (Michael Barnas, Jan. 2, 2008)
- "Whyte Hirschboeck Raises Its Digital Voice," Law.com (Alan Ciochon, Oct. 12, 2007)
- "Digital Tech Cures Dictation Blues," Hawkins & Parnell Law.com (Bob Elliott and Ted Gerber, Aug. 24, 2007)

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E-mailing Smart

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user IDs, and passwords. Using your own machine (with an encrypted hard drive, of course) and an encrypted virtual private network (VPN) connection can avoid endless problems. For some subjects, a phone call might be better; for others, hard copy or CD by courier might be the best solution. Not only should these alternatives be more secure, they'll also save you some inbox space.

E-mail is a fact of every lawyer's life. But it doesn't have to overrun yours.

Alan Brill, senior managing director for Kroll Ontrack, a company specializing in data recovery, legal technologies, and computer forensics, is an author, speaker, and instructor on technology security. You can contact him at abrill@krollontrack.com.

READY RESOURCES

- *"Sanctions Just a Click Away: Email's Ethical Pitfalls"* (downloadable article from *The Public Lawyer*). 2008. PC # 51105671602PDFA03.
- *Introduction to E-Discovery: New Cases, Ideas, and Techniques*. 2008. PC # 1620402.

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YLD CALENDAR & CONFERENCES

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APR. 21-23, 2009	ABA DAY IN WASHINGTON 2009
APR. 23, 2009	REIMBURSEMENT & FALSE CLAIMS ACT FUNDAMENTALS
APR. 29-MAY 1 2009	THE YOUNG LAWYERS TRACK AT THE ABA SECTION OF LITIGATION ANNUAL CONFERENCE | ATLANTA, GA
MAY 5, 2009	ANATOMY OF A TRIAL: CLOSING ARGUMENTS YLDirect Teleconference Series Program

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Dealing with Nerves

By Caryn R. Suder

You know the symptoms: pounding heartbeat, sweaty palms, and dry mouth. You are about to take your first deposition, meet with a really important client, negotiate a big contract or settlement, or make your first opening statement to a jury—and you are nervous. What's wrong with you? Nothing. You are human. And you are in good company. Even the most experienced attorneys can still get nervous before an important event. Try using the following strategies to manage nerves and boost your confidence:

Recognize that nerves can be beneficial. A little bit of nervousness keeps you on your toes. Overconfidence, on the other hand, makes you careless. If you are worried that the judge will ask you about *that* case, you will probably go back and read it one or two more times. Afraid you will forget to bring those charts and graphs with you to the negotiation? Then you will go back and check your file to make sure you have everything you need.

Prepare, prepare, prepare. While you certainly cannot anticipate everything that will happen in a proceeding, thorough preparation gives you confidence and enables you to think on your feet when something new or unexpected occurs.

Find out whom and what you are up against. Having a better idea of what you are in for can decrease your nervousness. If you are going into a negotiation or a deposition, research your opposing counsel. If you know that your opponent tends to be hostile or tries to bully new attorneys, you can practice responding to jabs so you will not be flustered. If you are appearing before a judge for the first time, talk to attorneys who have appeared before the judge. Learn the judge's quirks and pet peeves. You will enter the courtroom calmer and more self-assured.

Learn breathing exercises. They work! Libraries and bookstores are loaded with books and CDs on ways to use breathing to calm the stress response. Experiment and find what works for you. Then practice the exercises until they become almost second nature.

Remind yourself of previous successes. You have experienced high-pressure situations before and come through them just fine. Think of a very difficult or stressful life or work experience you have navigated successfully. Tell yourself, "If I can (fight fires, give birth, get through the bar exam, get through a divorce, deal with irate customers), I can do this."

Re-frame the new experience in terms of an old one. The "new" situation you are nervous about may not be as new as you think. You already may have well-developed skills that transfer easily to the new setting. Worried about conducting a client interview for the first time? If you once worked in customer service, tell yourself that you are going to meet a customer who just happens to have a legal problem instead of a customer service problem. Getting ready to try a case for the first time? If you have teaching experience, tell yourself that your job will be to teach the judge or the jury about your case. But, instead of writing on a blackboard or calling on students, you will be using exhibits and witnesses to get your point across.

Put the situation in perspective. The thing that you are nervous about is an important part of your day or week, but it is only one part. This does not mean that you should minimize or pay less attention to the proceeding at hand. However, if you remind yourself that after this afternoon's hotly contested motion you still have to finish doing research for the partner for that other case or you have to hurry home to make it to your child's soccer game, you will not spend as much energy worrying because you will need that energy for other things.

Remember that you will make mistakes. All of us make mistakes. Simply reminding yourself that you cannot be perfect all the time can relieve a lot of the pressure.

Caryn R. Suder teaches Client Counseling and Negotiation at Loyola University Chicago School of Law. She is also a Writing Advisor at The John Marshall Law School. She can be contacted at csuder@luc.edu.

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