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Online data storage requires professional standards

By Janice Hazel, Attorney at Law

Increasingly, attorneys are using “cloud-based storage” for filing of confidential client information. Data is not actually stored up in the air. Instead, it is transmitted over the Internet to a third party’s computer – physically located away from the attorney’s office – recorded onto a disk, and stored in one or more physical locations. The term “cloud” is simply a reference to the manner in which data is delivered to another computer for storage. In November, 2011, the Oregon State Bar issued Formal Opinion No. 2011- 188 (www.osbar.org/_docs/ethics/2011-188.pdf) which tackles the issue of a lawyer’s ethical obligation when storing confidential client information this way.

The underlying rules of professional conduct which give rise to this obligation are RPC 1.6 (pertaining to disclosure of client confidences) and RPC 5.3 (pertaining to confidentiality and nonlawyer employees, vendors, etc.). The question presented in the opinion’s fact scenario is fairly straightforward: May a lawyer use a third party Internet service for the remote storage of confidential client information?

In practical terms:

- Is it OK to back up my entire computer system to Carbonite or a similar service?
- Is it OK to use Dropbox or a similar service so that either my clients or I can access and/or share information from any location?
- Is it OK to create folders on my gmail account for the purpose of organizing or storing client email correspondence?
- Is it OK to upload client information to a cloud-based practice management system?
- Is it OK to have a log-in feature on my firm’s Web site that gives my clients access to their documents?

Opinion No. 2011-188 appears to answer all the above questions with a qualified “yes.” A lawyer may use a third-party vendor to store client information, provided that the lawyer “complies with the duties of competence and confidentiality to reasonably keep the client’s information secure within a given situation.” Although there is more than one component to this qualified answer (e.g., duties of “competence” and “confidentiality”) that merits further attention, the good news is that the standard of care established by the opinion is one every lawyer is familiar with: reasonable care. The bad news is that the opinion provides little definitive guidance on what constitutes reasonable care, which types of Internet services (or operations) are covered by the opinion, and which steps a lawyer is required to take to fulfill his or her duty of competency in the context of remote data storage. Much of that dearth of guidance is to be expected since cloud-based services are a fairly new and rapidly evolving technology. Nevertheless, what is clear is that lawyers have an ethical obligation to develop at least a basic under-

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standing of the underlying processes of every cloud-based service they use in their practice, to keep abreast of technological advances, and to re-evaluate the security of confidential client information in light of those advances. In the event that confidential client information stored in “the cloud” is compromised, the “reasonableness” of the steps taken to protect the information will be measured against “the technology available at the time.” The bottom line is this: If you must send confidential client information over the Internet, don’t do it using obsolete or ineffective methods for securing the privacy of that information. What were reasonable steps even a year ago may not be reasonable today. Welcome to the frontier!

Types of Internet activity covered

Opinion No. 2011-188 refers to “files and documents” stored on a remote server which is owned by someone other than the lawyer. While the opinion clearly applies to two types of Internet services commonly used by lawyers — cloud-based system backup (e.g., Carbonite) and document sharing (e.g., Dropbox) — there are many other less-obvious types of services that potentially fall within the standard created by this opinion. For example, cloud-based practice management systems — and all of the unbundled pieces in between that assist lawyers with the collection of client information and often offer file-sharing features — necessarily require the law firm to transmit a variety of data to a remote server. Another example is a law firm Web site hosted by a third party administrator that allows a client to log in to review documents. Perhaps the most overlooked example of cloud-based storage is third-party email servers (that is, not the firm’s private email server).

To appreciate the broader application of the opinion, one must understand why all data sent from one computer to another over the Internet may be forever stored in multiple locations, even if that is not the sender’s intention and even if the sender wants to get the data back.

Most Internet users tend to hand-wave over how the Internet works, as long as it does work. Sending email is a good example of this. You put your message in here (point A), and (you hope) it pops out over there (point B). The reality of what occurs between here and there is somewhat more tedious than a non-stop trip from point A to point B. The message that

seems to instantaneously move from point A to point B may make several stops along the way at intervening email servers a lawyer knows nothing about. That’s the way email was originally designed to work and that’s basically the way it operates today. The only way to get around these multiple stops is to operate your own email server and ensure that it’s configured to talk *only* to the recipient’s self-operated server. (This is a lot of trouble, and destroys much of email’s “works anywhere” ubiquity.)

The problem, in terms of Opinion 2011-188, is that at any of these intermediary stops, the recipient server can make a copy of your message. And here’s something a bit unnerving: unless the email message sent from Point A was encrypted prior to transmission, or the message was sent from a private email server to another private email server, that message arrives and is stored (possibly forever) in an unencrypted state at each of the stops on its journey to Point B. The fact that your email message travels through a Secure Sockets Layer (SSL) or Transport Layer Security (TLS) “encrypted” connection on its way to Point B does not change this. The reason? There is a world of difference between encrypted “connections” (SSL, TLS, and others) and encrypted “data.” In the typical scenario, a lawyer writes an email message (the “data”) and clicks “send.” The “data” is not encrypted unless the lawyer took steps to encrypt it. Thus, unencrypted data leaves the lawyer’s computer and enters an Internet connection that begins the process of transporting the data to its final destination. Imagine that the “Internet connection” — as long as it’s SSL or TLS — is like an impervious tube, which renders the data invisible to anyone trying to get a look at it while it is in transit. SSL and TLS connections work great for that purpose. The problem is that when the data reaches an intervening server (which it will unless there is a private-to-private server transmission), it is spit out of the impervious tube onto a third-party server, where it is recorded and stored, then sent on its way to either the next intervening email server or the final destination. There can be an arbitrary number of stops along the way — typically more than two and sometimes up to thirty — each storing your unencrypted client information.

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Note: A discussion of the cell-phone-provider remote storage of confidential client information, while relevant to the issues addressed in this article, is not included here.

Note: Here's how to see the number of stops made on an email's journey to your inbox:

- In Outlook: Right-click over any message. Select "message options." Look at "Internet Headers" and scroll down to see where the email was "Received."
- In Gmail: Click on any message to open it. Click on "Show Original" from the drop down menu (usually at the top right corner of the message). Scroll to see where the email was "Received."

A word about sending encrypted email: You are sending encrypted email if you do the following each time you send an email:

- Type your message
- Obtain your email recipient's public key (the recipient can give it to you or there are plug-ins available that can help locate a recipient's public key)
- Encrypt using the recipient's public key
- Send

Don't despair if you haven't been following the four above steps. Hardly anyone does. Most Internet users believe their email is encrypted because they don't understand the difference between an encrypted connection (with SSL or TLS) and encrypted data. Encrypted connections (SSL or TLS) are not the same as encrypted data. Unless the four steps listed above are followed, your email message (the data) will leave your computer in an unencrypted state and be deposited at its destination in an unencrypted state.

Speaking of email, what about storing unencrypted client emails and documents in folders located within your cloud-based email server: gmail, hotmail, Comcast, etc. — anything other than a private email server maintained by your firm? Food for thought as you consider any differences between using a cloud-based computer system backup vendor (e.g., Carbonite or SpiderOak) to store the contents of your computer and using your cloud-based email account for email "file" storage. Hint: There aren't any, except that the probability of storing encrypted data in a remote location is far greater with a computer system backup vendor. But no one has ever had their email hacked, right?

Cloud-based law practice management software works much the same way as email: A lawyer logs into his or her account, enters data, and clicks "save," which launches the data into a SSL or other secure connection and dumps it out at its final destination in an unencrypted state. In virtually all cases, the data is then

encrypted and stored at the vendor's remote location. There are at least three questions for the lawyer to ask here:

- What is the vulnerability of my client data prior to encryption? (probably not much)
- Who has control over the encryption keys?
- If it's not me, should I trust the person who has that control?

A complete discussion of the technology behind encryption keys is beyond the scope of this article, but lawyers should be aware that most cloud-based data storage vendors encrypt data using a key that they select and that only they know. So, a third party might have trouble getting at the data, but in this situation, the lawyer is a third party too. The lawyer doesn't know the key, and typically has little or no control over how carefully the vendor handles the keys it knows.

Thus, an "online data storage provider" refers to much more than cloud-based services that will back up your entire computer system automatically (running continuously, quietly and invisibly in the background) to a remote location. And it's extremely important that lawyers be aware of how all of their cloud-based service providers receive, process, store, and re-transmit their data. That is:

- How does data leave the law firm computer (encrypted or unencrypted)?
- How does it get to its final destination (SSL or other secure connection)?
- What is the likelihood that client data will make intervening stops on its way to its final destination? What happens when data arrives at its final destination?
- Is it encrypted before storage?
- If data is encrypted by a third party, who has control over the encryption keys?

Standard of Care

Given the evolving nature of Internet technology and the myriad of ways client data may get stored in known or unknown remote locations, what must a lawyer do to meet the requirement of reasonable care when storing client data via the Internet? For one, lawyers must comply with "duties of competence and confidentiality." The confidentiality component is well understood by lawyers across a number of contexts in both the physical world and the Internet, but the reference to competence in Formal Opinion No. 2011-188 may

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refer more to a lawyer's obligation to achieve some minimum level of technical understanding than to practice-area expertise. The concept of technical competency was first introduced in a closely related OSB Formal Ethics Opinion 2011-187 that was adopted at the same time as the opinion under discussion. It discusses a lawyer's obligation with respect to confidential metadata transmitted via the Internet to third parties (typically, email and email attachments). In that context, a duty of competency "requires a lawyer who uses electronic media for communication to maintain at least a basic understanding of the technology and the risks of revealing metadata." A footnote to Opinion 2011-187 further requires a lawyer to "understand the implications of metadata in regard to documentary evidence." In the absence of such understanding, the metadata opinion requires lawyers to obtain and utilize "adequate technology support." Thus, it would be safe to assume that some level of understanding of the technological processes behind cloud-based data storage is an essential prerequisite to sending confidential client information via the Internet to a third-party provider, regardless of the type of storage.

Other requirements found in Opinion 2011-188 for meeting the "reasonableness" standard are a bit more vexing. For example, the opinion states that a lawyer "must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential." What are some examples of the "reasonable steps" a lawyer might take to ensure the reliable security of client data in the hands of third parties? The opinion provides this guidance:

- Make sure your service agreement requires the vendor to preserve the confidentiality and security of the materials to be stored.
- Require that the vendor notify you in the event of any non-authorized disclosure.
- Investigate how the vendor backs up and stores its data to ensure that its processes are consistent with a lawyer's ethical obligations.
- Keep current with technological advances. Remember: the reasonable test applied to the steps taken to safeguard information is measured against the technology available at the time to secure data against unintentional disclosure.

Without question, the first three suggestions are essential if the lawyer actually has the op-

portunity to negotiate an agreement with a cloud-based provider. The unfortunate reality is that most purchases of cloud-based services are not negotiated deals: the lawyer merely accepts (or not) the provider's terms of service, most of which are subject to change, if not complete revision, without notice to the lawyer. The unsettling news here is that if you determine that your service provider's terms of service are no longer in compliance with ethical rules, you cannot rectify the situation by simply taking your data and going elsewhere. That's because once you send your client information into the cloud, it's there to stay.

Take a look at this excerpt from Google's terms of service for gmail: *When you upload or otherwise submit content to our Services, you give Google (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content. The rights you grant in this license are for the limited purpose of operating, promoting, and improving our Services, and to develop new ones. This license continues even if you stop using our Services [...]*

Not only is it technically difficult (easily impractical, verging on impossible) to get back all the copies of your data, but Google almost certainly has no obligation to help you do it.

What's a lawyer to do?

By far the best thing a lawyer can do to protect client confidentiality and satisfy ethical obligations relating to the Internet and remote data storage is to fully embrace the fourth piece of guidance offered by Opinion 2011-188: Keep current! Ask questions! Educate yourself! The use of digital technology is so prevalent in our personal and professional lives that it's easy to forget that there are literally millions of underlying electronic operations required to make a single Internet application work. While you don't need much more than a passing awareness of those operations, you do need to know the questions to ask and the information to look for when using or selecting a cloud-based service provider. ■

Resources

OSB Formal Ethics Opinion 2011-188 refers to both Arizona and New Jersey ethics opinions in footnotes. Each offers a different perspective on the data storage issue and is well worth reading:

www.myazbar.org/ethics/opinionview.cfm?id=704

www.judiciary.state.nj.us/notices/ethics/ACPE_Opinion701_ElectronicStorage_12022005.pdf

A discussion of other states who have adopted similar rules may be found here: blog.legaltypist.com/?m=201112

The South Carolina Bar maintains a list of sample questions to ask online storage vendors, from pricing to security: www.sctbar.org/public/files/docs/VendorQ.pdf

The OSB PLF maintains a document entitled "Online Data Storage Providers." Log in and click "Practice Aids and Forms," then click "Technology" to find the document.

The American Bar Association maintains an up-to-date law office technology resource page: americanbar.org

Virtual assets are part of an estate

By Michael Walker, Attorney at Law and Victoria Blachly, Attorney at Law



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Virtual assets may be something you see, create, or rely upon every day, yet they may simultaneously be something you never consider as valuable or worth incorporating into your or your client's estate plan. In a 2007 study, Internet use in the age group over 71 was only 29 percent.¹ However, Internet use jumped to almost 80 percent among the Baby Boom generation and exceeded 90 percent for those 30 and younger. As the Baby Boomers grow older, virtual assets are certain to become a significant factor in the estate planning process. In the aggregate, virtual assets have tremendous aesthetic, emotional, and financial value.

When we die or become incapacitated, what happens to these assets? Who can gain access to this "virtual existence" when we're gone? And how can we plan for proper care and disposition of our virtual assets?

What are Virtual Assets?

With respect to electronics and the Internet, *virtual* is defined as something that is "occurring or existing primarily online" or that is "being simulated on a computer or computer network."² Accordingly, one's *virtual assets* are the electronic information stored on a computer or through computer-related technology

This includes banking and financial information, legal or financial documents, medical records, emails, photos, videos, music, websites, blogs, social media accounts, and business accounts. Often, these assets have sentimental value. If they have economic value they should be included in the estate for tax purposes. Another term used by estate planners to refer to these types of digitally stored property and information is *digital assets*.

Online Accounts

Online accounts are used to communicate, pay bills, conduct business, create online personalities, and even date. Because many individuals protect such accounts by limiting access to themselves only, accounts with protected passwords can create problems when the account holder passes away. As a result, online accounts are oftentimes left untouched.

An individual usually owns the contents of his or her emails or social networking posts as intellectual property. Many accounts, however, are in the form of licenses rather than actual property, and these licenses generally expire

upon death.³ Moreover, the terms of service of many sites require that the account holder grant the provider ownership of his or her content.⁴ Thus, transferability of the "ownership" of such an account upon death is oftentimes prohibited by the site's terms of service.⁵ It is therefore important to read the terms of service of each site and service used. Yahoo!mail, Hotmail, Google Gmail, MySpace, Facebook, YouTube, and Flickr—all of these popular online account providers—have varying licensing terms regarding what happens to the account, who can have access to it, and the procedure for access upon the death or incapacitation of an account holder.

Websites

A website domain name (URL) is registered to an individual as a true asset that is transferable and that passes with the residue of an estate.⁶ Thus, the "owner" of a website must determine whether or not he or she would like the website to continue after death. It is important that there be a plan as to how, when, and who carries out this desire. Moreover, one's website blog content firmly belongs to an individual under copyright law.⁷ The law provides that an individual can bequeath his copyright to others.⁸

Administering virtual assets in a decedent's estate

While we are alive and competent, access to and possession of virtual assets pose no legal problems. However, at the death or incompetence of the owner, the fiduciary (personal representative, conservator, or trustee) may find his or her authority under Oregon law nonexistent or unclear. The reason for the ambiguity in the statutes is that electronic communication and storage has developed independently of the historical definitions of assets.

The law relating to virtual assets has been somewhat slow in developing. At this writing, only two state legislatures have promulgated statutes to specifically authorize fiduciaries to have access to a decedent's virtual assets.⁹ The Uniform Law Commission recently formed a virtual assets study group, but it is not expected that ULC progress will meet the current demand for clarification of fiduciary authority.

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In the interest of addressing these issues more quickly, the authors of this article recently convened an Oregon State Bar workgroup to propose legislative changes that expressly include virtual assets in Oregon's probate, protective proceedings, and trust codes. This proposal aims to empower fiduciaries in performing the obligation of identifying, marshaling, and protecting virtual assets of a decedent, protected person, or trust beneficiary with greater efficiency and lower costs.

Until we have greater clarity specific to these virtual assets, the fiduciary in an estate or trust administration should adhere to the common practices and fiduciary standards required by existing law.

Integrate virtual assets into your estate plan

If virtual assets in question are vital to one's overall estate planning, the failure of fiduciaries or family members to have access to these assets could create serious difficulties and unnecessary expenses. Hence, it is very important that sensible measures be taken to integrate virtual asset planning into one's overall estate plan. Here are some steps to consider in this process:

1. Identify all virtual assets.

Not all virtual assets are Internet-based. For example, a great deal of electronic information may exist on the hard drive of one's home computer or laptop, or more portable storage devices such as flash memory drives, CDs, or DVDs. Home security systems are often controlled through keypad codes or passwords. In addition, personal or business smartphones may contain significant amounts of personal information as well as photos and videos.

Not all electronically accessed information relates to an "asset." It is now very common for many regular monthly bills (such as utility bills) to be paid electronically. Most credit card, bank loans, and mortgage accounts allow electronic review and bill paying capabilities. Hence, it is essential that a list of such "virtual liabilities" be maintained as well.

2. Choose appropriate personal representative, trustees, and/or advisors.

Not everyone is computer and Internet savvy. If a person's estate is complex and has a great many virtual assets, a tech-

nophobic fiduciary is likely not the best choice. If family politics requires that an individual without technical or computer skills be named as personal representative and/or trustee, then the will or trust could name either a co-fiduciary or informal advisor to help administer the virtual assets. In a trust setting, the Oregon version of the Uniform Trust Code contains a provision relating to trust "advisors" in which an individual is appointed to perform particular tasks on behalf of the trust.¹⁰ Hence, one might consider appointing a "virtual asset trust advisor" if the circumstances warrant.

3. Provide specific virtual asset authority in the will or trust.

Consider including instructions in wills and trusts to give the fiduciary specific authority over virtual assets. Because the contemplation of virtual assets in the estate planning process is a relatively new issue, a trust or will that grants specific authority to a fiduciary could be particularly important if one's estate contains a significant number of virtual assets.

4. Create a Virtual Asset Instruction Letter (VAIL).

A "Virtual Asset Instruction Letter" or VAIL will list all of your online accounts and other virtual assets, and will provide Web addresses, user names, and passwords to give your designated representative the ability to identify and gain access to these accounts. The VAIL should also contain the decedent's instructions as to what is to be done with these assets. However, it is important to keep in mind that, under the laws of most states, unless the VAIL is incorporated into the terms of one's will or trust, any such instructions may not be legally binding. That's not to say that the VAIL would not be an extremely helpful resource; it's just important to realize that the VAIL is not the place to designate the beneficiary of any asset or issue instructions that must be legally binding.

Place the VAIL in a safe location, such as a safe deposit box or a home's fire-proof safe, which can only be accessed by your legal representative. In addition to placing the VAIL in written form, one might consider saving the VAIL to a flash memory drive or CD which can make your representative's access to these accounts more efficient. In addition to containing instructions as to particular assets, the VAIL could set forth a decedent's wishes as they relate to administering his or her virtual presence after death.

5. Consider how virtual assets should be disseminated

If a virtual asset is a bank or investment account, your client's will or trust should (presumably) control who will receive these assets at death. But what about access to family photos or genealogical information? One might want to specifically instruct the executor or trustee to replicate and distribute these items so that they pass to *multiple* intended beneficiaries.

Commercial services ("electronic wills" and other snake-oil gimmicks)

A new cottage industry has sprung up to provide a type of "online safe deposit box" to store one's virtual assets and provide a means by which designated individuals can gain access to them. A few words of

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caution are in order. First, be careful and make sure you're dealing with a reputable company. Giving someone the keys to one's digital existence would be a goldmine for someone bent on stealing one's identity. Second, remember that giving someone access to information about an asset is not the same as giving that asset to that individual. One's will or trust should ultimately control who should inherit assets, not an online service provider. There may be complex legal and tax issues that need to be taken into account in designating beneficiaries of virtual assets. For example, one online service provider refers to an "electronic will." In most states, a will requires certain formalities (typically a written instrument signed before two witnesses), and the absence of these formalities can render one's good intentions legally invalid.

There are many online companies which provide what is essentially an "online safety deposit box" for passwords and account information. Legacy Locker, DataInherit, and Entrustet are among many companies referred to as "digital afterlife planning sites" – but such representations may lead to future litigation.

Conclusion

It may be tempting to marginalize issues relating to virtual assets as relevant only to individuals that lead highly "digital" lives or those who maintain intellectual property or creative assets in some type of electronic media. The growing reality is that individuals use numerous electronic devices in order to access information about assets and debts, to communicate for business or personal purposes, and to generally function in modern society. According to a recent article in the *Wall Street Journal*, state treasurers around the United States currently hold \$32.9 billion of unclaimed assets.¹¹ This new reality will have a profound effect on estate planning as well as fiduciary administration and litigation.

Being prepared for the various challenges and planning in advance with a VAIL and similar instruments will help to reduce or eliminate the risks of losing important information left for those charged with managing an estate. If virtual assets are any part of one's legacy or estate, then steps should be taken to protect them. ■

Footnotes

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5. *Id.*
6. Sarah AuMiller & Peggy Hoyt, "Estate Planning for Your Online Identity," *Wealth Counsel*, June 9, 2010, note 7, <http://estateplanning.wealthcounsel.com/bid/44803/Estate-Planning-for-Your-Online-Identity>
7. *Id.*
8. 17 U.S.C. § 201(d) (2006) ("The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.")
9. See, Idaho Code Ann. § 15-5-424 (West 2011) (authorizes personal representative to "take control of, conduct, continue or terminate any accounts of the protected person on any social networking website, any microblogging or short message service website or any e-mail service website"); Okla. Stat. Ann. Tit. 58, § 269 (West 2010) (stating that "[t]he executor or administrator of an estate shall have the power, where otherwise authorized, to take control of, conduct, continue, or terminate any accounts of a deceased person on any social networking website, any microblogging or short message service website or any e-mail service websites.")
10. See, e.g., ORS 130.735 (2009). ORS 130.735 specifically states: "A trust instrument may appoint a person to act as an adviser for the purpose of directing or approving decisions made by the trustee, including decisions related to distribution of trust assets and to the purchase, sale or exchange of trust investments. The appointment must be made by a provision of the trust that specifically refers to this section. An adviser shall exercise all authority granted under the trust instrument as a fiduciary unless the trust instrument provides otherwise. A person who agrees to act as an adviser is subject to Oregon law and submits to the jurisdiction of the courts of this state." See, also, 12 Del. C. § 3313 (Delaware's trust advisor statute)
11. Saabira Chaudhuri, "The 25 Documents You Need Before You Die," *Wall St. Journal*, July 2, 2011, <http://online.wsj.com/article/SB10001424052702303627104576410234039258092.html>

Tips for handling email correspondence

By Sheila M. Blackford, Attorney and Practice Management Advisor, PLF



If you cringe when you open your email program, this article may help you feel better about using email for client matters.

Email can be problematic for many people because the sheer volume can tempt you into viewing it as something less than correspondence. Most lawyers carefully handle correspondence from a client or pertaining to a client matter by date-stamping its receipt, reviewing the letter carefully, docketing any deadlines, answering any questions, clarifying any misperceptions, and filing it in reverse chronological order in the client matter correspondence file. Not so with emails. They get caught in our spam filters, ignored, overlooked, and forgotten amid the hundreds of emails in our email in-box. For most of us, the email spigot frequently seems to be stuck on full blast. One could no more read all the emails before lunch than drink demurely from a fire hose.

There are a variety of solutions for handling the processing of email. Because email pertaining to your client should be treated as correspondence, here are five tips for handling emails in your elder law practice.

1. Have a protective email policy.

Communicate your email policy to your clients and be sure to get client permission to use email to transmit correspondence. If your client rarely checks email, you risk having your email ignored. Don't send important information without alerting your client by phone to expect an email. Don't transmit confidential personal information such as social security numbers, driver's license numbers, or bank account numbers by email without encryption or without some password-protected lock. You can use Adobe Acrobat to lock a document and use the last four digits of your client's social security number for your client to open this email and read the private attachment. Confirm your client's email address by sending a test email requesting your client to reply.

2. Save your important client emails from the spam filter!

Add email addresses that you need to receive to your email program's safe-sender list and segregate by client matter. These will be your clients, related parties, accountants, bookkeepers, court administrators, and so forth. This is what is referred to as *white listing*.

- For Microsoft Outlook, from within In Box, highlight client email, right click with mouse, and select *Add Sender to Safe Senders List*. This option is probably located as one of the options in a drop-down menu at *Junk Mail*.

3. Create email folders and subfolders for your clients.

Set up email folders for each client and subfolders for each different client matter such as estate planning, guardianship, probate, etc., in your email program. These should mirror client folders and subfolders set up on your computer.

- For Microsoft Outlook, from within In Box, highlight In Box on tree list, right click with mouse, and select *New Folder* and name it *Clients*. Highlight *Clients* folder, right click with mouse and select *New Folder* and name it [*Client Name*].

4. Create rules to sort incoming emails automatically.

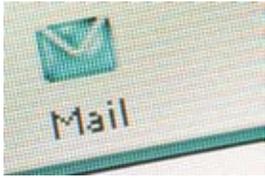
Set up an email protocol to automatically move emails into their respective client folder and subfolder in your In Box. Now your new client folder will act as a dedicated In Box. New emails will be identified just as they would in your general In Box. The number of unread emails will appear next to the client folder and subfolder, and the unread email message will be highlighted within that folder or subfolder.

- **Caveat for iPhone users:** If you are accustomed to reading emails on your iPhone, you will see these sub folders but will not see any emails in them. Only emails within the main In Box will show on your iPhone. This is annoying to discover on the weekend when trying to read emails you had carefully sorted into sub folders. They will only be seen in sub folders on your desktop computer. A work-around: Have the rule Copy the email and move to the sub file. Then your iPhone email box will show these emails. Or as an alternative, copy these client emails to a second dedicated email account, such as *Elderlawclient@*

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Email

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JoanSmithLaw.com. Set this up as an additional email account on iPhone.

- For Microsoft Outlook, from within In Box, highlight a client email, right click with mouse and select Create Rule. You will see the phrase *when I get e-mail with all of the selected conditions* and a number of conditions to be selected as desired. Select those that you desire. For example, from [Client Name], to me only along with whomever else desired that was copied on that email if so desired. At the phrase *do the following*, select *Move the item to the folder:* and select the specific [Client Name] sub folder under Client folder.

If this is not detailed enough, select the button *Advanced Options* at the lower right corner of the *Create Rule* popup window. This will allow even more detailed rules.

You will then be given an option to run the rule on emails in your In Box. If you want to get all these emails moved, select *run this rule on messages already in your In Box*. They will be moved to the proper folder and subfolder.

If any emails were not moved, you need to create a rule that will capture these remaining client-related emails.

5. Create archived email folders and subfolders for your clients.

Save your emails into the respective client folder and subfolder on your computer.

- If you have Adobe Acrobat 9 or later, you can select all the emails in the particular client folder or subfolder, select option to create Adobe PDF from selected messages to have one PDF document with the contents of a single folder converted into a single indexed PDF document. Selecting the option to create Adobe PDF from folders will create one PDF document with the contents of multiple folders converted into a single indexed PDF document. Attachments will be saved along

with the transmitting email message.

- If you do not have Adobe Acrobat 9 or later, you can save the emails into a text document by selecting and highlighting the messages, selecting option *Save As* and selecting the corresponding folder or subfolder on your computer. You will be able to open and read the emails using your Word or WordPerfect program. Any attachments will have to be saved as an Outlook Message Format *msg*. They will show with an envelope icon; open using Outlook.

Summary

Email doesn't need to be a curse. You can manage your email and treat it with all the care of correspondence so that you aren't overwhelmed. If you were beginning to feel like trying to handle email was like trying to eat an elephant with a demitasse spoon, take a deep breath and remember that you have to take small bites. ■

Resources

"The Email Blizzard: Tips for Taming Your Inbox," by Sheila Blackford, Oregon Bar Bulletin, April 2009, <http://tinyurl.com/7gjp77h>

PLF Practice Aids and Forms: "Using Email in the Office" located in Client Communication folder; and "Managing Client Email" located in Technology folder.

The Hamster Revolution, How to Manage Your Email Before It Manages You, by Mike Song, Vicki Halsey and Tim Burress, Berrett-Koehler Publishers Inc., 2006 <http://tinyurl.com/6n8vxzc>

FYI: *Playing it Safe With Encryption*, American Bar Association Legal Technology Resource Center, <http://tinyurl.com/5s8t9lg>

Managing office technology: lessons learned

By Bob Cronk



Bob Cronk is the business manager for the Law Offices of Nay & Friedenberg and has responsibility for managing the technology at the seven-attorney firm. He agreed to share some of the things he has learned in the course of his job.

There are many ways to approach office technology—this gives you insight into how one elder law firm does things.

Like most businesses, a law firm must deal with the technology that plays an ever-increasing role and is constantly evolving. The following are observations and opinions based on one manager's front-line experience.

PC or Apple?

Law firms and businesses in general are still living in a PC world, but Apple is starting to make inroads into corporate infrastructure. It started with people bringing their iPhones and iPads into work and wanting to get network access with them. IT departments were forced to accommodate. More business software is written for the PC than Apple; but this is changing as well.

Extended warranties for computers

It is not worth it to buy extended warranties on computers. Computer technology changes too fast. You will typically upgrade every four to five years. Out of the hundreds of Dell computers we have bought, I have had trouble with only one or two.

Servers

We purchase our servers through Dell and we have had good luck with the company. We usually buy the second-fastest server they have. You will pay a hefty premium for the latest and greatest. Microsoft Small Business Server is a great way to go if you have fewer than 25 employees. You can save a lot of money with that option rather than getting the full version of Microsoft Server. Using Microsoft Exchange on the server with Outlook on each user's computer will centralize all your data and make backups easier. This also enables shared calendars, which are essential in our office. I don't have any experience with Google Calendar but I hear that is a great alternative.

Printers

We buy HP printers and they have served us well. Buying the high-capacity toner cartridges can save you money. If your printer breaks down out of warranty, it is often cheaper to buy a new printer than to get the old one fixed. If you have multiple printers in your office, I would try to make them all the

same model or at least make sure they all take the same model of toner cartridge. We have accumulated an assortment of printers over the years and managing the various different toner cartridges is time better spent on something else. I would not recommend using refilled toner cartridges. In our experience, the quality just isn't there and the toner often comes off the page if the paper is folded. We do not use inkjet printers for our client documents. We only use HP laser printers. We do have a couple of color inkjet printers for internal use.

Service contracts

It is a good idea to have a service contract with someone—at least for your primary server. Your vendor will help make sure your server software is properly updated to protect against vulnerabilities. When your server goes down, you need to get it back up as soon as possible. Having a service contract with someone gives your server priority. How to find one? Asking others what firm they use is a good place to start.

Either way, you are going to want to check references to make sure the vendor's customer service is up to par. In reviewing the contract, pay special attention to the firm's response times to make sure they are acceptable.

Recycling

In Oregon, it is now illegal to dump electronics into the garbage bin. We take most of our outdated and broken electronics to Free-Geek.org. They do charge to recycle the old style CRT (bulky) monitors.

Wireless networks

For your wifi router, go with a popular brand like Netgear or Linksys. There are a lot of cheap alternatives out there, but don't try to save money here. Make sure there are at least four ports in the back to add hard-wired (non wifi) connections if necessary. Make sure you get a wi-fi router that is 802.11n compliant (it may just say N in the product model or description). N is the fastest wi-fi speed commercially available right now. The next speed will probably be referred to as AC, but is not available as of this writing.

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Office technology

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Do not let anyone who is not an employee use your secure network. Set up a guest network with limited access for others. (You will likely need an IT professional to help you out.) The guest access typically only gives guests access to the Internet and not your internal network.

The password for the guest network should not be complicated because you will be giving it out to many different people, including clients. But your secure network password should be long and contain upper and lower case characters, numbers and symbols. It should not be anyone's birthday or pet's name. Something like this would be appropriate: tY9*g#3pn!-haW%>wbC19d&a. That is 24 characters long – and I am not kidding. How much do you value your data? That is how secure this password should be. Keep in mind that anyone could park next to your office and get your wireless signal. Criminals often have all night to try to hack into your network. The more sophisticated your password, the better. You should only have to enter this password once when adding new hardware to your network.

Internet access

Comcast Business offers a great value if you have multiple people in your office. For around \$100 a month we have Internet access for about 45 people. I would avoid technologies like Wimax or any other wireless access (I'm not referring to wi-fi) for your primary connection for now. It just isn't reliable or fast enough yet.

Email

If you are still using a free email service like Yahoo, Gmail, MSN, or AOL for your business then you need to update your email system. You should have your own domain name – for example, *yournamelaw.com* if you're a sole practitioner. There is an inexpensive, outsourced way or you can do this. If you are a small office, you can get an email address through gmail.com, register your domain name and then "attach" it to your gmail account. Your clients will email you at *yournamelaw.com*, but the emails will be delivered to your gmail account. That way you look professional to the outside world. Keep in mind that if you have a website, the domain name you use for that should be the same domain name you use in your email address.

Backups

You should be backing up data daily. You should have at least one backup that remains off-site and is updated regularly. Think about how much work you did today and how much it would cost you to re-create that work. That should help you determine how often you should update your off-site backups. I take a backup home every night when I leave and I have one that stays in the office and one backup on our server. We also use Carbonite, which is a cloud backup system. Every night Carbonite determines which files were added and changed during the day and encrypts and uploads those files to their cloud server. I can connect to our Carbonite account from any Web browser and pick and choose which files I want to restore or download. You can also access Carbonite from an iPhone or Android app. Backup plans start at \$229 per year. ■

More information on law-office technology

American Bar Association's Legal Technology Resource Center

www.americanbar.org/groups/departments_offices/legal_technology_resources.html

Articles, reviews, presentations, surveys, comparison charts, annotated bibliographies, "how to" guides, and more – covering everything about the relationship between the practice of law and the use of technology.

Law Office Technology: <http://www.lawotblog.com>

A blog by Louisiana attorney Craig Bayer, Partner at Lawtopia, LLC

TabletLegal: <http://tabletlegal.com>

A blog by Portland attorney Josh Barrett that discusses use of Apple's iPad by the legal profession.

In the age of technology, Oregon public law libraries provide an effective partnership

By Laura Orr, J.D., M.L.S., Washington County Law Librarian



Laura Orr is the Washington County Law Librarian, a member of the Self-Represented Litigation Network Law Library Working Group, the American Association of Law Libraries, State Court and County Law Libraries Pro Bono Committee. She has worked in law libraries at the University of Maryland, University of Bristol (England), and Willamette and Yale law schools.

The law library is dead; long live the law librarian. The computer kiosk is dead; long live the smart-phone-tablet app!

We could lament the demise of the law library as a place to meet, research, mentor, collaborate, and browse shelves for new and old treasures, or we could, as law librarians everywhere are doing, create new service models. Law librarians love real-time social media, apps, blogs, websites, digital asset management projects, and most of all we love not having to file loose-leaf paperwork!

Services for Oregon elder law attorneys

I could list more than 30 services county law librarians provide to attorneys and pro se litigants, for example:

- A pro se litigant uses the law library and other self-help resources effectively.
- On December 31, an attorney discovers the law library can help get those three ethics credits without breaking into the kids' Christmas gift fund.
- The law library can find a copy of a book no other library in a 200-mile radius has.
- A law librarian and a judge, during a brief recess, can race through five treatises and six CLE course books to find an answer to a knotty procedural question.

I could go on, but suffice it to say, lawyers, judges, and taxpayers save time and money by using the services provided by local law librarians. If you can't find that document, book, article, official version of that 1965 statute, call or email me or your county law library. Lawyers and legal assistants have the simple stuff at their fingertips. Law librarians specialize in finding the difficult and the near impossible.

Attorneys in law firms pool their money in order to buy in-house databases and hire paralegals. Solo practitioners can find many of those same services through their county law libraries.

We acquire books, forms, CDs, CLE course and books on estate planning and special needs trusts you can use to refresh your skills or learn new ones. Attorneys use our conference rooms to meet with clients and our re-

search guides and notary services. Law librarians scan documents, locate hard-to-find books and articles, and collaborate with colleagues around the country to improve the quality and cost of online legal information and share research tips.

We serve elder law attorneys who need to research beyond their specialized areas of expertise and delve into criminal, land use, admiralty, tribal, and administrative law, and who need a crash course in compiling a legislative history.

Oregon county law library electronic discussion lists allow your law librarians to share locally digitized documents (e.g., superseded Oregon Revised Statutes) and exchange information on database evaluation, complex legal research, interlibrary loans, specialized databases, and other expensive legal treatise resources.

Local law librarians take some of the work load off bench and bar. We take referrals from OJD, OSB, nonprofits, public libraries, and attorneys. Professional county law librarians answer legal reference questions on the statewide 24/7 online reference service (L-net), create law library websites and blogs, and provide legal research and reference training for public library staff members.

There is a disclaimer, of course! Law librarians have databases, networks, and creative searching skills, but remember: we don't do your legal analysis. It's no different from law school, where the law librarians taught you how to fish and showed you the best places to fish; they didn't go with you on the all-day fishing expedition or decide which fish you wanted for dinner, and they didn't clean the fish for you. Law librarians don't do your legal analysis or compile your legislative histories or read those 12 cases to find out which ones support your argument. (We don't do these things for pro se litigants, either!) We do, however, give you the research assistance and tools that could save you hours of aggravation.

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Law libraries *Continued from page 12*

Access to justice

The OSB tells us that Oregon lawyers serve only 20 percent of people in need of legal services. Where do the remaining 80 percent go with their legal problems? Many go nowhere and many go to Google. Local and state courts, public libraries, and public law libraries do serve those who can't afford – or think they can't afford – lawyers. But, we could do better

Access to Justice (A2J) lawyer-law-librarian collaborations in other states result in measurable improvements to the quality and array of legal research services for pro se litigants and attorneys. We could develop a statewide law library/self-help center service plan for all Oregonians and review existing county law library outreach programs for statewide implementation. A statewide group would include representatives from the OJD, OSB, Legal Aid Services of Oregon, Oregon Law Center, county law libraries, the State Library, the State Law Library, and other stakeholders.

Other A2J-Law Library task force models include California Judicial Council Task Force on Self-Represented Litigants, Massachusetts Committee on Self-Represented Litigants, Montana Supreme Court's Commission on Self-Represented Litigants, and Texas Self-Represented Litigants Committee and Uniform Forms Task Force.

Minnesota and Ohio have recently streamlined their county law libraries and self-help centers into hybrid state/county partnership business models. Services are aligned with actual research needs of attorneys and pro se litigants and, with statewide coordination, duplicate costs and services are minimized while increasing and improving service to all corners of the state.

Oregon county law libraries already work with their presiding judges and court administrators to improve the use of library space, improve outreach, and save money. Some law libraries share space with academic libraries, public libraries, or local government and legal aid offices. Each county and region is unique, but a hybrid business model accommodates the needs of both rural and urban Oregon. For example, Washington County the Law Library might join the Washington County Cooperative Library Service (WCCLS) as a member

library or as a WCCLS program. Law librarians could then focus on building strong online Oregon legal research Web and social media portals and sites, provide regular on-site training for public librarians and their patrons, and share print and database costs.

With legislative support, Oregon public law librarians might collaborate with the Oregon State Library Statewide Database Licensing Committee, which has statutory and regulatory authority and years of experience writing database vendor RFPs and negotiating license terms for public libraries.

Preparing an Oregon Access to Justice (A2J) blueprint for the future is a task for the entire judicial system, the OSB, and the legislature - and all Oregonians would benefit if they include the program management, public service, and legal information knowledge of the Oregon public law librarians.

By actively engaging its county law librarians, A2J advocates would hear from the other "legal front line" and give a real voice to the unrepresented 80 percent, while also supporting solo and small law firm practitioners who provide the vast majority of affordable legal services to all Oregonians.

Could county law libraries do more?

Yes! What's on your legal research wish list? How about a smart phone app to a centralized Oregon public law library website with AskUs, legal News feeds, and TechTips? How about a toll free number to a legal research hotline that any Oregonian could use? How about a plan to build the Oregon equivalent to the California Judicial Council forms? ■

Funding Oregon's county law libraries

The legislature provided for the existence of county law libraries through June 2013. 2011 ORS 9.815. However, county law library funding changed dramatically in the 2011 Oregon legislature session. HB 2710 (Oregon Laws, Chapter 595), effective July 1, 2011.

County law libraries no longer receive dedicated filing fee revenues from their respective circuit court litigants. Instead, filing fees collected from circuit court litigants are deposited into the state's general fund. ORS 1.001, 21.005, 21.007.

The legislature made an appropriation to the OJD for funding county law libraries over the FY 2011-13 biennium (2011 HB 5056) and delegated to OJD, and county governing bodies, the authority to decide how to distribute the money to each county's law library. County law libraries are subject to the same budget cuts as all other state-funded departments.

Resources for elder law attorneys

Websites

Elder Law Section website

www.osbar.org/sections/elder/elderlaw.html

The website provides useful links for elder law practitioners, past issues of *Elder Law Newsletter*, and current elder law numbers.

OregonLawHelp

www.oregonlawhelp.org

This website, operated by legal aid offices in Oregon, provides helpful information for low-income Oregonians and their lawyers. A lot of the information is useful for clients in any income bracket. The articles are collected and grouped by category, e.g. *Seniors, Disability, Government Benefits and Taxes*.

Administration on Aging

www.aoa.gov

Provides information about resources that connect older persons, caregivers, and professionals to important federal, national, and local programs.

Oregon Legal Research blog

<http://oregonlegalresearch.blogspot.com>

Written by Oregon public law librarians. Legal research tips, advice to the legal blogger, commentary on reading material, etc..

BigCharts

<http://bigcharts.marketwatch.com/historical>

Provides the price of a stock on a specific date.

National Clearinghouse for Long Term Care Information

www.longtermcare.gov/LTC/Main_Site/Index.aspx

Information and resources to help plan for future long term care needs.

Social Security administration Spanish-language website

www.segurosocial.gov

This website provides online application for retirement and Medicare benefits. Information and publications are written in Spanish.

Washington County Law Librarians

www.co.washington.or.us/LawLibrary

The Washington County Law Librarians are compiling a list of websites useful to elder law attorneys. If you have any favorite websites or blogs, email their URLs to: lawlibrary@co.washington.or.us. ■

CLE seminars

OSB Elder Law Section unCLE Program

May 4, 2012

Valley River Inn, Eugene

Oregon State Bar Programs

<http://osbarcle.org>

Ethics Best Practices

May 4, 2012

Oregon State Bar Center, Tigard

ADR 2012: What You Need to Know

May 3, 2012

Oregon State Bar Center, Tigard

Estate Planning for Doctors, Lawyers, and Accountants

May 22, 2012

Quick Call

Lawyer Ethics on the Internet— Social Media, Email, and More

May 31 2012

Quick Call

Including Pets in Your Estate Plan: Providing for Fido and Fluffy

June 1, 2012

Oregon State Bar Center, Tigard

Oregon Law Institute Program

http://law.lclark.edu/continuing_education

Starting and Building a Successful Law Practice

May 18, 2012

Oregon Convention Center, Portland ■

Elder Law Section electronic discussion list

All members of the Elder Law Section are automatically signed up on the list, but your participation is not mandatory.

How to use the discussion list

Send a message to all members of the Elder Law Section distribution list by addressing it to: eldlaw@lists.osbar.org. Replies are directed by default to the sender of the message *only*. If you wish to send a reply to the entire list, you must change the address to: eldlaw@lists.osbar.org— or you can choose “Reply to all.”

Guidelines & Tips

- Include a subject line in messages to the list, for example, “lawyer referral needed” on the topic line.
- Try to avoid re-sending the entire message to which you are replying. Cut and paste the relevant parts when replying.
- Sign your messages with your full name, firm name, and appropriate contact information.
- In the interest of virus prevention, do not try to send graphics or attachments. ■

Important elder law numbers

as of
January 1, 2012

Supplemental Security Income (SSI) Benefit Standards	Eligible individual.....\$698/month Eligible couple\$1,048/month
Medicaid (Oregon)	Long term care income cap\$2,094/ month Community spouse minimum resource standard \$22,728 Community spouse maximum resource standard \$113,640 Community spouse minimum and maximum monthly allowance standards.....\$1,839/month; \$2,841/month Excess shelter allowance Amount above \$552/month Food stamp utility allowance used to figure excess shelter allowance\$395/month Personal needs allowance in nursing home.....\$30/month Personal needs allowance in community-based care.....\$155.30/month Room & board rate for community-based care facilities \$542.70/month OSIP maintenance standard for person receiving in-home services\$698 Average private pay rate for calculating ineligibility for applications made on or after October 1, 2010\$7,663/month
Medicare	Part B premium \$99.90/month* Part B deductible..... \$140/year Part A hospital deductible per spell of illness\$1,156 Part D premium:Varies according to plan chosen Skilled nursing facility co-insurance for days 21-100.....\$144.50/day * The standard Medicare Part B monthly premium will be \$99.90 in 2012, a \$15.50 decrease over the 2011 premium of \$115.40. However, most Medicare beneficiaries were held harmless in 2011 and paid \$96.40 per month. The 2012 premium represents a \$3.50 increase for them. Premiums are higher if annual income is more than \$85,000 (single filer) or \$170,000 (married couple filing jointly).



Elder Law Section

Newsletter Board

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