THE NEWSLETTER FOR LEGAL OFFICE MANAGERS

# LAW OFFICE ADMINISTRATOR™

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TECHNOLOGY

## How document automation can save you thousands

Does your firm use document automation tools? If not, you're not alone. According to a survey conducted in 2013 by the International Legal Technology Association, a whopping 62% of law firms surveyed reported not using a document automation system. But when you think about how much time your team spends assembling variations of the same documents every day, automating the process is something to consider.

"On average our customers who implement document automation technology as a part of their everyday work practice save 72 percent of the time they would otherwise spend on the manual creation of repetitive documents," says **Bob Christensen**, CEO of TheFormTool, LLC.

### What is document automation?

Document automation traditionally refers to the process of assembling a package of related materials in their entirety, taking out irrelevant pieces, and tailoring the text appropriately for each client. For many firms, document automation is simply using templates and macros created in their word processor. And while that may be fine for some documents, there are limits.

*(continues on page 3)*

APPROPRIATE OFFICE WEAR

## Now's the time to enforce your warm weather dress code

After a long, cold winter, who doesn't look forward to a long, hot summer?

For office managers, however, summer brings a new set of challenges, including what staff members wear to the office.

Ah yes, warm weather work attire. Ultra-sheer blouses, midriff tops, plunging necklines, short skirts, shorts, and flip-flops.

Whatever are they thinking?

If you don't have a summer dress code policy, your practice is at the mercy of an individual's fashion sense, which may not coincide with good business sense.

*(continues on page 13)*

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## Reader Tip

# NJ firm finds an easy to reduce last-minute sick calls

Experience is often a manager's best education. Such is the case for the long-time manager of a practice in New Jersey, who has found that the best way to prevent the last minute sick calls is to allow staff to carry their sick days over to the next year.

But instead of transferring as sick days, the time becomes personal days to use however they want. As in any office the sick calls always came in at the last minute and left the office shorthanded.

### Use it or lose it

What's more, the office had a use-it-or-lose-it policy, so there was invariably a surge of absences at the end of the year.

Making matters worse, Mondays and Fridays, which are the busiest days, are the most tempting times for people to be out.

The carry-over system ended that, and to everybody's satisfaction. For the office, there's full coverage for all positions; for staff, there's a bonus of added personal time.

### The potential for more vacation

Each employee starts the year with five sick days and ends by taking the unused days into the next year. Thus, staff can potentially add as many as five days to their vacation time. Most people carry over at least three days, and one staffer who has been there since the carry-over began has carried over five days every year. The manager asks staff to request the personal time at least a week ahead so she can cover the work, though usually they arrange the coverage themselves before making their requests.

### Plus protection for holidays

There's more to the picture: an added a provision to prevent unnecessary call-ins around holidays.

To miss the day before or after a holiday, staff have to get the absence approved in advance or bring a doctor's note verifying illness. Otherwise, they don't get paid for the holiday. With most holidays falling on Monday, the following day is invariably a Monday-Tuesday day with twice the work, so the office needs that provision to ensure full coverage. The manager adds, though, that enforcement follows common sense. If a staffer is obviously ill, the doctor's note is not necessary. But having the provision in the handbook allows the office to enforce it if there's doubt.

If your law office has a system that helps operations run smoothly, *Law Office Administrator* would like to write about it. Contact the Editor at at barb@plainlanguagemedia.com. We pay $100 for each idea we publish. ◆

(**Document automation** *continued from page 1)*

For example, Christensen tells of a client whose most complex document is their engagement letter. "Everything goes in there. That 6,000 word document has 150 variables," says Christensen. "And they have one for each different practice area. They couldn't automate it because it was well beyond Word's limits."

### How can document automation affect your bottom line?

At a presentation delivered to the Chief Information & Technology Officers forum, **Roberta Gelb**, President of Chelsea Office Systems, told a story of a client's secretary who refused to use the newly installed document automation system. Instead, she continued to follow her standard practice of reusing an existing document and cutting and pasting as necessary to create a new document. Gelb timed her. It took 65 minutes for the secretary to complete the task, an hour longer than it would have taken had she used document automation.

Gelb then did the math. If all 20 secretaries in the law firm followed the same process, it added up to a potential loss of almost $800,000 per year.

And the cost of document production is becoming increasingly difficult to recover from clients. "The biggest disagreement between a lawyer and a client is the perception of the value of the documents," says Christensen. "To the lawyer, these documents represent the largest cost of their practice. However, in the past 10 years, clients have been taught that documents have little or no value. Lawyers need to do whatever they can to decrease the costs of those documents."

### Why isn't it standard practice?

"Lawyers tend to be resistant to change," says **Nicole Black** of MyCase.com. "They (and their staff) are used to the programs/systems they've always used and choosing and learning a new one takes time and money. So many lawyers just opt to stick with what they've got as long as it's sort of working."

But legal assistant **Tranesia Joseph** didn't complain when her former employer brought in document automation software. "The only con was that the documents were created by the supervising paralegal so that is where human error comes in to play. Some of the documents were perfect but some of them you had to do more work to edit. Other than that… I would highly recommend it, because it made my work day easier."

### When a claim's not worth your time

The next generation of document automation contains what Christensen sees as the most important development — the system's ability to act independently of the author and to replicate or leverage the author's expertise and judgment without the author being further involved.

For example, one of Christensen's clients is a firm that represents a hospital. The hospital was faced with an overwhelming number of reimbursements being declined by Medicaid. Many of these claims were low, around $200. As it would take approximately 90 minutes of a lawyer's time to put together the materials needed to proceed, these claims were deemed too small to pursue individually.

But 100 of these little amounts daily started to add up—to the tune of $4 million per year. This was the perfect situation for TheFormTool's latest document automation software, Doxserá. It was able to collect all of the required facts, assemble the necessary documents, analyze the materials, and cite the proper authority supporting the claim, using only five minutes of clerk time per claim.

"If the economics determine whether or not you pursue a matter, shifting the economics affects the party you're working for and against, as well as your firm as a business," says Christensen. "It levels the playing field."

### How to proceed?

That raises the question of how much work is involved to implement a system. There are many different document automation systems to choose from, and each has their own unique features and requirements. Some advanced systems require special attention. Some are fully integrated systems, combining everything from document management to billing systems. Others are Microsoft Word plug-ins, designed to work with a firm's existing templates. "Law firms already have the best of the documents they need," says Christensen. "They just need something more efficient that works on their documents and adds intelligence to the documents."

If you already have a practice management system, talk to your representative and see if there's a built-in automation system. If so, find out what it would take to roll it out to your team. Otherwise, conduct a little research online, select software that is powerful and easy to use, and download a free trial.

But, as Gelb's story demonstrates, it's not enough to simply download the software and expect everyone

in the firm to embrace it. You need a strategy. To get your team onboard, Christensen recommends these tips:

- Enlist the support of your firm's heavy users of repetitive documents, such as the real estate, family law, or corporate departments. Let them experiment with the software.
- Don't tackle the most complex documents first. Go with the simpler ones to get your return on investment right away, while educating your staff at the same time.
- In every firm, there are people on the lookout for better ways of doing things. Turn them loose on the software. Let them be creative. "People enjoy playing with our software," says Christensen. "Get a segment of your staff playing and the word will spread on its own."

### Conclusion

Technology is having a profound effect on the legal industry and on clients' expectations. "It's becoming an industry increasingly difficult to stay viable in," says Gleb, "and firms that recognize that technology will make the difference going forward will be the firms that stick around." ◆

## Reader Question: How can I rein in a runaway staff?

**Question:** *The previous manager let staff get away with everything. I'm the new manager. How do I change the staff behavior?*

**Answer:** Take the bull by the horns. Hold a staff meeting and spell out the new expectations. Call them rules or call them pet peeves, but make it clear that everybody is expected to follow them.

Cover all the items the previous manager let slide so staff know that what was tolerated before will be tolerated no more.

All that says there's a new captain who is going to run a tighter ship. It also shows what won't be tolerated without calling anyone out personally.

Afterwards, meet one-on-one with every staffer to go over the duties and responsibilities and make sure both manager and employee are on the same page.

Reiterate the expectations outlined at the staff meeting, and ask if the staffer can meet them

End by asking if there are any requests. For example, somebody might want to continue performance discussions the previous manager held. Or somebody may have earlier requested training and now wants to know if it's still available.

**BILLING AND COLLECTIONS**

# Don't give discounts to clients without first calculating cost

Discounts are dangerous things. Some firms give them out willingly in exchange for a guaranteed volume of business. Others wind up having to take them for lack of client planning. You need to understand the dollar cost of every discount. Calculate how the firm will fare with the business and without it and know how much discount the firm can accept. Even better, keep control on the client balance so the firm doesn't have to take discounts in the first place.

### Sure business or sure loss

It's common for firms to grant discounts in exchange for guaranteed business. But guaranteed business doesn't mean guaranteed profit or even guaranteed survival. Suppose the firm currently charges Bigshot Client $200 an hour for a limited amount of work. The partners ask for Bigshot's other business as well, and the response is "okay, we'll give it to you, but only if you lower your rate to $150 an hour." Current revenues are good, so the firm figures it can take on the work, reasoning that "every nickel we lose on the lower rate we'll make up on the volume." Not so fast. It doesn't work out that way. In fact, the only time a discount makes sense is when the attorneys can't fill up their time. Most firms have that backwards and give discounts only when the attorneys have steady work at the standard rate, figuring that's when they can afford the loss. But if the revenues are good, there's no need for a sale. If the attorneys already have enough work lined up at $200, why work for $150? It may be guaranteed work, but it's also a guaranteed pay cut.

### Idle hours = the devil's workshop

Give a discount only when the hours are idle and the year is looking bleak. At that point, guaranteed work is a good deal. But even then, there's a breaking point. Suppose Attorney Smith commits 1,000 hours to Bigshot at the requested $150 hourly rate. Will that cover the cost of doing the business?

Tally the overhead, or the attorney's share of what it costs to run the shop. Take Smith's share of the annual rent, support staff, utilities, and so on and divide it by the number of hours he is expected to bill in a year. If his share of the costs is $150,000

and he's expected to bill 2,000 hours, that's $75 an hour allotted to office overhead. Suppose Smith's salary and benefits come to $150,000. Divide that by the 2,000 hours, and that's another $75 an hour going to his support. That makes Smith's breakeven point $150 an hour, or $300,000 a year. If he's only bringing in 1,000 hours at the standard $200 rate and can't replace the remaining hours with other work, then Bigshot's 1,000 hours at $150 will produce an annual $350,000 – not such a bad deal considering the alternative.

But if business is good and Smith has other clients or potential clients who will fill that time at the regular fee or even at a lower amount of, say, $180, why push that business aside for Bigshot? All that company is offering is a guaranteed pay cut. The firm will make more money if it turns down the business.

## How deep is too deep?

There's also the question of how deep a discount the firm can afford to accept, even when business is at its lowest. Suppose all Bigshot is willing to pay is $100 an hour. At year's end, that will come to 1,000 hours at $100, or $100,000 plus the other 1,000 hours at Smith's standard $200 rate, or $200,000. The firm will see $300,000, which is the break-even point. Is this an acceptable rate? It probably is not. Lose any one of those hours to a write-off, and the firm slides immediately into the loss column.

## Discounts hidden from the books

Besides the agreed-on discounts, firms fall into hidden discounts. They come from associate billings, and few firms even recognize them as a loss. Firms do a good job of tracking partner write-offs, but what they don't keep track of is the time lost when a partner reduces an associate's billed hours. Those hours get cut often and without a second thought. An associate turns in a brief showing 10 hours' work, and the partner takes the time down to six hours to account for the associate's inexperience. And in the process, the four hours just disappear.

While it may be appropriate to reduce those hours, it's not appropriate to let them go unrecorded. Keeping track of the cut-back time gives a better gauge of the number of associate hours that actually do need to be written off. It may turn out that drafting that type of brief actually requires eight hours even for an experienced associate, not the six that the partner guessed on. What's more, seeing where time is being written off tells the firm where training and mentoring is needed so the wasted hours can be reduced or even prevented in the future. Every worked hour, billed or not, needs to be accounted for and evaluated. That's the only way the firm can know how many associate hours should be written off in specific types of work and where it needs to focus associate training.

## Client in control

A final aspect of discounts to be aware of is bargaining power. While the firm may at times have no alternative but to accept a discount, don't do so without a fight. Always try to get as close as possible to the standard rate. But understand that success will depend on the strength of the bargaining power.

Many firms weaken their bargaining position by relying too heavily on one client. Whenever a single client accounts for a substantial portion of the revenue, the partners have something to be concerned about. Substantial means more than 5% of the revenue. At 10%, it worsens to being a bad situation. And at 20%, the client has the firm hooked. It holds all the bargaining power because it determines the firm's ability to survive. It can say, "We account for most of your revenues. Give us a discount or we'll take our work down the street." At 5%, the firm can say "we hate to lose you, but farewell." At 20%, it can only respond with a meek "okay."

Regardless how good the income from a single client, the firm should always be expanding its client base so the client dependency doesn't get unbalanced. Don't let one client gobble up the firm. If the business from a single significant client grows by 10%, the firm should expand its business in other areas by 10%.When a single client represents too much of the revenues, it knows it's sitting in the take-it-or-leave-it seat and can demand discounts and write-offs. What's more, if that client leaves, word will get out, and the firm will be in a weak bargaining position with new clients. Along with that, go after work that isn't price sensitive. Insurance defense, for example, "is work any licensed lawyer can do, and there are plenty of lawyers out there who can do it." The same is true of routine work such as divorces, consumer matters, and residential closings. The clients hold the power. Look for work that isn't so easy to hand out so the firm stays in control of the pricing. ◆

GOOD ORIENTATION

# How to get new staffers off to a strong start

Don't lose the investment of a new hire to a lackadaisical orientation. Set the stage for success. Lay out what the firm expects in the job. The more clearly that's communicated, the better the relationship and the more likely that person is to be successful.

A good orientation assimilates the newcomer into the firm. What's more, it makes people feel welcome so they stick around. But leave a new employee alone in a new job and the relationship falls apart very quickly. The orientation itself can last anywhere from two hours to two weeks. It can cover everything up to formal training in safety and harassment. But at a minimum, it needs to cover these elements.

## A long list of review items

Set up a checklist of items to go over. Talk about them even if they are already in a manual or handbook. If the firm has taken the time to print them, they are important enough to discuss. Also, if the new hire is later terminated for some violation, the firm can show that everybody had full knowledge of what was expected. The main topics to cover are these:

**The money and benefits.** Outline the salary, insurance, and retirement benefits. Explain how bonuses are given. Outline other nonfinancial benefits such as employee assistance programs.

**The facility.** This includes elements such as parking, security, building access, emergency evacuation, and the procedures for reporting hazards or accidents.

**The firm and its policies.** Tell about the firm's history and mission statement. Also, give the new employee a written outline of the corporate structure and the chain of command and explain where to go with what type of problem. Include here too the code of conduct, dress code, policies on ethics and confidentiality, and the policies on drug use and harassment.

**Work time.** Review the working hours and the time allowed for lunch and breaks. Explain the attendance requirements and what to do about late arrivals and how to call in sick. Go over the time allowed for vacation, holidays, and bereavement, and tell how to request time off.

**The job.** Review the job description and along with the requirements, explain how the job affects the rest of the office. New employees need to see the big picture of how their jobs fit into the firm's business objectives. At the same time, tell what professional publications the individual should read, what seminars are available, and what professional organizations to join.

**The billing.** For the billers, give the billing expectations and show how to report time.

**Performance.** Tell how performance appraisals are conducted and when they take place, and also explain the discipline procedures.

**A mentor.** The first day is also the time to give the new employee whatever how-to manuals are needed such as computer or billing manuals. Along with that, assign a peer mentor to help the new employee learn the job.

## Office, people, and phone numbers

Next is a tour of the office plus introductions. Show where everything is located – copier, time clock, first aid kit, lavatories, break areas, and so on. With each introduction, explain the purpose of the new employee's position and how it will affect the other individual. Conversely, tell the newcomer about the other persons' jobs.

Afterwards, give the new employee an in-house directory of phone numbers and e-mail addresses. And along with that, make sure the new staffer knows how to reach the administrator. Give the cell number and email address and tell that person to call even after hours.

## Goals for the first week

Then immediately set short-term goals for learning the job, perhaps to master a software by a certain time, and schedule a date to review the progress. That first week is the best time to set goals, because the job is still new. Capitalize on the fact that new employees are excited about their jobs. Then to keep momentum going, meet with the employee at least once during the next four weeks to review the progress. During those meetings, ask questions such as:

- *What did you learn last week?*
- *What will you focus on next week?*
- *Are you meeting your goals?*
- *What areas are giving you trouble?*

- *What do you want to do better?*
- *How can we help you? Do you need more training?*
- *Have you learned the software system?*
- *What have you done to learn X skill? Y skill?*
- *Have you learned about our client base?*
- *Have you read the publications we recommended? signed up for the seminars? joined the organizations?*

Those meetings are critical to success, because they show the firm is serious about the employee's progress. Equally as important, they show quickly if a new hire doesn't suit the job, which besides avoiding the grief of firing someone later can save money. Most states don't provide unemployment compensation if someone is let go within 30 days of being hired. So if the firm can find out early that there's not a match and can end the relationship before the 30 days is up, it can save a lot of unemployment dollars. ◆

**COMMUNICATION**

## 5 things you should never say to your staffers

Without realizing it, a manager can create conflict. It comes from the way staff's interruptions, questions, and suggestions get handled. Here are five automatic and all too common bad responses.

### 1. *"I don't have time for that now"*

A staffer comes in with a question, the manager is in the middle of work, and the response is "not now" or "can't you take care of that yourself?"

That's a hard put-down. The staffer is hurt, the open-door policy looks like a sham, and when the manager hands out the next compliment, that staffer is going to think "why should I believe you?"

When there's no time for an interruption, make an appointment to talk: "Can you give me 10 minutes to finish what I'm doing? Then I can talk with you and not be thinking about this."

### 2. *"You're wrong about that"*

Don't debate. Not everybody likes it. What the manager sees as a healthy discussion staff often see as disagreement, rudeness, and confrontation.

Staffer A: "I think I should format this report in X manner." *Well you are wrong. Why do you want to do it that way? That's the worst way to format the report. Keep it just as it is.*

The staffer leaves feeling devalued and motivation is crushed. Express an opinion with a qualifier: *Please don't take this as confrontational or negative, but why do you think that way is better?*

Then listen to what that staffer says. The idea could be a good one, but if it isn't feasible, say so with diplomacy: *I appreciate your suggestion, but let me tell you why we follow this procedure.*

### 3. *"Just do it this way"*

Don't solve staff's problems. Show them how to come up with their own solutions. Continuously solving problems tells people they aren't smart enough to do the solving themselves. And worse, they become less and less reliant on their own ability and so come back to the manager with all their other problems. Teach them with *why* and *what-if* questions.

Staffer A: "I don't think I can get this project finished on time." *Why don't you think so?*

Staffer A: "I don't have time to make 10 phone calls." *What if you only made seven instead of 10?*

Staffer A: "I don't think that's enough." *Why not?* Those questions force staff to think through their problems. After a while, they start doing it on their own.

### 4. *"That's a waste of time"*

Acknowledge suggestions, even if they aren't good ones. If a staffer says "I've come up with a great way to do X," don't answer with a demoralizing "okay, get to the point" or "I don't care how you do it. Just get the job done by Wednesday."

The staffer is proud of having come up with the idea. Talk about it and show a genuine interest with comments such as "tell me more" and "that's great." And if the decision goes against the staffer's idea, end with a compliment of "I'm proud of you" or "you gave that a lot of thought."

### 5. *"Too bad for you"*

Take the same conversation-encouraging approach when a staffer comes in with a problem.

Staffer A: "I am really frustrated because I can't come up with a solution to this problem." *I'm sorry to hear that. Is there something I can do to help you?*

The problem will get solved no matter what the response. But that little bit of interest makes the staffer feel valued. ◆

# THIS MONTH'S MODEL POLICY:

One of the toughest challenges of managing a law office is the handling of client files. It's not just an administrative issue. Retention and destruction of client files are subject to legal and ethical requirements, including the American Bar Association Rules of Professional Conduct.

It's crucial to establish a written policy that explains how long client files will be closed, retained, culled, i.e., rid of extraneous information, and, ultimately, destroyed

This Model Policy combines the provisions of a couple of leading examples and must be carefully adapted to meet your own policies and procedures by one or more partners who are familiar with the ABA Rules and other legal and ethical requirements that apply.

## Client legal file retention and destruction policy: ABC Law Firm

### 1. Purpose of policy

The attorneys of the ABC Law Firm have adopted this Policy to ensure that files containing the records of client matters are handled appropriately and in accordance with all of the firm's obligations under applicable laws and ethical codes.

### 2. Definitions

For purposes of this Policy, the following terms will be defined accordingly:

**Client file** means paper or electronic records pertinent to the case of a particular client represented by ABC Law Firm, including but not limited to, documents brought to the attorney by the client or the client's agents; pleadings pertinent to the case; depositions or other discovery documents pertinent to the case that the client was billed and has paid for, and "work product" (i.e., notes in the file consisting of attorney's impressions about the case and notes containing comments and thoughts made during phone conversations with the client).

**Disposition** means the final action taken during the life cycle of the record within this office including its: destruction; transfer to vital record status; transfer to the client; transfer to third-party, e.g., another lawyer or law firm; or permanent retention.

**Retention period** means the period of time following the closing of the matter (active to inactive status) until its final disposition.

**Vital record** means any record that must receive the highest level of protection because of its necessity to protect the interests of the lawyer or the firm and essential to the resumption of business. These records must be secured in a destruction proof environment such as a fireproof safe or vault.

### 3. Retention of client files

**a. File closing:** A client file must be reviewed by the lawyer before being closed and prepared for storage. Closing of a file must be in accordance with a specific written policy takes into account the following factors:

- No file may be closed and scheduled for destruction under a retention schedule until all matters relating to the resolution of all matters relating to the representation as follows:
  - i. **All matters:** Discharge by client or withdrawal from representation by firm;
  - ii. **Litigation:** Satisfaction of judgment. Final dismissal of action because of settlement or exhaustion or abandonment, with client consent, of all appeals options;
  - iii. **Bankruptcy claims and filings:** Discharge or debtor payment of claim or discharge of trustee or receiver;
  - iv. **Dissolution of marriage:** Final judgment or dismissal of action, or date upon which marital settlement agreement is no longer effective, except when minor child custody is involved in which event the date of the last minor child's reaching majority;
  - v. **Probate claims and estate administration:** Acceptance of final accounting;
  - vi. **Tort claims:** Final judgment or dismissal of action except when minor involved, in which event the date of such minor reaching majority;
  - vii. **Real estate transactions:** Settlement date, judgment or foreclosure, or other completion of matter; and
  - viii. **Leases:** Termination of lease.
- No file may be closed until all outstanding fees are paid or discharged.
- No file may be closed until there is a final distribution and accounting of all trust account balances relating to the file.
- No file may be closed until the responsible attorney examines the file to identify all client property and that client property has been returned to the client or is stored as a vital record, if necessary, including such personal documents as tax records, expense records, bank records, deeds, corporate documents, etc.

**b. Culling of files:** At the discretion of the lawyer, the file can be culled of unnecessary materials, including:

- Legal memoranda, briefs, pleadings, and other documents that can be reproduced from other sources.
- Drafts of documents otherwise preserved in final form unless the process of creating the final document might later be an issue. Marked-up copies are often useful in the event questions later arise.
- Notes and memoranda recording nonpublic information regarding a client or its adversary can be destroyed.

# Client file retention & destruction policy

- Copies of published opinions and other available published material.
- Duplicate documents.
- Depositions may be culled particularly if electronic transcriptions are available.
- Extraneous material such as scratch pads, legal pads, and paper clips.

## 4. Storing files

All files must be kept in storage for at least 10 years beyond the closing date of the file.

**a. Storage of closed files:** Closed files must be stored:

- On-site for the first two years after closing.
- Off-site after the first two years after closing.

**b. Storage facilities:** Facilities in which files are stored must be:

- Physically secure to protect client confidentiality.
- Reasonably safe from environmental factors such as moisture.

## 5. Destruction of files

**a. 10 Years minimum retention:** ABC Law Firm will maintain legal files for at least 10 years after the representation ends. But while files may not be destroyed before 10 years, it may be necessary to retain client files and refrain from destroying them for a longer period in accordance with the following guidelines.

**b. Attorney must review, approve destruction:** No ABC Law Firm client file may be destroyed unless and until the attorney who represented the client or, if that attorney is not available, another attorney designated by ABC Law Firm management, reviews the file and determines that it is appropriate to destroy it.

**c. Criteria for review:** In determining whether it is appropriate to destroy the file, the reviewing attorney shall consider at least the following factors:

- Whether the statute of limitations for legal malpractice has run or been tolled.
- If the representation was of a minor client, whether the client has reached majority age at the time of review.
- Whether client expressed dissatisfaction with the representation or outcome.
- Whether there remains an unsatisfied judgment that cannot be renewed—in which case the file should be maintained until a malpractice action could no longer be brought after the date for renewal expires.
- Where minor children were tangentially involved, a file should not be destroyed until all such children reach majority age, plus the extinguishment of their rights to a malpractice action.
- In a dissolution representation, a file should be maintained for as long as there are any acts left to be executed by any party, and during the pendency of an award of spousal maintenance or child support.
- When there is a structured settlement, the file should be maintained until all payments are made.
- In collections cases, the file should be maintained until the judgment is paid or until renewal of the judgment is no longer viable, plus the time for bringing a malpractice action.
- In criminal representations, the file should be maintained for the longer of either:
  i. The length of incarceration and/or parole, or the satisfaction by the client of any alternative sentence, such as Community Service, fines, disgorgement, restitution, SES or SIS; or
  ii. The period of time for bringing a malpractice action.
- In corporate representations, the file should be maintained for the life of the corporation plus the period of time for bringing a malpractice action.
- In estate planning, estate administration and probate matters, the file should be maintained until the resolution of the final accounting plus the time period for bringing a malpractice action.
- In Trust administration matters, the file should be maintained until all operative trust clauses are exhausted, plus the time period for bringing a malpractice action.
- Explicit confirmation that none of the conditions requiring continued maintenance of the file, as set out in the Rules of Professional Conduct Rule 4-1.15(h)(1-4), are present, even in circumstances where destruction is pursuant to an agreement between the lawyer and the client.

## 6. Client notification

Notifying the client of destruction of the client file is not provided where ABC Law Firm has previously notified the client of the Firm's retention period at the inception of the representation. If ABC Law Firm has not previously obtained the client's consent to the destruction of the file at the time of destruction, the file may not be destroyed until the requirements of the Rules of Professional Conduct Rule 4-1.15(h) have been met, and the file has been reviewed by the responsible attorney in the representation according to the provisions of this Policy.

## 7. Post-destruction records

After the destruction of the client file, the ABC Law Firm will maintain records of:

- The file's opening and closing.
- The date of the conclusion or termination of the representation.
- Whether the file was destroyed under an agreement with the client or the Rules of Professional Conduct Rule 4-1.15.
- If destruction was carried out under an agreement with the client, a copy of the communication (Engagement Letter/Fee Agreement or other written document) notifying the client of the retention/destruction policy, and the client's consent thereto, if required.
- The date of destruction.
- The name of the attorney that reviewed the file and authorized its destruction. ◆

INCREASING PROFITS

# Keep profits on track with this quick 5-point spring financial checkup

It happens every January. The firm makes grand resolutions to improve the financial performance.

But by spring, the attorneys get bogged down in their old habits. It's the administrator's job to keep the attorneys focused on their financial resolves, because their abilities and interests lie far more in law than in business. Take a hard look now at what's going on financially lest the firm face the bleak money picture that too often appears at year's end.

## An A/R birthday party

Look first at the aging of the accounts receivable. Many a firm lets too much time pass before collecting on the unpaid accounts, and the outcome is often no payment at all. Studies show that at 90 days, a firm has only a 50% chance of collecting on a bill. The hold-off happens to a great extent because the attorneys fear destroying the client relationship and so let large amounts go uncollected until the end of the year. Then they make a big push to collect, and the clients make a big push not to pay. It's psychological. To the client's mind, if the attorney isn't worried enough to call about the bill, why should the client worry about paying it? Or the client assumes there's another 90 days' grace because the firm hasn't made any earlier collection effort.

No more than 15% of the receivables should be as old as 90 days and ideally, none of them should be that old. If the firm is not at that level, take a look at what's happening with the collections.

Make sure the attorneys are getting the billing information at intake, and that includes finding out where to send the bill, when the client cuts checks, and who the billing contact is.

Make sure they are laying out the payment requirements up front and doing it in the first person: "This is my hourly rate, and this is when I will send the bill, and this is when I expect to be paid." Make sure too that the firm is taking a second look at any client who complains about the fee or tries to negotiate for a lower fee. Those are the clients who will take longer to pay and might even be clients the firm should not represent.

Evaluate the bills the firm uses. They should state clearly that the payment is "due upon receipt."

Look at the billing follow-up. The firm should not be waiting longer than 30 days to call about non-payments. It doesn't have to be confrontational, just something along the lines of "We sent your bill on (date) but haven't received your payment yet. We just wanted to make sure you got the statement okay." At 30 days, the bill is often stuck on somebody's desk, and a call gets the check sent immediately.

## Keeping the new car smell

Another point to evaluate now is whether the bills are going out on time. At the beginning of the year, firms resolve to do just that, but about this time of year, they go back to their bad habits. The bills for one month's work should go out no later than a week into the next month. Get the bill to the client early in the month and the firm has a good chance of seeing payment before month's end. Send it later, and there's a good chance it will get pushed into the next payment cycle. Bill while the work still has a new-car smell. At that point the client is appreciative of the service and willing to pay. By contrast, wait six months and the logical response is "they must not need the money if they're just now billing for it." Worse, with the service now history, "what did they really do for me?" or "I can't believe they spent that much time on it!" And if the client challenges the bill, the attorney can have a difficult time defending what's now partly forgotten.

## No time, no raise, no bonus

Along with the billing time, check up on whether the attorneys and paralegals are still following the time entry policies. They should be required to enter their time into the system on a daily basis. Some firms withhold bonuses or raises from attorneys who don't enter their time on schedule or who have unbilled time at the end of the year. For real enforcement, it's possible to take that a step further and make a rule that everybody's bonus gets held up if even one attorney fails to enter time as required. Then peer pressure takes over.

There also needs to be a rule that the billers must enter their time directly into the system as opposed to writing it down and having their secretaries enter it. Handwritten notes produce lost hours because the billers are the only ones who know what the work entailed and who can best summarize it on the bill. Spring is also the time to identify the attorneys who have large gaps in submitted time. Chances are, they are not keeping up with their billing. Addressing that now can prevent a year-end revenue shortfall.

### Track the plaintiff profits

This is also a good time to take a hard look at the profitability of any plaintiffs' work the firm is now doing. That type of work isn't always lucrative, yet it's not uncommon for a firm to spend hundreds of hours on such a matter and not bring in enough money to cover the hours invested. Look now at the current cost of each plaintiff matter and project the profits, because that type of work can easily become marginal.

Consider the example of a case where the work already put in includes 200 partner hours at $250 ($50,000), 300 associate hours at $200 ($60,000), another 100 associate hours at $150 ($15,000), 125 paralegal hours at $100 ($12,500), and 100 more paralegal hours at $90 ($9,000) for a total of $146,500 in time. If the firm gets a third of the settlement, the matter needs to settle at $440,000 or more to be profitable.

But take into consideration too the other factors affecting the return. If the matter was referred by another firm, the attorneys may have to split the fee with that firm. And what happens if the settlement turns out to be low?

Keep a close monitor on that type of work. Make sure it's constantly balanced out with enough hourly work to keep the lights on. Also make sure it's being done as much as possible at the less expensive associate level. And more, make sure the attorneys and staff are entering their time on the matter so that when the firm negotiates the settlement, it has some kind of benchmark to cover the time invested.

### Budget money versus real money

At this point, the firm should also evaluate its budget standing. Every firm has a budget, but few firms keep a running comparison of budget to actual numbers. Others print out the comparisons but do nothing about the discrepancies that show up. Look at projected revenues versus what's actually coming in. Look at projected expenses versus what's actually going out. See if the billed hours are meeting requirements, and if they aren't, find out why not – that a major deal fell through or the firm lost a client or even that an attorney is not producing because of illness or divorce. Factor in anticipated increases in areas such as health insurance costs. Set the raise amounts and see how they will impact the year-end figures. And then use this year's actual numbers to date to project for next year. The firm may need to make new allowances for unexpected swings in income and expenses. Or it may need to delay purchases or hirings or reset expected raise amounts. And there's a lot more time now to make changes than there will be in November. ◆

**WORKING WITH LAWYERS**

## Take these 4 steps to make sure you hire the right temporary attorney

In an uncertain economy, temporary attorneys are a good business option. They give the firm an additional attorney without having to worry if there will be enough business to support that person in the future. They come in with the experience necessary for the job. If they don't perform up to par, the agency will replace them. And if they do perform well, the firm ends up with vetted job candidates. But though the arrangement is temporary, the selection process has to be made as carefully as if it were for a permanent hire. And the agency needs to be evaluated right along with the candidate.

### How extensive is the experience

Don't rely on the agency to do all the interviewing. The best way to ensure a good relationship is to participate in the selection and evaluate the person's experience, personality, and intentions. Ask about experience in the type of work that needs to be done. People can put anything on a resume. A good opener: *The work you would be doing is X. Have you done that type of work before? How often?*

Then to make sure the attorney knows more than the buzzwords of the work: *Tell me about the last matter like this that you worked on. What was your level of responsibility?*

Ask as many probing questions as possible about the specific work that person has done. One of the advantages of using an agency is that the firm can get an experienced attorney who is ready to go to work. There's no reason it should have to invest in a significant amount of training.

### What's the personality like?

Look for a personality fit: *What have you liked and not liked about the firms you've worked for in the*

(continues on page 16)

MARKETING

# Personal touch helps win highly profitable corporate clients

It's a first-class presentation, but the corporate business goes to another firm. What happened?

The big balloon deflator is that most corporations have their hiring decisions made long before the beauty contest. The winner is almost always the firm that has developed a relationship with the company beforehand, and the selection process is naught but a friendly formality.

To make rain, the firm has to put its efforts more on people than presentation. The best marketing is done via long-term relationships. Attorneys get the majority of their business through personal referrals. Yet sadly, most attorneys don't understand how to develop the personal relationships that lead to business. Simply by sharpening up their people-building skills most attorneys can double their business.

## Court the periphery people

Contrary to what most firms think, developing a relationship with corporate targets is a matter of backing into the business as opposed to approaching the corporate representatives directly. The best results come from developing friendships in the right places, with the right places being the individual professional service organizations that already serve the corporate organizations where the firm has interest. Those are services such as accounting firms, banks, and real estate companies. They already have business relationships with organizations and so have the corporate ear. Get them to drop a word here and there about the firm, or about an individual attorney, and the door starts to open. Also, those organizations aren't in competition with either firm or corporate client so there's every possibility of building a positive relationship with them.

## A matter of friendships

Courting the potential referrers means getting to know them personally and on a nonbusiness level. Don't go to them and try to sell. Instead, work to develop honest relationships with them, which essentially equates to making friends. That may sound like a waste of marketing time. It's not. It's the personal relationships that build professional trust, and trust is essential to generate referrals, because for professionals, giving the business nod is a significant event. Their reputations are on the line.

How can the firm prove its expertise to them without a sales pitch? Do it indirectly by trading war stories. Talk with them about their own businesses, and in the process, tell about legal situations the firm or individual attorneys have encountered and how those situations were resolved successfully.

Casual conversations of that sort paint a good and memorable picture of what the lawyers do and that they are good at it. However, while talking about doing good business, the one thing never to do is to appear inundated with business. Many attorneys do that thinking that it makes them appear superior in talent and greatly in demand. When someone asks "how are you doing?" they respond with "I'm running ragged" or "I've got so much going on."

That may impress other attorneys. But someone outside the profession reads it another way. To the outsider sitting there ready to put in a word to the next corporate client, it says the attorney is too busy to take on any new business.

## Not just foul-weather friends

Relationship building is not a one-shot venture. The attorneys who successfully get business through their social contacts maintain those contacts steadily. It's not just knowing those people that counts; it's the consistent contact that generates the introductions. Many attorneys are mercenary about it. They court their referral possibilities during the lean times and then when things get busy, they quit for a while. Then the business slows, and there they are again — hungry and looking for business, and those hard-made earlier contacts smell the desperation.

## People-focused presentations too

The personal touch continues on into the actual corporate presentations. When the contacts are solid, when the good words are dropped, when the firm is ready to make the sale, the winning approach stays the same: back into the business. Don't give the standard "ain't-we-wonderful routine" where the firm spends most of the time reciting a litany of its successes. Talk instead about the corporation's legal needs. That audience isn't there to judge a beauty contest; what it wants is a presentation focused on the issue it's facing.

## Research the client

Do some homework. Research the corporation's business history. Find out what its legal issues have been in the past and what approach it has taken to resolve them. Then explain the firm's perception of the current needs and tell how the firm's particular expertise will support the company's goals and needs. Show the firm's track record in those areas. Don't kill the corporation with theatrics. Many a firm gets over-prepared on the colors and graphics and goes in with presentation that's more flash than substance.

The audience isn't impressed with all that. Those people are sitting there thinking they will end up paying for the marketing efforts. Engage in personal discussions with the members of the selection committee. Mention the referrers. After all, the firm got there by way of a personal relationship. Continue along the winning path. ◆

*(**Warm weather dress code**, continued from page 1)*

## Establishing guidelines

Depending where in the country your practice is located, so-called summer clothing may be year round attire. Still, even in warmer climes, people tend to dress more casually during the summer months. Nevertheless, you can ensure that the line between business and backyard barbecue attire doesn't get crossed by taking a few simple steps:

- create a summer dress code policy;
- circulate the policy annually; and
- remind employees why the policy exists.

## Getting specific

When it comes to the policy, make sure you are specific.

"Let employees know what is expected and what will and will not be tolerated in the office," says Mary Lake, an HR consultant with HR Advisors Group. It helps to provide examples of appropriate attire, as well as what the practice considers inappropriate.

Here are suggestions for conveying what is and is not acceptable:

- Appropriate summer attire for women may include sleeveless summer tops, with a jacket or cardigan. By contrast, a midriff top or a sheer blouse is inappropriate for the office.
- Appropriate shoes for women may include open-toed shoes or dress sandals. Thong-like sandals or flip-flops are considered inappropriate for the office.
- For men, button-front short-sleeve shirts are considered professional and are therefore appropriate. T-shirts and golf shirts are inappropriate for the office.

This level of detail is necessary to ensure that staff members understand the practice's interpretation of professional, appropriate, and acceptable attire. Don't make assumptions that everyone's interpretation of these terms is the same.

It's helpful when sharing the policy to let employees know they should err on the side of caution. They should be told that if they question whether an article of clothing is appropriate for the office, they shouldn't wear it. They can later ask whether it is acceptable; and, if the answer is yes, wear the item another day.

## Enforcing the policy

A policy is only useful if it's enforced. And policies, including summer dress code policies, must be uniformly (no pun intended) enforced.

Just because Jennifer is 22 years old and looks like a fashion model in a short skirt and cropped top is no reason to let Jennifer violate the policy. What happens if you look the other way and then Margaret, age 55 and overweight, decides to duplicate the look? If you cite Margaret for inappropriate attire after letting Jennifer slide, Margaret can claim age discrimination, and she may also be able to claim discrimination based on her weight. The moral of the story is one policy for all staff members.

Deciding how you will enforce the policy is important, and a little tricky. Will you send the employee home to change clothes? Give her or him a first-time warning? Base your decision on how inappropriate the attire is?

Make sure you spell this out in your policy as well. Something to the effect that at the manager's discretion, the employee may be given a written warning or sent home to change clothes should suffice.

With proper attention to detail ahead of time, you won't have to sweat the small stuff during the summer months—and staff members can remain cool and comfortable, while looking professional. ◆

HIRING AND FIRING

# Always ask these 7 questions before you hire a staffer

They are the seven-question solution. They have become the standard for determining whether a firing is justified. A "no" answer to any one of them leaves room for argument that a dismissal was discriminatory.

They are the seven questions arbitrators ask when settling firing disputes. They are a valuable pre-termination checklist to determine whether a firing is risky. Administrators need to be aware of them for two reasons.

One is that employees don't necessarily accept responsibility for their actions and performance deficiencies. Instead, they focus on their rights, and they are sophisticated about the remedies available to them.

The other is the fact that law firms have little room for error in employment law because juries and judges hold attorneys to a higher standard than other businesses, assuming they know the law better than anyone else.

The seven determining questions were established in a 1966 arbitration decision involving the Enterprise Wire Company in Illinois, and they set out the elements that determine whether there is just cause to terminate an employee.

## A broken rule

**Question 1:** *Was the termination caused by a violation of a reasonable office rule?*

In other words, was there a rule and did the employee know about it? That requirement is well satisfied by an employee handbook that spells out the performance requirements. With a handbook, it's an easy matter to justify firing someone who hasn't met a billable hour expectation or has been absent or late too often or rude to clients. The handbook need only set out the basic expectations and then say that all employees must abide by the provisions. Explain the specifics such as the billable hour or quality expectations, and from there get as detailed as the firm wants, even going into things such as how to answer the telephone.

Many rules such as those on client confidentiality and personal use of e-mail need to be in writing, but others don't. Meeting court deadlines, for example, is a given for a paralegal.

This provision well illustrates the need to get signed statements that employees have received and read the handbook. That's proof both that there was a rule and that the fired employee knew about it.

## Notice and a clear warning

**Question 2:** *Did the firm give the staffer notice or warning of the possible disciplinary consequences of the conduct?*

That too should be explained in the employee handbook. Usually, it's simply a statement that "employees who violate these policies will be subject to disciplinary action up to and including termination."

But along with that, each warning the firm gives to an employee should be in writing and should repeat the fact that the employee is subject to discipline, including termination. Along with that, the employee should sign a statement acknowledging knowledge of the warning and the consequences of not improving.

The Enterprise arbitration decision does note, however, that for offenses such as theft from the employer or from other employees or intoxication at work, warning is not necessary, because they are serious enough that anybody should expect discipline.

## An inquiry

**Question 3:** *Was there an investigation to determine that the employee was, in fact, guilty?*

If the situation is clear-cut – perhaps a staffer didn't meet some standard of performance – no investigation is called for. But whenever there's question as to whether somebody was guilty of a transgression or concern that there could be argument about it, an investigation is necessary. That means interviewing witnesses. But it also means interviewing the accused. Leave that out, and any plaintiff's attorneys will latch onto the fact that the employer didn't ask for the employee's side of the story. You should conduct the accused's interview with yet another seven questions, and again, all need to produce a yes answer:

a. Did you do X?
b. Were you aware of our rule prohibiting that?
c. Were you aware of our rule at the time you did X?
d. Do you agree that it is appropriate to terminate someone for that type of conduct?
e. Is there any reason why we shouldn't terminate you?
f. Are you aware of any other employee what did X and wasn't terminated?
g. Is there anything you'd like to tell us?

Ask those questions at the very beginning of the investigation and even put them in writing for the employee to sign. At that point, there's a good chance the employee will answer yes to everything and possibly sign the statement as well in hopes of leniency in exchange for the cooperation. But once people get terminated, they get angry and their posture changes. The firm will never get those admissions again.

## Impartiality

**Question 4:** *Was the investigation fair and objective?*

A main factor here is whether the person conducting the investigation was an objective party and not a witness in the investigation. The Enterprise decision states that one person can serve as prosecutor and judge but not also as a witness against the employee. For that reason it's best to have just one person – usually the administrator – in charge of the investigation as opposed to having several partners conduct parts of it. What if it's a dispute between the employee and someone in management and there are no witnesses? In that case, the firm needs to question the manager in the same way it questions the employee being fired.

## Substantial proof

**Question 5:** *Did the investigation produce substantial proof that the employee was guilty?*

There needs to be hard evidence such as e-mails or written records or statements from witnesses. What's more, it has to be factual and not conjecture or hearsay or gut instinct. And it has to be fair. The firm can't rely solely on what volunteer witnesses say or on statements from persons who have some interest in the matter. Instead, it has to look for witnesses who are unbiased and not associated with the matter. What if there are contradictions in the stories?

That requires a judgment call after looking at the employment history of the conflicting witnesses to determine their credibility.

## A fair precedent

**Question 6:** *Has the firm treated similar situations in the past the same way?*

Be careful. If another employee was guilty of a similar violation and wasn't terminated, don't try to make an example out of somebody now. The question that's bound to arise is "if the firm didn't enforce that rule in that past, why is it enforcing it now?" And if the fired staffer is in a protected category such as race or age, here comes a claim of discrimination. If there's not been enforcement in the past, the only thing fair thing to do is send everybody a written reminder of the rule with a note that starting now, the firm will enforce it. That might happen, for example, if there has been, say, abuse of the e-mail requirements that has been allowed to continue.

## An appropriate punishment

**Question 7:** *Does the penalty fit the offense?*

Again, look at how the firm has disciplined similar offenses in the past. There needs to be even-handed discipline. Even so, it is okay to look at a person's work history and years of service and let that influence the firing decision. For someone with a good record and long employment or someone whose record is significantly better than the people who were disciplined earlier, there can be justification for lighter discipline than in the past. It's also okay to go easier on someone who is difficult to replace, reasoning that the individual is not similarly situated to those disciplined earlier and that the firm would suffer handicap if it fires that person. When that happens, however, there needs to be an internal memo explaining why the individual was not terminated. Or send a memo to the employee saying "normally we would terminate you for this offense" but there's no termination for such-and-such reason.

Conversely, the firm can be stricter with someone who has been guilty of the same offense or of other offenses in the past. The past record of guilt can't be used as the basis of determining guilt in the current situation. However, being able to point to earlier similar situations where employees received a similar penalty is good evidence that there's been no discrimination. With any firing situation, the firm's surest defense is documentation.

When a claim gets filed, the EEOC (Employment Equal Opportunity Commission) asks the employer for documentation supporting the firing, and if there's good documentation, the matter usually ends there without a hearing. But if the documentation is poor or nonexistent, a credibility dispute ensues.

Write to the audience– the audience being a judge and a jury. Show them that the firm keeps its employees apprised of where their performance fails. Besides being fair to the employees, that's a ready escape hatch from a lawsuit. And from a psychological standpoint, people accept responsibility for their failings if they have an opportunity to be successful.

*(In re Enterprise Wire Company [Blue Island, IL] and Enterprise Independent Union; Arbitrator Carroll R. Daugherty; 46 LA 359, Mar. 28, 1966)* ◆

(**Hire the right temporary attorney** *continued from page 11)*

*past?* If the job entails working with a gruff partner nobody else wants to deal with and the attorney doesn't like working with abrasive people, don't expect satisfaction on either side. Also, somebody who takes on a victim-like tone and denigrates another firm with "it was a terrible place and they didn't treat me well" has a serious lack of professionalism.

Ask about hierarchy preferences: *Do you like being in the lead role or are you more comfortable working in the back room?* If the work entails sitting alone in an office reviewing documents, an attorney who likes to head up a team isn't the person for the job.

And to discover personality traits, ask *What would your siblings say about you?* Then follow that with the same from another viewpoint: *At job reviews, what have your employers cited as your strengths and weaknesses?* That's a curve ball. That type of question will pull out accurate information about the attorney's personality and habits and likes and dislikes and strengths and weaknesses. It elicits far more than the standard *What are your work habits? What are your strengths and weaknesses?*

## Will this person finish the job?

Will the attorney stay around until the work is finished? To find out: *What are you looking for? Are you looking for a permanent job? Are you interviewing for a permanent job?*

The person who says "I'm doing this to support my real passion, which is to be an actor" is probably going to be stick around. On the other hand, someone who says "I'm doing this until I can find a permanent position" is going to bolt as soon as the opportunity arises. Also find out if the temporary will be out of the office during any critical times: *Is there anything that will take you out of the office between now and three months from now?*

Further, be sure the attorney understands that the work is temporary and the firm has no intention of making a permanent job offer later. But include a look-ahead question: *What other work experience do you have? Have you ever had your own clients?* The firm may need temporary work in another area after the current job is finished. It may even decide to bring in a fulltime attorney. The attorney could be a readymade hire.

## Query the agency well

Be equally inquisitive about the agency that's filling the position. Ask if it meets the attorneys it hires. Not all agencies do, but it's the personal meetings that ensure a placement is suited to the culture of the client office. Ask who does the interviewing. It should be former attorneys, because the best person to judge one attorney's legal skills is another attorney. An attorney also understands law offices and can tell if a candidate will fit into the culture of a particular firm. Ask about the background checking. The agency should check references and bar status and also do criminal background searches. Checking is the agency's responsibility, not something the firm should have to do. Ask how the agency conducts conflicts checks. Even though the firm has its own checking procedures, the agency should have a system as well. And finally, ask about confidentiality. Find out what procedures the agency follows to ensure confidentiality. At a minimum, it should require its candidates to sign confidentiality agreements. ◆