

The number of electronic courtrooms and conference rooms across the country is increasing daily. The entire milieu of trial and transaction presentations is completely changed. As law firms make adjustment for these out of office occurrences, it is also a perfect time to look at making the in-office transition to electronic practice - e-practice .

The purpose of this article is to present an alternative mode of practice for both transactional and litigation environments. Although the use may differ, the setup and processes are almost identical. Attaining the appropriate level of electronic practice (e-practice) will soon be a necessity rather than a luxury. Courthouses and governmental agencies across the country are all moving towards solely electronic filing. The FDA and SEC both have regulations requiring electronic filing of some documents, with automatic rejection of any attempts at paper filing.

An attorney friend of mine decided he wanted to get his family out of the city to a rural area. He moved his practice and now covers six counties with the farthest courthouse being 100 miles from home. His visits to his office are at times sparse and short. So he takes his office with him.

Tucked away in one of those carry-on size suitcases on wheels, my friend has his Tablet PC laptop computer with Blue tooth, wireless and a CD-RW, battery powered printer and scanner, and his Blue tooth cellular phone. Each case is on a CD which contains all pleadings, discovery, exhibits, mail/fax/e-

mail, research and deposition transcripts. On another CD are the videotaped depositions and transcripts. If he needs a case to present to the Court in the middle of a trial he connects his modem to his cellular phone, logs on to Lexis and downloads and prints immediately. If he needs a motion or a memorandum of an agreement, he assembles it right away in WordPerfect® Legal Edition and prints it on his quiet printer. While waiting for his case to be called, my friend catches up on the mail, updates his calendar, does some research, or drafts a pleading or contract, all on his laptop.

Did I make this up? -NO! My friend became paperless out of necessity. When he does go back to his office he has easy access to the other computers, backs up to a removable hard drive. Total cost for this setup – under \$3,000.00.¹ The same concept, however, is applicable to any transactional or litigation

environment. Law firms not changing to this technology will soon find themselves unable to compete both in the marketplace and court. The day of a totally paperless law office will probably not occur during my working lifetime; a paper lessened office is possible now.

Goals

What is to be accomplished by moving from a paper oriented practice to an



Breaking With Tradition

Moving from Paper to e-practice



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¹It is assumed that the same software would be used just in the office so no cost is added here .

e-practice? In brief, reduction in costs, increase in productivity, shorter yet improved preparation, disaster protection and finally - success.

By reducing the paper in your office you will a) decrease supply costs; b) decrease rent (no need for large file rooms); c) decrease support staff cost - fewer people needed; d) increase staff productivity - no need for personnel to spend time walking to file room, searching through files or boxes, making copies; e) improve firm teamwork by sharing files and information; f) provide better client service; g) put your current equipment and software to work for you; h) prepare your transactions and litigation faster and more accurately and in-depth; and i) eliminate cost of outside storage and recovery.

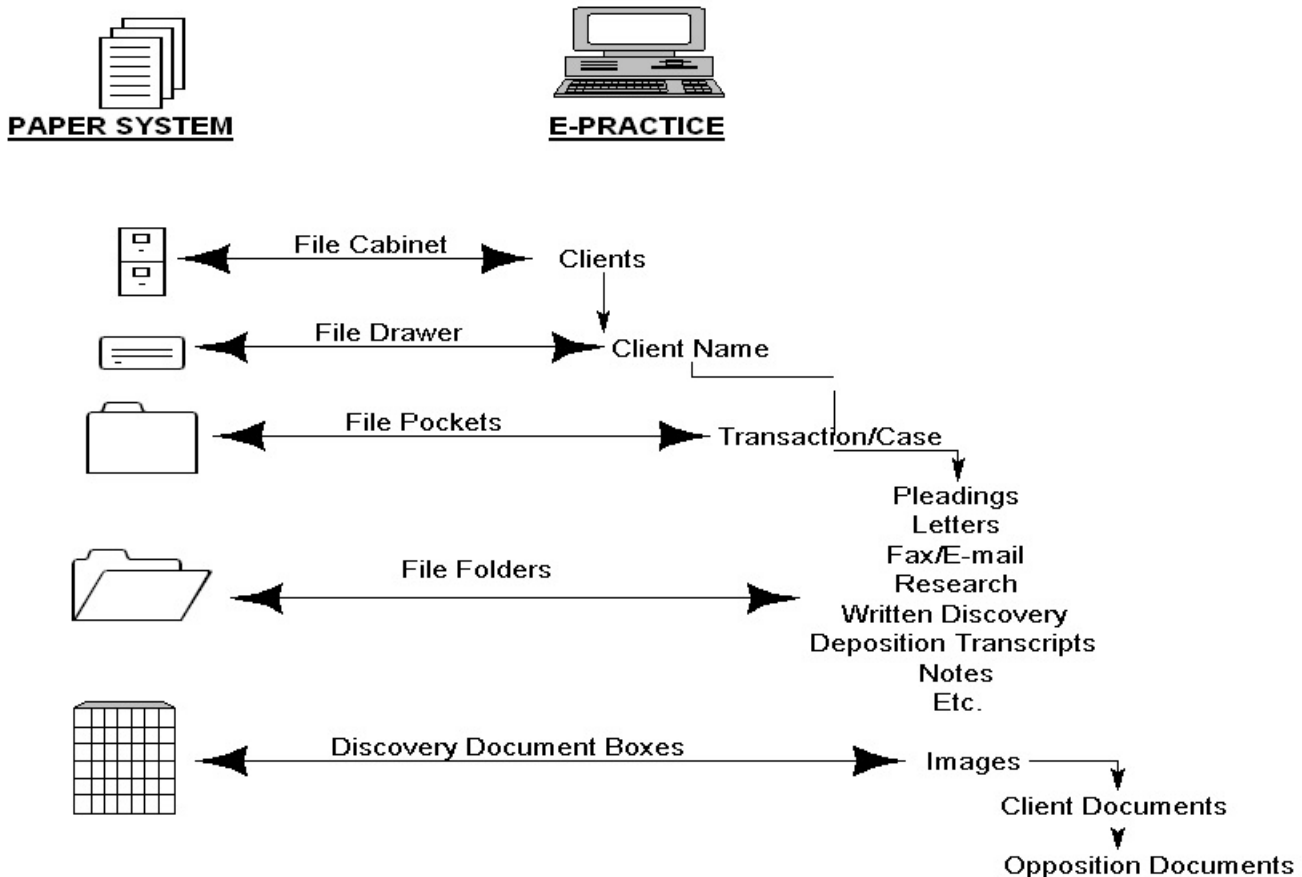
What's Required From You? In order to bring about the conversion it will require, 1) a change in mind set, habits and processes for all at the firm; 2) a willingness to learn; 3) taking the time to truly discover all the

features available in your software; 4) a commitment to remaining focused throughout the learning curve; 5) a willingness to stand fast in the face of resistance from personnel, clients and opposing counsel; 6) an evaluation of the needs and practices of all personnel involved; and 7) an up-front budget commitment

.Electronic Storage Is Done Like Paper Storage.

Many people are afraid that they will not be able to find and recover documents stored electronically. They conveniently forget about the hours spent looking for a misfiled paper document. It all depends on the structure of your filing system but the chances of not finding an electronically stored document are minimal.

The chart below shows the relationship between a paper system to an e-practice system. Variances may be necessary in order for your network administrator to assign the proper security access and reinforcing a



“Chinese Wall”. Whether or not the images should be on the same server as applications and data is for your office administrator and your Information Management consultant to jointly determine.

An alternative to storing the images on the firm’s server is to outsource the scanning and have the images stored on the service bureau’s server. All qualified parties can then access the documents through secure connections via the Internet or direct phone line.

When Are Electronic Copies Admissible Evidence?

What Paper Is Required to Be Retained?

The answers to these questions will vary somewhat from state to state. A large number of states have adopted the various “Uniform” acts.² If you operate in several states, however, you can encounter different requirements affecting the same records. You must then determine which of these laws to follow. The pertinent record keeping statutes, regulations, rules, and policies with which the organization must comply should be identified, compiled, and included with the system documentation. An excellent source to begin researching is Skupsky’s *Legal Requirements for Information Technology Systems*.³

The uniform preservation acts provide that state law requiring retention of a business record is satisfied by retention of a reproduction of the business record. The SEC, IRS, and FDA have all adopted procedures and regulations for electronic retention and processing of documents.⁴

² Uniform Business Records as Evidence Act. Uniform Photographic Copies of Business and Public Records as Evidence Act. Uniform Preservation of Private Business Records Act. Uniform Rules of Evidence

³ *Legal Requirements for Information Technology Systems* (formerly *Legal Requirements for Microfilm, Computer and Optical Disk Records*.) Evidence, Regulation, Governmental and International Requirements, Donald S. Skupsky, JD, CRM, Informational Requirements Clearinghouse, 1997

⁴ SEC Rules 17 CFR 240.7a and 17a; IRS Revenue Procedure 97-22; FDA Rule 21 CFR Part 11.

Generally, in a law practice it is recommended procedure to return all original copies of official documents, contracts, documents of conveyance and wills and trusts to the client as soon as possible. This way you do not have to go looking for the client when the time comes for destruction of the files.

How To Accomplish The Goals.

Appendix 1 provides a summary of the types of software and hardware necessary to make the transition. I have not addressed networking issues because of the intense technical nature.

It is my belief that the most successful transitions occur when the implementation plan focuses primarily on today forward. The decision regarding the value of backfiling or just letting the files decrease by annual attrition can be addressed after your system is running smoothly.

Whether the work is performed in-house or out-sourced, two key personnel are needed to help an entity move into electronic information management:

- (1) An experienced, trained, Records Manager (preferably certified) who will work with your employees to set-up the records management program for each department and will oversee the overall records management policy; and
- (2) A Certified Document Imaging Architech™, as a consultant, who possesses critical knowledge of all major areas and technologies used to plan, design and specify imaging and COLD systems.

It is important that one or both of these people be familiar with the various laws and regulations governing the use of electronic systems.

The Rules.

Now it is time to set the house rules which will promote a successful venture.

Rule 1. The only paper created within the firm is:

(1) That which is to be sent out of house, to an entity that cannot receive electronic documents; or

(2) Signature pages of documents being sent electronically (which are then scanned in and added to the document after signing); or

(3) Originals of contracts, wills and trusts, deeds, official documents and similar documents.

Rule 2. All outside parties (clients, opposing counsel, courts and agencies) are requested to transmit all documents electronically via e-mail, the Internet or fax (see agreements below).

Rule 3. All paper received is scanned, indexed and forwarded to the addressee immediately. The decision as to whether or not to retain the paper is made by the addressee in conformance with the firm's guidelines.

Rule 4. Using fax software, incoming faxes are received on a computer, renamed, indexed and placed in the fax sub-directory for the transaction or case. An internal e-mail is then sent by the fax clerk to the addressee advising them to review up the fax from their computer.

Outgoing faxes are created and sent from the sender's computer. If additional documents are necessary they are scanned and attached to the fax. A copy of the entire transmission is kept in the fax sub-directory of the transaction or case.

Rule 5. Discovery or transactional documents received from both your client and the opposition are scanned and indexed. No copying. Boxes are returned to the sender. Why should you pay rent to store these materials for months?

Rule 6. If this is a litigation matter, once the needed documents and evidence have been gleaned they along with the pleadings, research and transcripts are placed on a

CD-ROM disc for easy handling at trial or mediation.

Rule 7. If there is an appeal, a new sub-directory is set up and those documents that are being sent up to the appellate court are copied into it to make brief preparation easier. For information on electronic brief submission see www.paperlesstechnology.com/cdbrief.

Rule 8. As soon as the case is closed, any necessary originals, as I described above, remaining in the file are sent to the client, the entire case is recorded onto a CD-R (non-rewritable) disc and placed in the disc archives. Once this is completed, that case is erased from the server and any paper documents are destroyed.

Security and Liability

In May 1999, the ABA Standing Committee on Ethics and Professional Responsibility issued its opinion regarding the use of e-mail by attorneys. It summarized its findings as:

"A lawyer may transmit information relating to the representation of a client by unencrypted e-mail sent over the Internet without violating the Model Rules of Professional Conduct (1998) because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint. The same privacy accorded U.S. and commercial mail, land-line telephonic transmissions, and facsimiles applies to Internet e-mail. A lawyer should consult with the client and follow their instructions, however, as to the mode of transmitting highly sensitive information relating to the client's representation."⁵

For those in ongoing contact with a client or counsel various security encryption modes are available. They require that both users have the same program. The use of

⁵ Formal Opinion No. 99-413, March 10, 1999, Protecting the Confidentiality of Unencrypted E-Mail

FedEx or some similar carrier or fax carries no better protection than e-mail. Faxes can be intercepted⁶ and the FedEx terms and conditions (and practically every other carrier including the U.S. mail) states;

“Inspection of Shipments : We may, but are not obligated to, open and inspect any shipment at our sole discretion and with or without notice.”
(<http://www.fedex.com/us/services/conditions/domestic/inspection.html>)

The Processes

The processes used will vary somewhat depending upon the needs of your personnel and your particular type of practice. The following paragraphs contain some of the key processes to be implemented.

A formal document retention system that complies with state laws must be designed, placed in writing (a requirement of many government agencies), and supervised by a person designated as the Records Manager.

Both a case management program and a document management program should be used. Many people confuse the two types of applications. The first is used to keep track of all the information on the case such as people and addresses, filings, settings, documents, deadlines and time sheets. The latter is used to locate, manipulate and effectively use data and images. When a document is scanned it is retained in an image format. Its contents cannot be edited or searched. A process known as OCR - Optical Character Recognition - converts the image into accessible and searchable text. Whether to use summary indexes of images or OCR the documents is an individualized decision that considers many factors. Some programs provide for both. Their search mechanism is so strong that even if the characters are not correctly recognized, resulting in nonsensical words, the program can search for a concept and find the right

document. Today's document management applications conduct boolean and/or fuzzy searches of both your summary indexes and all text based documents. Search by word content, author, subject or case and any other index that you create.

One of the necessary ingredients to an e-practice is agreements with clients and opposing counsel. These provide, at a minimum, that in the interest of economy and productivity, it is agreed that:

Documents will be submitted whenever possible by e-mail, fax or over the Internet.

If faxed, the transmission will be in not less than fine (200 dpi) or superfine (300 dpi) mode. (This is for OCRing purposes)

When paper documents are submitted, a virus checked disk containing the word processor file will also be enclosed to avoid the necessity of retyping.

For deadline purposes, any electronic transmission after 5:00 p.m. shall be considered sent and received the next business day.

When working on transactions and agreements, upon receiving the other side's document via e-mail you can immediately bring it up in your word processor. If faxed to your computer in the proper mode, it can be processed through OCR and into your word processor. At this point you can run a compare with your last version to see exactly what changes have been made. No more relying on their word or quick glance sight comparisons.

Scanning of mail and other documents received each day can usually be handled in-house. But when there are many boxes of documents, thought should be given to outsourcing the project to an imaging service bureau. These companies can provide both the scanning and indexing performed by trained experienced personnel. They will then provide you with your choice of CD's, tape or hard drives with all your images and

⁶ I do know of at least one program that will digitally encrypt faxes for secure transmission.

the necessary index file to go with your image enabling program. Many also provide OCR services. As mentioned above, some will also provide online repository.

Another important step is to develop a meaningful file naming structure. Even with the good search engines, with the advent of long file names there is no reason that anyone should have to guess what a file contains if they are perusing the directory tree. Spell it out clearly.

(C:\wpdata\family\jasper\support
modification\resp_interrog.wpd)

Concerned that you normally edit and write reminder notes on hard copy? Not to worry. Forms of Post-It™ notes are found integrated into a good word processor and add-on versions that work in any application are also available. This is really better than hard copy notes because its available to anyone looking at the document online.

National and state electronic signature statutes are in place. Through the use of a digital pad, a person's signature is captured directly into the computer onto the electronic document. This will alleviate the need for printing pages just to obtain signatures.

Image enabling software will allow for placing of annotations, sticky notes, highlighting needed information, redlining important material, redaction of privileged information and bates numbering without altering the integrity of the original image.

Using a Tablet PC or a digital pen, such as Logitech's io2 system, you can save an image of your handwritten notes directly into the directory for that specific matter. If you need to use those notes in a document, the accompanying ICR software will convert your handwriting into a text file. Client interviews, deposition notes, etc. can now be right at your fingertips.

The day of bookshelves and in-house law libraries is almost gone. Today most information can be found online thru Lexis, Westlaw and similar programs, free services on the Internet, or CD-ROM subscriptions. My web browser has categorized bookmarks to

over 4000 legal/government related sites and most of them are free. Writing briefs and memorandums is simplified with "cut and paste" quotes directly into your word processor. Finish the brief, click a button, and your work is automatically checked for cite form and Shepardized®. The Internet is also a great source for free non-legal research such as medical, company information, forms, etc..

Communications

In order to make e-practice truly effective, the proper communication processes must be in place. This involves the right connections, software and workflow.

For the medium-sized firm, cable modems or DSL lines provide reasonably priced, high speed access to the Internet and e-mail. Since the use of cable modems still requires separate fax lines, smaller firms should look to DSL technology. This technology allows the combination of digital and analog transmission on the same telephone line. The analog portion remains free for fax or phone usage even when the DSL portion is being used to go online. For more information contact your local telephone company, cable company and Internet Service Provider.

A strong fax program provides not only fax handling and conversion but e-mail forwarding for in-house use and is easily adaptable for network use. It is a fundamental prerequisite, that the individual that receives faxes, has a list of cases and transactions with the assigned attorneys readily available online, so that they can forward incoming material immediately.

Each member of the firm and each legal assistant should have their own e-mail address so that they can receive direct communications.

Conclusion

Getting yourself as paperless as possible is not difficult. It will, however, require a capital investment and a significant amount of time and energy to design, install, implement and tweak your e-practice. There is no instant solution. I recommend that you seek outside help so that you can continue to focus on the practice of law. Once it is fully operational you will wonder why you ever did things any other way. Whether a solo or a firm, The cost savings and the ease of operation will be readily apparent. You will quickly see productivity increase, tension reduced and financial benefit. Just as importantly, you will never have to wonder where to find the document you need . Type in your search and within seconds the location will be reported. Most importantly, with proper backup and storage, you will be prepared for both technological and natural disaster.

Necessary Tools For An e-practice

HARDWARE:

Fast computers with ample RAM (1MB or higher) memory.

In order to view images clearly and split screen indexes with images large screen Monitors are recommended along with a PCI video accelerator card with ample onboard memory.

A Tablet PC laptop computer and portable printer for court and client visits.

High speed Internet connections

One or more duplex, color, flatbed scanners with automatic document feeder. The number, speed and add-ons will depend on the types and amount of documents to be handled in-house.

One or more CD-R/RW recorders.

An enterprise image server

An array of CD-drives attached to the network for accessing archived material and/or legal research programs.

A solid backup system commensurate with your system. (RAID 5, Tape, External Hard Drive, CD-RW, DVD)

A good firewall for Internet security

TYPES OF SOFTWARE (In Addition To Usual Office Applications)

Strong Anti-Virus application with good Internet and e-mail scanning.

Case Management integrated with time & billing program

Document Management

Document Assembly

Adobe Acrobat Professional Version

Litigation or Transaction Support

Scanning and OCR

Fax

Image enabling

A good e-mail program

An optional add-on for poor typists would be Voice Recognition Software

Advanced
Paperless
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Associates



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Bob Moss is an Attorney, Legal Technologist and a Certified Document Imaging Architech™. A former District Judge and trial attorney, Moss utilizes the combination of his experiences in providing legal technology consultation for small to medium sized law firms. Moss is the Consulting Director for Advanced Paperless Technology Associates. His articles on the use of technology in the practice of law have been published nationally. He has presented at many Continuing Legal Education programs.

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It's easy to tell which paralegal works for the most technologically oriented lawyer.

