

Paperless Perils!

By JoAnn L. Hathaway

Introduction

Earlier this year, a State Bar of Michigan member contacted me for information about the risks of going paperless. Many firms are going (or already have gone) paperless. Some have just incorporated the concept of “less paper,” and others are still considering if this is something they should do in 2009. While there are many excellent articles about the benefits of going paperless, I haven’t come across many that deal with the perils of going paperless. The member’s inquiry made me consider the many issues that should be assessed when developing paperless policies. While not comprehensive on the topic, this article addresses some main considerations for those planning to take the “paperless leap” this year.

The biggest risks associated with going paperless can be categorized under one or both of the following: (1) document retrieval issues and (2) document security issues.

Document Retrieval

File Naming

While digitizing documents is a fairly easy process, finding them again usually isn’t. Therefore, it is extremely important that any paperless practice have a formalized policy regarding file-naming conventions.

In many law firms, individual practice areas develop their own protocols, while many don’t even have protocols. While a few people within a “team” might be able to find previously saved files, anyone outside the team would be unable to do so—or at least not easily. When both a paper file and a digital file are maintained, the digital file does not need to be accessed as often as it would in a paperless world. Take away the paper and the need for digital access increases tenfold.

Numerous document management systems (DMS) in the market today incorporate naming conventions with “lock-down systems.” Specifically, this prevents users from developing their own naming protocol, contrary to a firm’s paperless policy. While coupling DMS with a paperless plan is not a necessity, it can be a lifesaver to ensure uniformity, prompt and accurate retrieval, and the ability to access documents remotely. These features only begin to touch on the benefits of DMS. Some of the players are:

- **WORLDQX:** www.worldqox.com
(800) 962-6360
- **Interwoven:** www.interwoven.com
(888) 468-3976
- **DOCSOpen:** www.opentext.com
(800) 499-6544
- **NetDocuments:**
www.netdocuments.com
(888) 297-2736

Search Functionality

Another key component of a paperless system is the incorporation of excellent search software (such as “dtSearch”) to en-

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—JoAnn Hathaway and Diane Ebersole,
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sure that keywords can immediately produce all associated digital documents, consistent with the query. Notably, DMS include excellent search functionality along with many other outstanding features.

Timing is Everything

Personnel should understand the importance of ensuring that all materials associated with a particular matter or case are properly and timely scanned and digitally saved. If others associated with a case believe that all materials have been digitally saved, but additional documents are scattered around the office, it can be a recipe for disaster. Unknowingly relying on an incomplete file can cause duplication of work and confusion (best-case scenario) and could easily result in a breach of the standard of practice, laying the groundwork for a malpractice action.

Document Destruction

A paperless policy must include document destruction processes, incorporating a mechanism for prompt destruction with procedures that maintain client confidentiality. Questions to consider when drafting the policy include:

- Where will the documents be stored before and after scanning?
- When is your computer system backed up? (Always retain documents until the system has been backed up, which should occur nightly.)
- What notification will be placed on documents to verify that they have been scanned and can be destroyed?

Answers to these questions are just a few of the components that should be included in a paperless policy.

Wise planning can help ensure that your paperless practice doesn't make you a malpractice statistic.

Calendar Management

Another paperless risk factor that needs to be addressed is that of calendaring important dates and deadlines before digitizing and destroying incoming and outgoing documents. If a document with an important date or deadline has been digitized and the date has not been memorialized in a calendaring system, it is much less likely that the date will *ever* make it into the calendaring system. Conversely, when maintaining a paper file, an individual might come across a document when working on a matter and realize that an important date had not been appropriately captured. The old saying “out of sight, out of mind” certainly applies to a paperless practice, stressing the need for good date-capture processes.

Document Security

Encryption

There are many security issues associated with going paperless. Specifically, with today's mobile lawyering, maintaining client confidentiality is not always easy and can be an area of compromise. With the paperless law firm and the very common practice of keeping digital information on various modes of technology, there are many instances in which confidentiality might be compromised. Specifically, consider lost laptops, flash drives, PDAs, cell phones, etc. If the information contained therein is not encrypted and these devices are stolen or lost, this scenario could quickly become a nightmare.

Back it Up

Consideration must also be given to computer backup procedures. A computer sys-

tem crash, a fire, water damage, or any other possible scenario resulting in lost data sets the stage for not just one possible malpractice action, but several.

Conclusion

The benefits of going paperless are many. However, before you take the leap, ensure that your policy contains concise, thorough processes and appoint someone with ownership over the policy. Wise planning can help ensure that your paperless practice doesn't make you a malpractice statistic. ■

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ADDITIONAL RESOURCES

Encryption

Bilinsky, *Electronic devices—encryption and client confidentiality issues*, *Benchers' Bulletin*, available at <http://www.lawsociety.bc.ca/publications_forms/bulletin/2008/08-03-14_tips-ecurity.html>. All websites cited in this article were accessed January 28, 2009.

Computer Backup Practices

Kodner, *Ross' great truths about data backup*, *Ross Ipsa Loquitur Blog* <<http://rossipsa.com/?p=162>>.

Mobile Security

Freedman, Trautz, & Calloway, *A lawyer's guide to mobile computer security*, 77 *Okla B J* 3085 (2006), available at <http://www.okbar.org/obj/articles_06/110406.htm>.

Wireless Security

Beard, *Wireless networking best practices: Version 2.0*, *Lawtech Guru Blog* <<http://tinyurl.com/9sade>>.