# Communication Breakdown, It's Always The Same (But It's Avoidable)

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# Communication Breakdown,
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**I.** **PREMISE OF THIS SEMINAR**: Almost every time a client is unhappy or a ball is dropped, it is the result of a communication breakdown. This seminar examines ways to prevent those breakdowns in your practice both internally and externally.

**II.** **COMMUNICATION BREAKDOWNS ARE A SIGNIFICANT MALPRACTICE TRAP**: "A study completed by the American Bar Association Standing Committee on Lawyers Professional Liability reported that 17% of all malpractice claims are the result of a poor attorney-client relationship. Approximately 75% of all grievances filed against lawyers are the result of poor communication."[1]

In an excellent article entitled The Biggest Malpractice Risks[2] by Daniel E. Pinnington (director of practicePRO, a claims prevention initiative at the Lawyers' Professional Indemnity Company in Toronto), the author analyzed the causes of malpractice in both the US and Canada. He concluded that, "Although there are some differences in law practice between the United States and Canada, it clear that the reasons for malpractice claims—and the steps that can be taken to avoid them—are more or less identical in both countries." Among the findings, Mr. Pinnington determined that administrative errors account for 28.5% of reported malpractice claims and client-relations errors account for 12.3% of claims. So over 40% of claims are caused by these two factors. This is relevant here because administrative errors are usually caused by internal communication problems; and client-relations errors are nearly always external communication problems.

**III.** **PROBLEMS CAUSED BY COMMUNICATION BREAKDOWNS**: Here are a couple of ways communication breakdowns can negatively impact your practice:

**A.** **Client Is Unhappy Because**:

1. **No Status Updates**: The client never knew what was going on because there was no proactive communication.

2. **The Process or Procedure Was Not Adequately Explained**: The client wasn't informed about how the process/transaction typically works. This causes confusion, surprise and frustration.

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[1] Attorney-Client Agreements Toolkit from Lawyers Mutual Liability Insurance Company of North Carolina. See http://tinyurl.com/lbcdmbu for the entire publication.

[2] See http://www.americanbar.org/publications/gp_solo/2011/march/the_biggest_malpractice_claim_risks.html

3. **Expectations Not Properly Set**: If a client's expectations regarding process and possible outcomes are not set up front, it's often impossible to meet them.

4. **Failure to Respond Timely**: Many lawyers are routinely overwhelmed with the volume of email and telephonic communications they have to respond to or deal with. If a client emails her lawyer and doesn't get a response for 4 days, the client is just as offended as if they had called and not received a response for 4 days (even though we often don't think of email as having the same urgency as a phone call). Of course, the client doesn't know or care that her attorney is trying to field and deal with over 100 emails a day.

5. **They Don't Feel Like They Were Listened To**: A lawyer's so-called bedside manner matters. Even if a lawyer actually does gather all of the necessary information from the client, the client can still feel as if they weren't heard. Here's a few excellent observations from the Inspired Law Blog in an article entitled Why Lawyers Should Be Better Listeners:

> "In my personal experience, I believe lawyers [as a group] to be even worse listeners than the average person. No scientific research to support this - just 14 years of being constantly interrupted, ignored, misquoted, and more by lawyers who simply weren't listening.
>
> Following are some habits of a bad listener. Anything familiar here? Anything?
>
> - listening only for facts
> - excessive outlining/notetaking
> - letting emotional words block the message
> - asking too many questions about detail and missing the big picture
>
> These are just the tip of the iceberg - I point them out first because I think we're actually taught to listen this way in law school. And here are a few more:
>
> - criticizing the speaker/delivery
> - interrupting
> - getting ahead of the speaker and finishing her thoughts

- topping the speaker’s story with ‘That reminds me of the time …’
- lack of respect for the speaker
- faking attention
- creating or ignoring distractions
- disregarding what isn’t understood"[3]

6. **They Believe an Unfavorable Outcome Was Caused By a Something They Did Not Agree To**: It's easy to forget what decisions were made via dozens of emails, phone calls, text messages and meetings. If decisions made are not journalized or recorded, it can become a he-said/she-said.

**B.** **Mistakes Caused By Inadequate Discovery or Investigation**: Procedural and substantive mistakes are easily made if a lawyer fails to gather *all* of the required information up front. Further, getting the facts is only half the battle. A lawyer must also be sure to understand the client's concerns and needs.

**C.** **Responsibility Mistakes**: For example, Sarah thought Jim was handling a particular thing and Jim thought Sarah was handling it. As a result, no one ended up doing it and it wasn't discovered until it was too late.

**D.** **Supervision Mistakes**: It's common for a supervisor or manager to get so busy that they are unable to make sure everything is happening the way it's supposed to. Of course, that's when things often go sideways.

On a more contemporary note, supervisory lawyers are often responsible for a case in which technology tools are necessarily being used. However, it’s common for the supervisory lawyer to unaware of how to operate or use the relevant technology tools because they rely on others (subordinate lawyers or staff) to use those tools. Unfortunately, Rules of Professional Conduct 5.1 and 5.3 impose a supervisory burden on such lawyers that they are often incapable of discharging since they don’t know how to use some or all of the tools necessary to handle the case or representation.

**E.** **Process Mistakes**: Many engagements/cases involve a series of steps that have to occur; and there are often multiple people involved in the execution of those steps. Sometimes, there are so many cases and/or so many steps that one of them is inadvertently skipped. A missed step that negatively impacts the outcome or causes unnecessary delay often goes undiscovered until it's too late.

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[3] Why Lawyers Should Be Better Listeners by Caitlin (Cat) Moon, August 10, 2015, see http://tinyurl.com/p66za62

F. **Frustrated Employees or Colleagues**: It's very common for employees to complain about firm leaders failing to keep everyone informed about firm issues, new developments or the status of client work.

**IV.** **HOW TECHNOLOGY IMPACTS COMMUNICATION AND YOUR ETHICAL DUTIES**: Losing client data can shut you down and unauthorized disclosure can result in a malpractice action. These things are arguably the worst kind of communication breakdowns.

**A.** **Relevant Rules of the Code of Professional Conduct**: I've only reproduced the sections of the rules and comments below which are relevant to this discussion. Further, I've bolded the particularly important text.

1. **Competence - 3.1-2** - A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

2. **Competence - 3.1-2 Comment 4A** - ***To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3***.

3. **Competence - 3.1-2 Comment 4B** - ***The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including***:

   a) The lawyer's or law firm's practice areas;

   b) The geographic locations of the lawyer's or firm's practice; and

   c) The requirements of clients.

4. **Quality of Service - 3.2-1** - A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

5. **Quality of Service - 3.2-1 Comment 5(f)** - The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

(f) ***answering, within a reasonable time, any communication that requires a reply***;

6. **Quality of Service - 3.2-1 Comment 6** - A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in handling a matter, ***responding to communications and reporting developments to the client***. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

7. **Confidential Information - 3.3-1** - ***A lawyer at all times must hold in strict confidence*** all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

   (a) expressly or impliedly authorized by the client;

   (b) required by law or a court to do so;

   (c) required to deliver the information to the Law Society, or

   (d) otherwise permitted by this rule.

8. **Confidential Information - 3.3-1 Comment 1**- A ***lawyer cannot render effective professional service to a client unless there is full and unreserved communication between them***. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client’s part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

9. **Confidential Information - 3.3-1 Comment 8**- ***A lawyer should avoid indiscreet conversations and other communications***, even with the lawyer’s spouse or family, about a client’s affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client’s business or affairs that is overheard or recounted to the lawyer. Apart altogether from ethical considerations or questions of good taste, indiscreet shoptalk among lawyers, if overheard by third parties able to identify the matter being discussed, could result in prejudice to the client. Moreover, the respect of the listener for lawyers and the legal profession will probably be lessened. Although the rule may not apply to facts that are public knowledge, a lawyer should guard against participating in or commenting on speculation concerning clients’ affairs or business

10. **Communications - 7.2-5** - A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

**B. Encryption Defined**: For purposes of this discussion, encryption can be defined as follows.

> "Encryption is the process of converting data to an unrecognizable or 'encrypted' form. It is commonly used to protect sensitive information so that only authorized parties can view it. This includes files and storage devices, as well as data transferred over wireless networks and the Internet.
>
> …
>
> An encrypted file will appear scrambled to anyone who tries to view it. It must be decrypted in order to be recognized. Some encrypted files require a password to open, while others require a private key, which can be used to unlock files associated with the key."[4]

**C. Email Encryption**:

1. **Reasonable Expectation of Privacy**: Email simply doesn't afford you a reasonable expectation of privacy.

2. **What The Experts Say**: Here are a couple of quotes to consider.

> "A secure email account that the attorney is assured protects the content of correspondence. No attorney should use Gmail or other free services that in fact admit that they use personal information from email content. They should encrypt their client correspondence. Before sending sensitive correspondence, they should check by phone or text with the client to see what method of delivery is preferred."[5]
>
> "The level of encryption may vary based on practice areas or, more importantly, the firms' clients. At a minimum, emails and attachments that contain confidential data

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[4] See http://techterms.com/definition/encryption

[5] Law Firm Data Security: Experts on How to Protect Legal Clients' Confidential Data, by Nate Lord, DigitalGuardian, October 13, 2015, quoting Robert Ellis Smith. See http://tinyurl.com/h6nzvjb.

> should be encrypted or sent through collaboration tools that send encrypted links rather than plain text data."[6]
>
> "It's all about encryption of the 3 main risk areas for data held: data in transit, at rest and in backups. It doesn't matter if it's email, Instant Messages, case files, discovery or 3rd party expert communications, the principle of encryption is the ONLY way you can really satisfy due diligence requirements."[7]

3. **Email Encryption Services**: There are many ways to encrypt email, but the easiest is to use an encryption service. The options listed below are inexpensive and easy. They encrypt both the emails and any attachments to the email. In most cases, a password must be entered by the recipient to open the email and any attachments.

    a. **EchoWorx Encrypted Mail**: http://tinyurl.com/h6sm668

    b. **Hushmail**: https://www.hushmail.com/

    c. **Office 365 Message Encryption**: http://bit.ly/2L8zW2I

    d. **Protected Trust**: https://envoy.protectedtrust.com/

    e. **RMail**: http://www.rmail.com/ - registered email service which can prove delivery + encrypted email

    f. **SenditCertified**: http://www.senditcertified.com/ and note that they offer discounts through several bar associations.

    g. **ShareFile**: https://www.sharefile.com/

    h. **Trustifi**: https://trustifi.com/

    i. **ZixMail**: https://www.zixcorp.com/

4. **Encrypt Email Attachments**: Word, WordPerfect and every good PDF program including Acrobat offers file encryption. This functionality is built-in so you only have to learn how to use it. With file encryption file simply cannot be opened without a password. You email could unencrypted and simply say "Please see attached." However, the attached file containing the sensitive information would be encrypted on its own.

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[6] ibid., quoting Marco Maggio.

[7] ibid., quoting Steve Santorelli.

## D. Laptop, Tablet and Phone Encryption:

1. **Duty To Protect**: If you are carrying confidential client data on any of these devices, "reasonable efforts" to maintain confidentiality cannot possibly include doing nothing to protect it.

   > "Not properly protected, laptops and portable media can be recipes for a security disaster. One survey reported that 70 percent of data breaches resulted from the loss or theft of off-network equipment (laptops, portable drives, PDAs, and USB drives). Strong security is a must. Encryption is now a standard security measure for protecting laptops and portable devices—and attorneys should be using it."[8]

2. **PC Encryption**: If you've got a notebook computer, there's always the chance that someone will steal it or that you'll misplace or otherwise lose it. If you have confidential client information on the laptop, then it would be prudent for you to encrypt the laptop. Encryption would prevent a thief or finder of your laptop from obtaining any information from the hard drive, even if they remove the hard drive and install it in another computer. There are many choices for this type of software, including the following:

   a. **BitLocker** - included for free with Windows Professional 8, 8.1 & 10.

   b. **Mac FileVault** - included for free with OSX.

   c. **SecuriKey Pro** - https://www.securikey.com/

   d. **Symantec Drive Encryption** - http://tinyurl.com/39seow

   e. **AlertBoot** - http://tinyurl.com/63h36wt

   f. **Folder Lock** - http://www.newsoftwares.net/folderlock/

   g. **SecureDoc** Full Disk Encryption from Winmagic Data Security - http://tinyurl.com/4vek6ot

3. **Smartphones**: All of the smartphone operating systems have free encryption built in, you must only enable it. Make sure you do this.

4. **Tablets**: Like smartphones, Android and iOS tablets have built-in encryption that you must simply turn on. Windows tablets may also have BitLocker depending upon the version of Windows installed. Of course,

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[8] Encryption Made Simple for Lawyers, by David G. Ries & John W. Simek, GP Solo, November/December 2012 - see http://tinyurl.com/znh4jqz

any of the Windows encryption options above would also work (besides BitLocker).

E. **Wireless Encryption**:

1. **Home or Work Wireless Connections**: If you rely on a wireless Internet connection at your office or home to work with sensitive client information, it goes without saying that your wireless router or access point should be properly encrypted. If you set it up yourself and aren't sure, then you should immediately secure the assistance of an expert to ensure that your security is properly configured. Sometimes, it's as easy as calling the technical support line for the manufacturer of your router. The big companies that sell wireless routers all have technical support representatives that can walk you through the process over the phone. In case you're wondering, big names in wireless routers include Cisco, Linksys, Netgear, Belkin, TP-Link, D-Link and Asus, among others.

2. **Risk of Using Public WiFi**: First of all, you need to be educated about this subject. For a quick primer, here are two short articles that will bring this issue into focus: Here's what an eavesdropper sees when you use an unsecured Wi-Fi hotspot by Eric Geier, 6/28/13 (see http://tinyurl.com/ppm3oyc) and What Is A Packet Sniffer? by Andy O'Donnell, 12/15/14 (see http://tinyurl.com/jxvhf92). For an interesting discussion of this in the legal arena, see the now famous California Formal Opinion No. 2010-179 which states:

> "With regard to the use of a public wireless connection, the Committee believes that, due to the lack of security features provided in most public wireless access locations, **Attorney risks violating his duties of confidentiality and competence in using the wireless connection at the coffee shop to work on Client's matter unless he takes appropriate precautions, such as using a combination of file encryption, encryption of wireless transmissions and a personal firewall**.20/ Depending on the sensitivity of the matter, Attorney may need to avoid using the public wireless connection entirely or notify Client of possible risks attendant to his use of the public wireless connection, including potential disclosure of confidential information and possible waiver of attorney-client privilege or work product protections, and seek her informed consent to do so.21/"[9]

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[9] See http://tinyurl.com/3szklcx, emphasis added.

3. **How To Protect Yourself**:

   a. **Cellphone WiFi Hotspot**: Rather than connecting to the public WiFi where ever you are, consider using a cellular hotspot or MiFi. Properly configured, these connections are a secure way to connect your notebook or tablet to the Internet via the phone hotspot.

   b. **Consumer VPN Services**: There are many services that allow you to create a Virtual Private Network connection even though you're using a public and otherwise unsecured WiFi connection. "In the simplest terms, a VPN creates a secure, encrypted connection between your computer and the VPN's server. This tunnel makes you part of the company's network as if you are physically sitting in the office, hence the name. While connected to the VPN, all your network traffic passes through this protected tunnel, and no one in between can see what you are up to. A consumer VPN service does the same thing, but extends that protection to the public."[10] Here are some options for this. Private Internet Access is the one I use personally.

      i. **Cloak** (Mac only): https://www.getcloak.com/

      ii. **CyberGhost**: http://www.cyberghostvpn.com/en_us

      iii. **Hide My Ass**: https://www.hidemyass.com/

      iv. **Hotspot Shield Elite**: https://hsselite.com/

      v. **IPVanish**: https://www.ipvanish.com/

      vi. **NordVPN**: https://nordvpn.com/

      vii. **Private Internet Access**: https://www.privateinternetaccess.com/

      viii. **PureVPN**: https://www.purevpn.com/

      ix. **Spotflux Premium**: http://spotflux.com/

      x. **VyprVPN**: https://www.goldenfrog.com/vyprvpn

F. **External Hard Drive and Flash Drive Encryption**: If you need to use external hard drives or flash drives, there are many choices for encrypted devices. Of course, you can also use encryption programs like BitLocker to encrypt external devices as well. In any event, here are some options:

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[10] The Best VPN Services for 2016, by Max Eddy, Fahmida Rashid, 3/9/2016, PCMag - see http://tinyurl.com/njuv7br.

1. **External USB Hard Drives**:
    a. **Apricorn Aegis Padlock 2 TB** USB external hard drive.
    b. **Fantom Drives DSH2000 DataShield 2TB** USB external hard drive.
    c. **Lenovo ThinkPad USB 3.0 Secure** Hard Drive.
2. **Flash Drives**:
    a. **Apricorn Aegis Secure Key** FIPS Validated 4 GB USB 2.0 256-bit AES-CBC Encrypted Flash Drive
    b. **Kingston Digital 8GB Data Traveler** AES Encrypted Vault Privacy 256Bit 3.0 USB Flash Drive
    c. **IronKey S250 8 GB** USB 2.0 Flash Drive

**G.** **Policies You Need**: There are many places to find sample policies for the following and a great resource is the SANS Institute. To see their sample policies, just go here: https://www.sans.org/security-resources/policies.

1. **Internet and Email Usage Policy**: There may be (and likely is) a big gap between what you would deem acceptable use of company internet and email and what your employees deem acceptable use of those resources. Thankfully, you can Google "internet usage policy" and find many free examples to start with.
2. **Document and Email Retention Policy**: Lawyers tend to hold onto every document and email forever and this is simply a bad policy. You can end up with so much irrelevant digital clutter that you're unable to find the things you actually need. Your policy should comply with any applicable federal or state laws, the Rule of Professional Conduct and any other relevant regulations. It's also a great idea to contact your malpractice insurer to see what they recommend (they may even have a sample policy you could start with).
3. **Secure Password Policy**: I will warn you that a really strong password security policy can be extremely annoying because most of them recommend that you change your password every 30 days, don't repeat old ones and use unique passwords for each logon. While I appreciate the value of those rules, they would drive most people batty in short order.

Here are some much less annoying rules that will still help ensure your passwords are secure:

> "According to the traditional advice — which is still good — a strong password is:
>
> - Has 12 Characters, Minimum: You need to choose a password that's long enough. There's no minimum password length everyone agrees on, but you should generally go for passwords that are a minimum of 12 to 14 characters in length. A longer password would be even better.
>
> - Includes Numbers, Symbols, Capital Letters, and Lower-Case Letters: Use a mix of different types of characters to make the password harder to crack.
>
> - Isn't a Dictionary Word or Combination of Dictionary Words: Stay away from obvious dictionary words and combinations of dictionary words. Any word on its own is bad. Any combination of a few words, especially if they're obvious, is also bad. For example, "house" is a terrible password. "Red house" is also very bad.
>
> - Doesn't Rely on Obvious Substitutions: Don't use common substitutions, either — for example, "H0use" isn't strong just because you've replaced an o with a 0. That's just obvious."[11]

4. **Mobile Device Security Policy**: This policy describes protocols that must be used when using notebooks, tablets or phones to conduct legal work.

5. **Equipment Disposal Policy**: The general rule is that no mobile device, PC or copier should ever be disposed of while it still contains client data.

H. **Training**: The biggest hole in every organization's security are the users. It is imperative that tools are provided and that training is mandatory.

V. **CLIENT DATA BACKUP STRATEGY**: This subject is an entire seminar by itself. So I'm not going to go into great detail about this, but I'm going to give you some general rules and principles to follow in order to keep your data safe.

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[11] How to Create a Strong Password (and Remember It) by Chris Hoffman, 5/29/15, How-To- Geek, see http://tinyurl.com/kx6s7uf.

## A. **The Backup Rules**:

1. **You Own This**: You cannot just *assume* that your data is being backed up. Trust but verify. You need to know how to confirm that your data is backed up every day and someone in your office needs to be responsible for it. If you lose all of your client data, you won't be able to blame the person who handles your computer work or anyone else. It's on you.

2. **Every Day, No Excuses**: You must be backing up all of your important data every day.

3. **Unattended Is Best**: The best backup methods do not require you to remember to do anything for the backup to occur. Unattended backups are the best for two important reasons. First, if someone has to remember to do it, they'll forget. Second, backups sometimes take a long time and they'll usually bog down your system when they're running. Therefore, they're best run at night when no one is using your network or their computers. This means that you cannot use backup media that is not large enough to backup all of your data. Therefore, CDs, DVDs and flash drives are eliminated because unless you have hardly any data, it's not going to fit on a single CD or flash drive and that means you'll have to baby-sit the backup and feed it additional media when the first one is full.

4. **Backup Everything**: DO NOT backup only the data you've created (i.e., Word or WordPerfect files, etc.). You want to back up the entire drive of the computer you're backing up. When you restore, you want the operating system back the way it was, you want all of your printer drives installed, your video driver installed, your network adapter driver installed, etc. Trying to install all of your programs from CD and getting your settings back to the way they were pre-crash can literally take months.

5. **You MUST Check the Backup Log Every Day**: Most backup devices don't tell you if they worked properly or not. The only way to make certain is to look at the "backup log" which the tape backup software maintains. Someone needs to do this every single day to make sure there were no malfunctions.

6. **Replace Tape Media At Least Annually**: If you're using a tape drive as a backup device, you need to write a "born-on" date on the tape and replace them at their 1 year birthday. Tapes lose their ability to hold data over time and you don't want to take the risk that your successful backup is not restorable due to bad media.

7. **Off-Site Storage**: If you're using tapes, take yesterday's backup home with you every night. If you're using an external hard drive, burn your important

data to CD periodically and put it somewhere off-site. You can also use one of the Internet based backup options I'll mention later.

8. **Do Not Rely On Incremental Backups**: An incremental backup means you're only backing up files that have changed since the last full or incremental backup. You can get quite a chain of these going and hopefully there's a full back up at the beginning of the chain. People have used this method because it's faster and takes less space. Incremental backups are NEVER, acceptable. First, trying to restore something when the data is scattered across many incremental backups is a nightmare and takes a very long time. Second, if one of those incremental backups gets screwed up, it may eliminate the possibility that you can restore anything that was backed up subsequently. You want to do a full backup of everything, every night.

9. **Run Test Restores At Least Once A Month**: You need to do this to verify that you *can* restore and also to make sure you know how to do it.

10. **Have a Secondary Backup**: If you're using a tape drive, get an external hard drive as a secondary backup or use one of the online backup options. Just make sure you have an extra copy of your stuff.

No matter what you do, you must get a backup system. It is not optional. Losing all of your data can cripple your practice and cause you to commit malpractice. The risk is simply not worth it.

B. **Recommendations Regarding Backup Hardware and Software**: For a small firm, consider something like this:

1. **Server**: There are simply too many options out there and you should rely on your network expert for this. Ultimately, you can pay more and more for fault tolerance and quick recovery. When you've reached a point of diminishing returns in terms of what you've spent is hard to tell. Just remember the rules: You want everything backed up daily and you need at least one copy on-site and one copy off-site.

2. **Personal Desktop or Laptop**: I would recommend that you buy an external hard drive (2 TB or larger) and use a Carbonite Personal Plus plan for $100/year. You get unlimited online storage and the ability to mirror your computer's entire internal hard drive to the external drive simultaneously. Here are some options for cloud backups:

   a. **BackBlaze**: https://www.backblaze.com/

   b. **Carbonite**: https://www.carbonite.com/

c. **CrashPlan**: https://www.crashplan.com

d. **iBackup**: https://www.ibackup.com/

e. **iDrive**: https://www.idrive.com/

f. **SOS Online Backup**: https://www.sosonlinebackup.com/

g. **Sync**: https://www.sync.com/

**VI. HOW TO IMPROVE INTERNAL COMMUNICATION**: Here are some ideas for improving communication in your office:

**A. Read and Apply The Checklist Manifesto**: There is a best-selling book called The Checklist Manifesto: How To Get Things Right by Atul Gawande[12] ($12.30 on www.amazon.com). The book illustrates the critical importance of checklists in many professional fields but doesn't spend much time talking about the legal applications. However, you'll instantly see how the ideas within The Checklist Manifesto apply to the practice of law. As I'm sure you'll agree if you read The Checklist Manifesto, there is high value in compiling checklists for all significant practice areas you're involved with. Checklists and written protocols are important for business continuity and as part of your business succession plan. They also allow you reduce errors, ramp up new employees more quickly, and to delegate tasks to support staff that you may have otherwise had reservations about delegating.

Ideally, checklists should be used for every process. By "used," I mean that the items on the checklist are actually checked off (on paper or electronically) as they are completed; and someone actually verifies or certifies that all steps were followed at the end of the process. This could be a simple paper checklist which someone follows and it is then signed and dated at the end. At that point, it could be scanned into the file if you're trying to reduce paper.

**B. Start Documenting Processes**: The steps involved in any particular legal process cannot (safely) *only* reside in someone's head (yours or someone else's in your office). This doesn't have to be terribly complicated. The idea is to write down the steps involved in the main work-flows which occur in your office.

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[12] Atul Gawande is a surgeon, writer, and public health researcher. He practices general and endocrine surgery at Brigham and Women's Hospital in Boston, and is Director of Ariadne Labs, a joint center for health systems innovation. He is Professor in the Department of Health Policy and Management at the Harvard School of Public Health and Professor of Surgery at Harvard Medical School.

1. **What To Record**: You want to write down:
    a. The name of the step (i.e., send notification to client).
    b. Who typically does it.
    c. How long it usually takes (write down an average minimum number of minutes and an average maximum number of minutes).
    d. What tools are used in each step (software or hardware or whether steps are completed manually).
    e. If decisions must be made during this step, what considerations should one keep in mind when making the decision(s)?
2. **What You Can Use to Document**: Most people do this in the word processor by simply numbering and describing the steps involved in any particular process. If you want to graphically represent the process, then you could use programs like SmartDraw[13] or Microsoft Visio[14].
3. **Example - Open a Probate Estate**: Let's say a firm opens new estates approximately 3 times per week. Here are the steps:
    a. **Client Contacts Us**: We normally receive a call from a loved one of the decedent and it is typically a spouse or child who will be appointed the fiduciary of the estate. The initial calls can last anywhere from 15 to 60 minutes depending upon how many questions they have. We schedule an initial meeting during this call normally for 2 weeks out. The call is always handled by one of the attorneys (Robert, Sarah or Paul).
    b. **Creation of Paper and Electronic File**: Amy fills out a new file form and submits it to accounting (Michelle) electronically so that the matter will be created in the accounting system. Once Michelle emails Amy the client and matter ID, Amy creates the paper file (red rope with sub folders), labels the file with decedent name, client & matter ID. This entire process normally takes 45 minutes to complete.
    c. **Initial Client Communication**: Print initial fiduciary questionnaire, cover letter and list of items to bring to the initial meeting and mail

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[13] See www.smartdraw.com
[14] See http://office.microsoft.com/en-us/visio/

to fiduciary. Process completed by Amy and normally takes 20 minutes.

d. **Prepare Engagement Agreement**: This is handled by Amy with instruction from the attorney in advance of the initial meeting and the printed engagement agreement is added to the file. This usually takes 20 minutes.

e. **Initial Meeting with Fiduciary**: These usually last one hour and one of the attorneys handles it. The attorney goes over the information provided by the Fiduciary, creates a list of any additional items needed and has the fiduciary sign the engagement agreement. Amy makes a copy of the agreement for the client and we keep the original.

f. **Probate Forms Completed**: Amy completes the following forms using the fillable PDF forms available from the Probate Court. This is slightly inefficient because the same information has to be re-entered in each form; and some of the forms don't have enough space to type everything so must be printed and finished in a typewriter.

- Form 1.0 - Surviving Spouse/Next of Kin
- Form 2.0 - Application to Probate Will
- Form 2.1 - Waiver of Notice of Probate of Will (if required)
- Form 2.2 - Notice of Probate of Will (if required)
- Form 2.4 - Certificate of Service of Notice of Probate of Will (if required)
- Form 3.0 - Appointment of Appraisers (if required)
- Form 4.0 - Application for Authority to Administer Estate
- Form 4.5 - Entry Appointing Fiduciary - Letters of Authority

The foregoing forms are printed and signed by the attorney where applicable. Amy then drafts a cover letter to the fiduciary, a postage-paid return envelope and mails the forms and letter to the fiduciary to sign and return. This entire process takes about an 2 hours.

g. **Open The Estate At Probate Court**: Once the forms have come back signed, Amy fills out a check request form for the deposit necessary to open the estate and obtains the check from Michelle. She also makes two copies of each form and puts them in the file. The attorney then takes the entire file to the Probate Court, deposits the initial fee, files all of the original forms, obtains time-stamped copies of the copies, obtains the certified Letters of Authority and returns to the office. This process takes 2 hours on average.

h. **Return Pleadings to Client**: Amy takes one set of the time-stamped pleadings, drafts a cover letter and sends them to the fiduciary. This process takes 15 minutes on average.

4. **What Could Be Improved About The Foregoing Process?** A lot of little things could be done to improve the foregoing. For example:

    a. A pamphlet could be created which is sent to new clients explaining the probate process. If this could be sent to the client, it would cut down on the time involved in the initial client phone conference and initial client meeting.

    b. The file could be maintained exclusively electronically rather than both paper and electronic.

    c. Many clients may be happy to receive an emailed PDF copy of pleadings and filings. This would save on sending out hard copies and drafting correspondence.

    d. Templates could be created for all of the standard correspondence which would speed it up; and those templates could be linked to Outlook or a case management program which automatically pulls in the client's information so that it doesn't have to be entered again into every letter.

    e. A program could be used to generate the probate pleadings which would be much faster than using the court's PDF forms. Information would only have to be entered once and it would transfer from form to form.

5. **Benefits of Written Processes**: Writing down what is supposed to happen at each step and who is responsible for it creates accountability. It also significantly reduces the possibility that a step will be omitted; and it makes it much easier to train new employees.

C. **Face-To-Face or Phone Communication**: People correctly interpret the tone of an email only about 50% of the time; but they *believe* they've correctly interpreted the tone 90% of the time. You've probably experienced email blow-ups resulting from you misinterpreting someone else's email or someone else misinterpreting yours. Good old-fashioned face-to-face communication is a good way to avoid this; and if that's not possible, get on the phone. Of course, if you're still angry about the email exchange, then wait to cool down before you talk on the phone or visit the person in question.

D. **Schedule 1-On-1 Meetings With Staff and Lawyers Who Work For You**: Particularly in view of how COVID has physically separated people from each other, scheduling brief touch-base meetings with important people in your operation every 2 weeks is a great way to help stay connected.

E. **Consider Practice/Matter Management Software**: One of the primary benefits of case/matter management programs is that they facilitate communication among attorneys and support staff within a firm. Everything can be shared from matters to contacts to calendars, and all practice information is stored in a common database. Hence, case/matter management programs at least establish a system whereby members of a firm can better communicate with one another, share information about cases, and help one another out.

F. **Schedule Regular Case Meetings**: No one likes meetings, but regular meetings during which case statuses are discussed can be really important for making sure everyone is on the same page. They can be timed and it should be someone's job to ensure that meetings stay on track.

G. **Consider Engagedly.com**: This is a progressive performance management system that we use internally. It stores a *lot* of company information for our employees which anyone can access at any time. for example, ours contains:

1. Accountability chart
2. Client gift program
3. Wellness program information & forms
4. Employee time zones, contact info, home addresses
5. Personality analysis of all employees
6. Suggestion box
7. Affinity clothing
8. Insurance information

9. Retirement plan information

10. Financial information about company

11. Employee feedback

12. Annual reviews – self evaluation

13. Check-ins with supervisor

H. **Try a Traction Team Meeting**: In my company, everyone was required to read two books that cover the same subject matter: Traction by Gino Wickman and Get A Grip: How to Get Everything You Want From Your Entrepreneurial Business by Gino Wickman and Mike Paton. We implemented the principles outlined in those books into our own business and it has paid great dividends. A full discussion of that is beyond the scope of this seminar. However, one of the results of it was what we call Traction Team Meetings. They last exactly 60 minutes and here's how they work:

Every 2 weeks, my department has a meeting. We begin by going around the room and everyone offers up one piece of good news personally and one piece professionally. Then we write down highlights and achievements (anything good that happened business-wise since our last meeting). Next, we identify issues (this can be anything). We don't discuss or belabor the issues, we just record them in a document that everyone can see on the TV in the conference room. At that point, everyone votes on which 3 issues they would like to work on this meeting. We tally up the votes and whichever issue received the most is worked on by everyone in the room. Assigned tasks usually arise from trying to solve the issues and problems and those are also written down. Then we go through the existing list of tasks and everyone is only allowed to respond either "done" or "not done." If it's not done, you are not allowed to defend yourself. Finally, we rate the meeting 1 - 10 and adjourn.

I really dislike meetings, but these have proven to be incredibly powerful in terms of improving communication, solving problems and eliminating issues. Prior to this, we all knew what the issues were, but we never actually had a forum for trying to resolve them. As a result, they would remain unresolved for literally years at a time. After a couple of years of Traction meetings, we often have no issues left to resolve and we use it as an opportunity to learn/educate, brainstorm on new ideas, talk about what everyone is working on and help each other. When an issue does arise, it is quickly resolved.

I. **Create a Complete Electronic File**: This may not seem like an obvious way to improve internal communication, but it definitely is. If all of the information related to a matter is buried in a paper file, whoever has possession of the file is the only person who can answer questions about it or typically work on it. If the file is electronic, then everyone in the office can be in the file at the same time. The file is easily sharable and can be transported. Overall, electronic files provide better and faster information access for everyone.

Related to this, storing email electronically is the best possible way to make those otherwise private communications accessible for everyone else in the office. If you're using Outlook, then email can be saved electronically as MSG or PDF files in the client's electronic file along with all of the other related documents.

Finally, an important aspect of building an electronic filing system is to make sure that everyone in the office is working out of a single electronic file. Lawyers and staff within law offices often create their own filing systems for electronic files. For example, at my old firm, each employee (lawyer or staff) had a folder with their name on it. Anything that each person worked on was in a subfolder under their name. If 3 people worked on the same matter, then each of them would have a separate electronic file for that matter under their name. Unfortunately, this meant that there was no central location where all client documents were stored electronically. This can't be permitted if you want to improve internal communication. Just like the paper files are managed, there needs to be a single electronic file for each matter that everyone works out of.

J. **Gain Access to Your Electronic Calendar, Contacts, Tasks & Email From Anywhere**: With Microsoft Exchange (hosted or in-house) or Google Apps for Business, you can synchronize your calendar, contacts, tasks & email from Outlook or Google, respectively, with any computer, tablet or phone. If you're relying on an electronic calendar (as you should), then it's critically important that you can get to that calendar from whatever device you're using. Of course, Exchange and Google Apps also let you *share* your electronic calendar, contacts, tasks & email with anyone else in your office you'd like to share with.

K. **Improve Task Management**: Unfortunately, there's no panacea when it comes to task management. What works for one person doesn't work for the next. However, there are some principles that everyone can put to use.

1. **Read Getting Things Done**: Getting Things Done: The Art of Stress-Free Productivity by David Allen is $9 on amazon.com. Mr. Allen is not a techie, but his ideas can be translated to any analog or digital approach for tracking tasks. In terms of task management, the concepts are solid.

2. **Remember the Hit By A Bus Rule**: It's a little morbid, but the hit-by-a-bus rule dictates that if you disappear tomorrow, others in your office should be able to figure out what is on your task list so balls aren't dropped and malpractice claims done ensue. I've talked to lawyers who track their tasks by "how they arrange things on their desks" and lawyers who use random

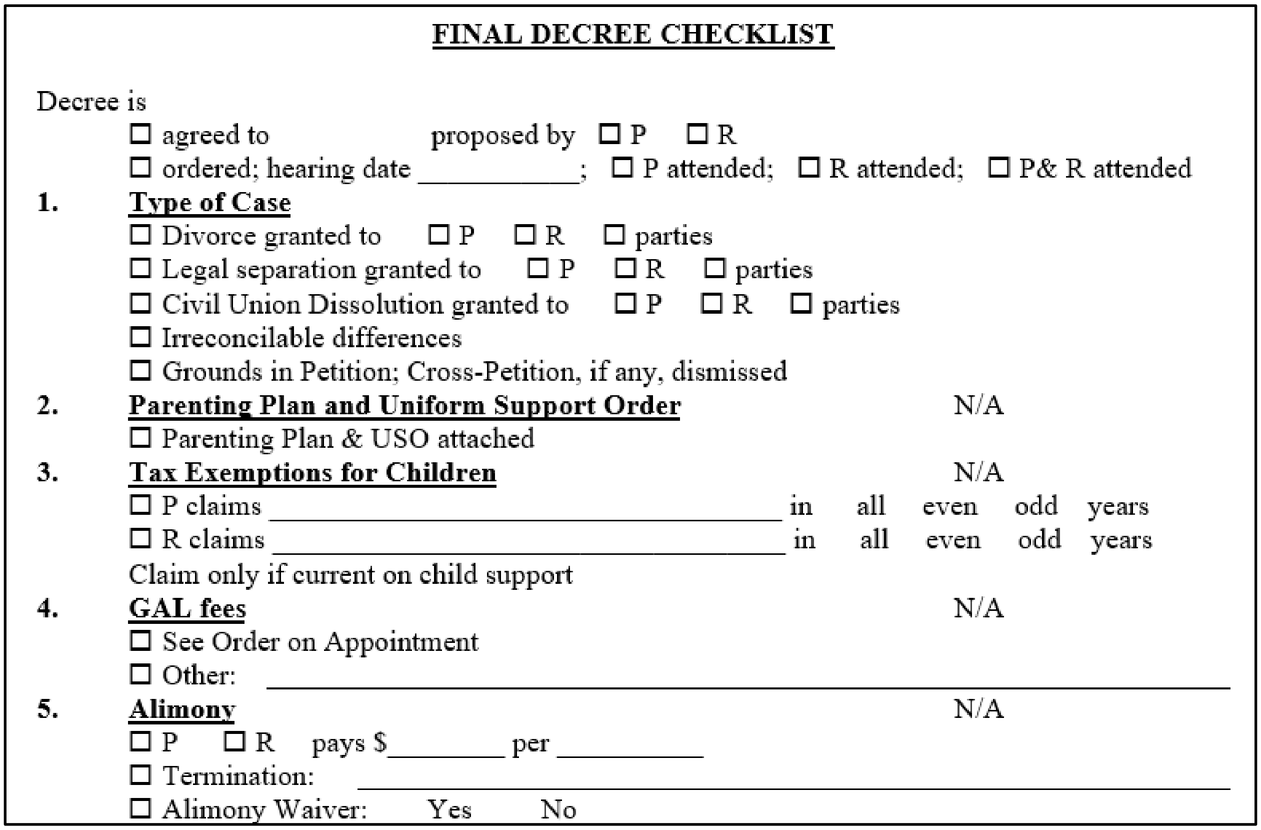
sticky notes, cryptic hand-written notes in their Day Planner or who send themselves emails to remind themselves about things to do. These techniques will convey little useful information to anyone else and should be abandoned in favor of task management techniques that reasonable people can decipher. Whatever system you use, at least one other person in your office should be able to translate it. Case/matter management programs can make this a lot easier on everyone involved because they standardize the methods by which tasks are tracked.

3. **Your Inbox Is Not a To Do List**: Unfortunately, lots of people feel that their inbox is a way of reminding them of things they need to do. The problem is that the subject line of an email often has nothing to do with the underlying task. Secondly, if you have a lot of email, you can only see a certain number of them on the screen at once. If an email gets pushed off the bottom of the screen and you can't see it, then it can't remind you of anything. In view of these things, it's important that you NOT use your inbox as a to-do list.

**L.** **Formalize File Follow Ups**: Here's the rule: every active matter should have a follow up date or a "next task to be completed." Failing to adhere to this rule is exactly how balls get dropped. The problem is, how does one track this? Manual systems can actually work well to solve this problem if users are diligent and have some means of setting files for future follow-up. On the other hand, case/matter management programs all have a means of handling file follow-up. Not only can you typically set up a task that reminds you of files that need attention, but there is often a report solution to the issue. In many case/matter management programs, there is a report called something similar to the "Last/Next Report." You can select all active matters to run it and it will display the last thing that was done and the next thing that needs to be done. Obviously, if you run a Last/Next Report on all active matters and the "next thing to be done" column is empty for any active matter, that would be a red flag.

**M.** **Consider Microsoft Teams**: This is included in most of the Microsoft 365 plans. You can use it for confidential instant messaging, web meetings (internal or external), and sharing information through Teams and Channels within the program. We even use it for our VoIP phone system through Vonage.

**N.** **Build Templates and Consider Document Assembly**: By building templates where fill-points are consistently identified, and the beginning and end of optional text is identified along with the test for its inclusion/exclusion, you can significantly improve drafting accuracy. Many firms also build drafting guides that are used when interviewing clients or gathering information; and the guides track the templates in terms of the order data must be entered. For example, something like this:



**FINAL DECREE CHECKLIST**

Decree is
☐ agreed to proposed by ☐ P ☐ R
☐ ordered; hearing date ___________; ☐ P attended; ☐ R attended; ☐ P& R attended

**1. Type of Case**
☐ Divorce granted to ☐ P ☐ R ☐ parties
☐ Legal separation granted to ☐ P ☐ R ☐ parties
☐ Civil Union Dissolution granted to ☐ P ☐ R ☐ parties
☐ Irreconcilable differences
☐ Grounds in Petition; Cross-Petition, if any, dismissed

**2. Parenting Plan and Uniform Support Order** N/A
☐ Parenting Plan & USO attached

**3. Tax Exemptions for Children** N/A
☐ P claims ________________________________ in all even odd years
☐ R claims ________________________________ in all even odd years
Claim only if current on child support

**4. GAL fees** N/A
☐ See Order on Appointment
☐ Other: ____________________________________________

**5. Alimony** N/A
☐ P ☐ R pays $________ per __________
☐ Termination: ____________________________________________
☐ Alimony Waiver: Yes No

## VII. HOW TO IMPROVE EXTERNAL COMMUNICATION:

A. **Engage in Good Email Management**: The majority of your communication with clients and other attorneys probably occurs via email. As such, good email management has become extremely important.

1. **Organize Email By Matter**: If you leave every email in your inbox, it can become difficult to find what you need. Remember that email is exactly the same as correspondence by letter. Would you leave every letter you receive via U.S. mail in a single paper folder? Of course not, because it would be difficult to find a specific letter related to a particular matter. Instead, you *segregate* your paper correspondence into folders related to each matter. You need to do the same thing with your email.

2. **Everyone In Your Office Should Be Able To Find Important Client Email**: Many people will respond that they don't need to segregate email because they can search through thousands of emails at once for the specific one they need. That may be true, but it's not always easy to find ALL of the email related to a particular matter. For example, maybe you received an email from a real estate appraiser on a particular matter. Searching by your client's name or email address may not turn it up. Furthermore, you need to remember that other people might need to find email related to a

particular matter and how are they going to do that if you're not there? Printing email and stuffing your files with it **is not a solution to this issue** (see paragraph VII.B.). What if something happens to you, someone else has to figure out what correspondence occurred related to a particular matter and you have 50,000 emails all in one folder?

3. **Store Email Outside of Your Email Application**: This is an important concept. If you have a folder on your C:\ or server related to each case/matter (and you should), then you should save the important emails related to those matters in the same folder. Although you may be currently storing only Word or WordPerfect files in your folder structure, those folders can hold *any* type of file. If you put them in a place where other people can find them, it improves internal and external communication and helps create a complete electronic record. If you're using Outlook, this is easy to accomplish and there are several ways to do it (see paragraph VII.F.3. below). If you're using some other email application or webmail, then there's always the ability to open the email and print to PDF.

4. **How To Organize Your Email**: If you're using Outlook, see paragraph VII.F.1. below. If you're using a web mail account, most of them have the ability to create folders and organize email in them. It's typically a lot more time consuming and cumbersome compared to Outlook, but it's do-able.

**B.** **Don't Print Email**: This serves no useful purpose if you organize your email and store it outside of your email application as recommended above. Further, a stack of printed email is difficult to read because you have to start on the last page, read up (rather than down), and flip the pages forward to keep following the thread. Printing email wastes paper, toner and makes your paper files much thicker than they need to be.

**C.** **How to Email Huge Attachments**: If you need to send large documents to someone, it's obviously a lot easier and cheaper to do it via email. However, a big pile of documents can yield PDFs which are too large to email to anyone. An easy solution to this is Dropbox (www.dropbox.com) or Sharefile (www.sharefile.com), both of which easily allows you to share large files with others. If you use Outlook, it is even easier because it has a great integration with it.

**D.** **Don't Use A Personal Email Address as Your Business Email Address**: Free email account like Gmail, Yahoo and AOL should be relegated to personal use. They look unprofessional and create the impression with many recipients that you are technically unsophisticated or that your firm is a small-time operation. For example, my personal email is bkhenley@gmail.com and my professional address is bhenley@affinityconsulting.com. If you don't a domain name, you need to reserve one for your firm and this doesn't mean that you have to invest in a website. For example, I recently contacted www.GoDaddy.com on behalf of a lawyer who was using a Gmail address as his business address. His last name was Lanham and I found by searching on GoDaddy.com that www.lanham-law.com was available. To reserve the domain name for 10 years was only $12.69/year. Adding Hosted Exchange (see paragraph VII.E. below for an explanation of this) for 3 email addresses which includes 4 GB of storage per mailbox and free wireless sync with any Android, iPhone or Windows Phone 7 device was only $28.49/month. So the ***annual*** grand total for a domain name, 3 email addresses, Exchange and wireless sync with a smartphone was only $354.57. It's inexpensive and you can do it yourself.

**E.** **You Need Exchange or Hosted Exchange**: Exchange is a Microsoft product that acts as the back-end for Outlook. You can either buy it and install it on your own Windows server, or you can rent it per month and access it through the Internet (this is "hosted" exchange). There are *many* providers of hosted Exchange but most of our clients are getting it as part of Microsoft 365[15]. If you just want Exchange, then the Microsoft 365 Business Basic bundle gives you that for only $5/user/month. Exchange provides the following benefits:

1. **Share Anything In Outlook**: If you have 4 people in your office, then those users would be able to share their calendars, contacts, tasks or email with anyone else in the office. Further, access can be restricted for each user. For example, I could give my paralegal full access to do anything on my calendar (create new appointments, read the content of existing appointments, etc.), but I could allow everyone else to only see when I was free or busy (they couldn't see the title or content or any appointment, add a new one or modify an existing one). It should also be noted that those users would be able to share those things regardless of whether they were in the office or not. As long as they have an internet connection, everything is accessible.

2. **Anywhere Access**: Exchange allows you to access everything in your personal Outlook via any device connected to the Internet thanks to something called "Outlook Web Access." Furthermore, there are apps for nearly every device you can think of. As a result, I can get everything in Outlook on my iPad, laptop and Android smartphone. Further, they are all wireless synchronized at all times without me having to do anything.

3. **Backup of Everything in Outlook**: Everything stored in Outlook is backed up in Exchange. Therefore, if anyone (or you) has a computer crash, you could even buy a brand new computer and once it's reconnected to your Exchange account, everything in Outlook is restored on your computer.

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[15] See http://tinyurl.com/zcdkoma.

4. **Wireless Sync with Any Smartphone**: Exchange will wirelessly sync everything in Outlook with any iOS, Android, Windows or Blackberry phone.

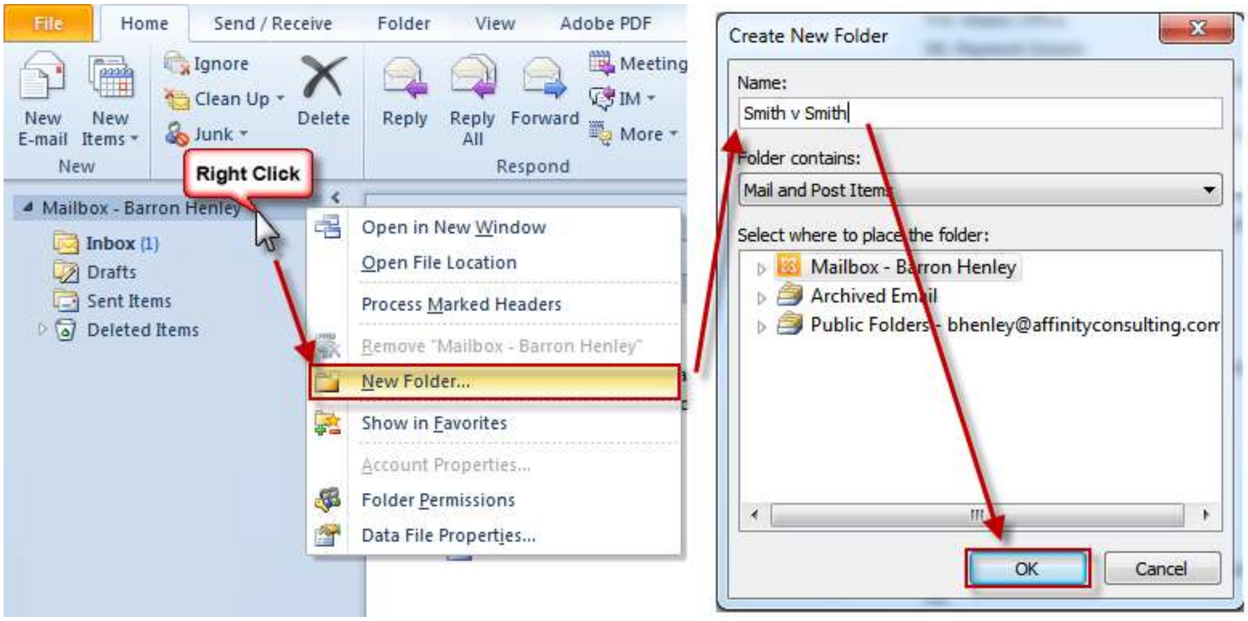
5. **Public Folders**: Everyone using Exchange can have private contact lists, calendars, etc. However, you can also set up public folders for things like firm clients. Public folders can be made visible to everyone on your Exchange account. This is a great way to share information and eliminate duplicative data entry.

6. **Works in Windows or Mac**: Whether you're a Windows user, Mac user or you have a mixed environment, Exchange still works. You can also access it via iPad or any Android tablet.

**F. Capitalize on What Outlook Can Do For You**:

1. **Organize Outlook**: Setting up folders and using rules are great ways to start to organize your Outlook.

   a. **How To Set Up a New Email Folder**: To Setup a new Subfolder in your Inbox, right-click the Inbox (or your mailbox) ➔ New Folder. Give it a name and make sure it will contain Mail and Post Items. Then click OK.


File
Home
Send / Receive
Folder
View
Adobe PDF
New E-mail
New Items
New
Ignore
Clean Up
Junk
Delete
Reply
Reply All
Forward
Meeting
IM
More
Respond
Right Click
Mailbox - Barron Henley
Inbox (1)
Drafts
Sent Items
Deleted Items
Open in New Window
Open File Location
Process Marked Headers
Remove "Mailbox - Barron Henley"
New Folder...
Show in Favorites
Account Properties...
Folder Permissions
Data File Properties...
Create New Folder
Select where to place the folder:
Mailbox - Barron Henley
Archived Email
Public Folders - bhenley@affinityconsulting.com
OK
Cancel

Name: Smith v Smith

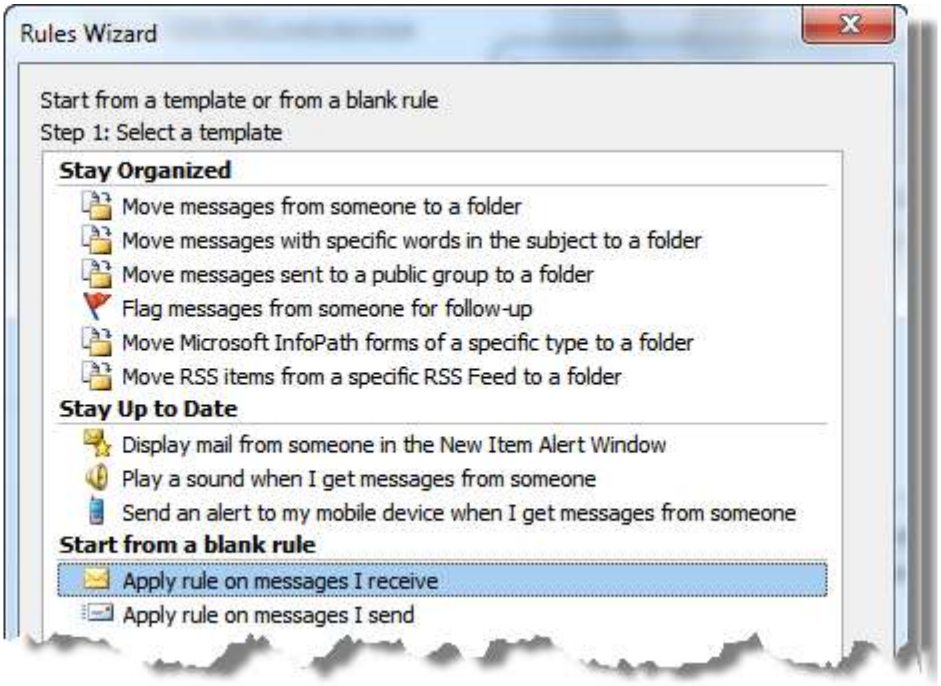
Folder contains: Mail and Post Items

b. **Outlook Rules**: Rules allow you to auto-sort incoming email (among other things). Here's how you set one up:

i. In Outlook 2007, click the Tools menu ➔ Rules and Alerts. In Outlook 2010/13/16, click the File menu ➔ Info ➔ Manage Rules and Alerts button.

ii. Click the **New Rule** button.

iii. Choose the appropriate item from the list below:



Start from a template or from a blank rule
Step 1: Select a template

**Stay Organized**
- Move messages from someone to a folder
- Move messages with specific words in the subject to a folder
- Move messages sent to a public group to a folder
- Flag messages from someone for follow-up
- Move Microsoft InfoPath forms of a specific type to a folder
- Move RSS items from a specific RSS Feed to a folder

**Stay Up to Date**
- Display mail from someone in the New Item Alert Window
- Play a sound when I get messages from someone
- Send an alert to my mobile device when I get messages from someone

**Start from a blank rule**
- Apply rule on messages I receive
- Apply rule on messages I send

iv. Follow the steps for selecting the Condition, Action, Exceptions, then give it a name and make sure the rule is turned on!

c. **Sample Rule - Automatically File Incoming Email Related to a Case**: Let's say the name of my case is Smith v Smith.

i. First, create the folder in Outlook for Smith v Smith. For instructions, see paragraph VII.F.1.a. above.

ii. In Outlook 2007, click the **Tools menu** ➔ **Rules and Alerts**. In Outlook 2010/13/16, click the **File menu** ➔ **Info** ➔ **Rules and Alerts**.

iii. Click the **New Rule** button.

iv. Under "start from a blank rule," choose "check messages when they arrive" and click Next at the bottom of the dialog.

v. Check "from people or public group," click the hyperlink for "people or public group" and enter the addresses of the individuals sending you email related to that matter into the From field separated by semicolons (or just choose them from your Outlook contact list). Click Next.

vi. In the "what do you want to do with the message" dialog, check "move it to the specified folder," then click the "specified" hyperlink and choose the Smith v Smith folder. Click Next.

vii. If there are any exceptions, enter them in this dialog, then click Next.

viii. Name the rule and click Finish. Now every time one of the individuals you identified by email address sends you an email, the incoming email will automatically be moved into the Smith v Smith folder and not clutter up your inbox.

d. **Sample Rule - Keep Track of Delegated Email**: Many people forward email to others to deal with but have a difficult time remembering what they delegated for follow up purposes. Here's a rule that will help.

i. First, create a folder in Outlook called Delegated Email.

ii. In Outlook 2007, click the Tools menu ➔ Rules and Alerts. In Outlook 2010/13/16, click the File menu ➔ Info ➔ Rules and Alerts.

iii. Click the New Rule button.

iv. Under "start from a blank rule," choose "check messages when they arrive" and click Next at the bottom of the dialog.

v. Under "check which conditions do you want to check," check BOTH "from people or distribution list" and "where my name is in the CC box." At the bottom of the dialog, click the hyperlink for "people or distribution list" and add your email address. We're basically creating a rule that will look for emails from you and copied to you. Click Next.

        vi. Under "what do you want to do with the message," choose "move it to the specified folder." Make the specified folder your Delegated Mail folder. Click Next and add any exceptions. Click Next, name it and click Finish.

2. **Outlook Add-On Programs To Help You Sort and Store Your Email**: There are many third-party programs that integrate with Outlook which can help you organize, sort and store your email (both incoming and outgoing). Here are a few to consider:

    a. **SpeedFiler by Claritude**: See www.claritude.com.

    b. **SimplyFile by TechHit**: See www.techhit.com/simplyfile. T

    c. **Incoming Mail Organizer Add-In for Microsoft Outlook**: See http://www.sperrysoftware.com/Outlook/Incoming-Mail-Organizer.asp.

    d. **NEO Pro**: See http://www.emailorganizer.com/

    e. **Quick File for Outlook**: See http://www.standss.com/quickfile/

    f. **Sanebox**: See http://www.sanebox.com/

    g. **QuickFile4Outlook - Lawyers Edition**: See www.outlook4lawyers.com.

3. **Save Email Messages Outside of Outlook**: When an email message is in your Outlook inbox, it's just a record in a database and *not* a discreet document like a Word file. That fact is a big part of the problem associated with organizing and storing them. Email related to a particular matter is stored in one place; and word processor files related to that matter are stored somewhere else. However, you can create documents out of those emails and those documents can be stored with every other document related to a particular matter or issue.

    a. **Saving Email as PDF Files**: If you have Adobe Acrobat, Nuance Power PDF, Foxit PhantomPDF, Nitro Pro or any other PDF program that integrates with Outlook, it makes creating PDFs out of email incredibly easy. This is definitely the recommended approach (creating PDFs). Very importantly, the integrations allow you to automatically capture the attachments to an email inside the PDF of the email. If you forget to separately save the attachments, this feature backs you up.

b. **Saving Email As A Document**: The classic problem that law firms have if they do not own a document management system is saving and finding matter-specific email. Why? Because people (1) keep them in their individual inboxes, or (2) save them in subfolders within their own inbox (which no one else has access to), or (3) delete the email altogether. Email is valuable correspondence that in most circumstances should be saved. However, in a law firm or legal department, it should not be saved within one's own individual inbox.

You can save email much like you save a Microsoft Word document clicking the File menu ➔ Save As (Outlook 2003 & 2010/13/16) OR Office Button ➔ Save As (Outlook 2007). We recommend that you save as **Outlook Message Format - Unicode (*.msg)** which is the default file type.

c. **Saving Email With Document Management Programs (DMS)**: While document management programs (Worldox, Interwoven Worksite, NetDocuments, etc.) were originally thought of as only word processing document repositories, that is no longer true. They can now hold just about any type of computer file (word processor, PDF, TIF, email, JPG, etc.). If a DMS has Outlook integration, this process is incredibly easy and fast.

d. **Saving Email Using a Case/Matter Management Program**: All case/matter management programs offer this capability. If you have a case management program with Outlook integration, you can streamline the saving of email by saving them directly into the matter within the case management program. You can also auto-associate emails by setting up rules within the practice management program based on the sender.

**G. Learn To Become a Better Listener**: This is a skill that you can use in all areas of your life. It's not easy, but it's worth working on.

1. **Active Listening Defined**: There are many definitions of this, but here's a good one:

> "The act of mindfully hearing and attempting to comprehend the meaning of words spoken by another in a conversation or speech. Activity listening is an important business communication skill, and it can involve making sounds that indicate attentiveness, as well as the listener giving feedback in the form of a paraphrased rendition of

> what has been said by the other party for their confirmation."[16]

I realize that Wikipedia is not considered a reliable source, but its definition of active listening is very consistent with what I was taught in my mediation seminar class during law school:

> "Active listening is a communication technique used in counselling, training and conflict resolution, which requires the listener to feedback what they hear to the speaker, by way of re-stating or paraphrasing what they have heard in their own words, to confirm what they have heard and moreover, to confirm the understanding of both parties."[17]

Note the emphasis in both definitions of re-stating or paraphrasing what the listener hears.

2. **Good Discussion of Listening**: If you have a spare 7 minutes, listen to Julian Treasure's Ted Talk entitled 5 Ways To Listen Better which you can find here: http://tinyurl.com/p6trvkx

3. **Active Listening Techniques**:

    a. **RASA**: The aforementioned Julian Treasure advocates RASA which is means:

        i. Receive: meaning paying attention to the person

        ii. Appreciate: meaning making little noises like hmm, ok

        iii. Summarize: using the word “so”

        iv. Ask: questions afterwards

    b. **Other Approaches**: Most active listening approaches recommend similar steps. You must pay attention to the speaker and exhibit cues/body language that you are actually doing so. You should provide some kind of feedback such as paraphrasing to confirm that you are understanding what the speaker is saying. No matter what your emotional or intellectual reaction to what you're hearing, refrain from judging or interrupting the speaker. Finally,

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[1616] See http://www.businessdictionary.com/definition/active-listening.html

[17] See https://en.wikipedia.org/wiki/Active_listening

ask questions and respond appropriately after the speaker stops talking.

H. **Use Strong Engagement Agreements Every Time**: If a lawyer doesn't even use an engagement agreement, then it's pretty easy for the client to misunderstand the nature of the representation and there's nothing to refer back to in the event there are issues. An engagement agreement should communicate clearly to the client all aspects of the engagement (including payment); and it must comply with the various Rules of Professional Conduct that are applicable to attorney/client relationships. Any engagement agreement which doesn't meet these objectives would be considered inadequate and can certainly cause problems later. Here are some ideas.

1. **Use Engagement Agreements Every Time**: Lawyers often tell me they don't need engagement agreements with clients they've represented for years. They tell me it would be silly or awkward. Regardless, it's important to keep in mind that long relationships often end badly. Use an agreement every time, no matter what.

2. **Consult The Experts**: There are many excellent resources on engagement agreements available at no cost. For example:

   - Preparing an Effective Engagement Letter by Mark D. White, Texas Bar Journal, October 2012 - see http://tinyurl.com/n9xezuq

   - Some Thoughts on Engagement Letters, by Peter Jarvis, David Elkanich, Allison Rhodes and Dayna Underhill - see http://tinyurl.com/qdmwtjb

   - Sample Engagement Letters and Fee Agreements by P. A. Henrichsen, GPSolo Magazine, January/February 2007 - see http://tinyurl.com/blfh3qz

   - Attorney-Client Agreements Toolkit from Lawyers Mutual Liability Insurance Company of North Carolina - See http://tinyurl.com/lbcdmbu

   - Contact Your Malpractice Insurance Carrier: Malpractice insurers often have sample agreements they would be happy to provide you with. They may also have an expert on staff who would be willing to review your current engagement agreement and make recommendations for how it might be improved.

   - The Elements of Engagement Agreements and Letters by the D.C. Bar - see http://tinyurl.com/kpj3c27

- An Attorney's Guide to Engagement Agreements by February 20, 2013 By NBI Staff, NBI CE Blog - see http://tinyurl.com/jvzqs7n

3. **Describe the Nature of the Representation**: It is important to specifically describe the representation. For example, a lawyer might represent a fiduciary in a probate matter, but not regarding a related wrongful death suit. A lawyer may provide representation for an initial lawsuit, but not for any resulting appeal. These details should be clearly described in the agreement.

4. **Make No Assurances Regarding Outcome**: This is fairly obvious, but make sure nothing in the agreement could possibly be construed as a representation regarding outcome.

5. **Describe the Fee**: Provide clear detail regarding how the fee is calculated, hourly rates and billing processes the client should expect.

6. **Describe How Expenses Will Be Paid and Reimbursed**: The agreement should explain what costs will be advanced by the law firm, which (if any) should be paid directly by the client, and how and when reimbursement will occur.

7. **Make Sure You Identify the Client**: This is particularly important if the client is an entity. Although the lawyer may be communicating with officers, employees, members, shareholders or directors of an entity, the engagement agreement must clearly state that the lawyer is representing the entity and not all of the various individuals speaking on behalf of the entity.

**I.** **Explain How You Want To Communicate To Your Client Up Front**: This should be discussed during your first meeting. If you prefer phone calls or emails, explain that. If the client needs to talk to you immediately, explain how that should happen (cell phone?). If you're not available, then who should the client ask for? If you prefer that clients communicate with other lawyers or staff in your office, that should be explained up front and their contact information should be provided. If it is during non-business hours, how can you be reached (if at all)? It's worthwhile to get this all ironed out up front so that neither you nor your client become frustrated with communication problems.

**J.** **Explain the Process**: A very common complaint from consumers of legal services is that they didn't understand how the process was going to play out in advance and/or they didn't know what was going on during the process. Make sure you're explaining to your client in plain English how the process works, the steps involved and what to expect. Use pictures when appropriate (see **Exhibit A** for an example on page 41). If you don't have a written document or brochure which explains all of this, then build one and make sure every client gets it. Go over it with them during the first meeting to make sure you're both on the same page.

K. **Engage in Proactive Communication**: To address the "I never knew what was going on" problem with clients, consider sending weekly emails to clients letting them know where you are in the process, what you're waiting on, and what the next step is. This will go a long way in ensuring that your clients are informed and happy.

L. **Engage in Regular, Descriptive Billing**: Remember that your monthly invoices can be excellent explanations of what has occurred. Make sure your time entries are detailed and avoid legalese or technical language the client might not understand. Even if you're working on contingent fee or your fee isn't due until a process is complete, it's a good idea to send a client a zero balance "invoice" with a full narrative just so they're aware of what you did last month relative to their case or matter. Many lawyers have difficulty billing regularly and if they're in a contingent fee type of case, they don't even bother tracking their time. There are many good reasons for tracking time in contingent or flat fee cases, not least of which is the documentation of work completed.

M. **Memos To the File Are Extremely Important**: If you and your client discuss something orally, best practices would be to draft a memo outlining the details of your discussion and sending it to the client for confirmation (with a copy to the file, of course). It's going to do you little good to only put a copy in the file, particularly if the client later disagrees with your assessment of the conversation. These should take very little time and are a key component to good client communication.

N. **Consider a Program That Provides a Read Receipt on Emailed Documents**: More and more lawyers email correspondence and other documents to clients rather than sending them via U.S. mail. Thanks to spam filters, email address auto-complete and various other issues, sending an email is no guarantee that the intended recipient actually received it. If you're using a program like Microsoft Outlook and you check the "Request a Read Receipt" box, the recipient can elect to answer NO to the prompt that will ask them if you should be notified. Therefore, the feature is fairly useless as almost everyone clicks "NO" to the prompt that the recipient is requesting a read receipt. However, there are services you can subscribe to which will provide you with a read receipt that the recipient cannot prevent. For example, a great service called Hightail (www.hightail.com) will provide you with notification that email attachments are downloaded by the recipient (which is just about as good as it gets for verifying that someone received your email). Verifying that the text of an email was read is a lot more difficult although there are services that will do this such as www.rpost.com. They are, however, a lot more expensive than something like Hightail. With hightail, I can send a PDF of a memo to a client and be notified when the client downloads the attachment to the email. The client doesn't know that I'm being notified and they can do nothing to prevent me from being notified. There are also many other benefits of this service which you can read about on their website. The biggest one is that you can send attachments of up to 2,000 MB and they will always go through (and not bounce back because the attachments are too large). The basic service costs $15.99/month or $159.99/year ($32 discount).

**O. Consider Sharing Information With Clients Via The Web**:

1. **Client Portal**: I know Wikipedia is not a reliable source for everything, but its definition of Client Portal is accurate and well-stated:

   > "A client portal is an electronic gateway to a collection of digital files, services, and information, accessible over the Internet through a web browser. The term is most often applied to a sharing mechanism between an organization and its clients. The organization provides a secure entry point, typically via a website, that lets its clients log into an area where they can view, download, and upload private information."[18]

   So you are using a client portal when you book a flight or hotel online, when you log into your bank's website or even when you use Facebook. Any law firm can also create a client portal. They can be custom-built or there are company from which you can rent or buy them. Further, there are many types of portals.

2. **Document Sharing Portals**: This type of portal may also allow you to send messages to others.

   a. **Microsoft Office 365 or OneDrive for Business**: OneDrive is Microsoft's cloud storage offering and it can be purchased as part of an Office 365 plan or separately. You get 25 GB for $2.50/user/month which is accessible from virtually any phone, tablet or computer, Windows or Apple. For the OneDrive plans, see https://onedrive.live.com/about/en-us/plans/. I personally like this option the best.

   b. **Google Apps for Business**: This service is $5/user/month or $50/user per year and gets you 30 GB of online storage among other features. See your options here: http://tinyurl.com/kcwt2fk

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[18] See http://en.wikipedia.org/wiki/Client_portal

c. **Dropbox Pro or Dropbox for Business**: Dropbox Pro gets you 100 GB of storage for $10/user/month and Dropbox for Business gets you unlimited storage for $15/user/month (minimum 5 users). See this: https://www.dropbox.com/business/pricing

d. **SpiderOak Professional**: This service offers complete encryption so thorough that not even SpiderOak employees can get to your data. For $10/user/month, you get 100 GB of storage. See this for more: https://spideroak.com/business_pricing/

e. **Syncplicity**: See www.syncplicity.com.

f. **Box.com**: www.box.com

g. **Sugar Sync**: See www.sugarsync.com. This service offers online backup of your files and file synchronization among multiple PCs and smartphones. You can access your files anywhere you have Internet access thanks to apps for BlackBerry, iPhone and Windows Mobile.

h. **ShareFile by Citrix**: www.sharefile.com - This is a fantastic service that allows you to create virtual "rooms" for others and share documents with them securely. You decide what rights each user has to the collection of documents. Simple and powerful.

i. **TrueShare**: www.trueshare.com - Similar to ShareFile, a little less expensive, a little more difficult to use.

j. **FileGenius**: www.filegenius.com - similar to TrueShare and ShareFile.

k. **OneHub**: Secure file sharing - see https://onehub.com.

3. **Project Management Portals**:

a. **Basecamp**: www.basecamphq.com

b. **Teambox**: www.teambox.com

c. **Projecturf**: www.projecturf.com

d. **GlassCubes**: www.glasscubes.com

e. **Apollo**: www.apollohq.com

f. **Teamwork PM**: www.teamworkpm.net

    g. **Huddle**: www.huddle.com

    h. **GoPlan**: www.goplanapp.com

    i. **Lighthouse**: www.lighthouseapp.com

    j. **PBWorks**: www.pbworks.com

    k. **Zoho Projects**: www.zoho.com/projects

4. **Document Management Portals**: Document management applications provide an electronic filing system for documents you've created in-house, documents you receive (they must be scanned), notes, emails & attachments to emails. Good document management systems provide things like full text searching (find any document by the words contained inside it rather than what it is called), security, and versioning (you can save dozens of versions of the same file with a full audit trail).

    a. **NetDocuments**: www.netdocuments.com - extremely sophisticated and well established document management application.

    b. **Box Document Management**: see www.box.com/business/document-management/

    c. **Javek**: www.javek.com

    d. **Agilewords**: www.agilewords.com - specializes in collaborative document review

    e. **DocumentTree**: www.documentree.com

    f. **SharePoint**: http://tinyurl.com/b57xjhs - SharePoint is an online collaboration tool developed by Microsoft. It is often used as a content management system for Intranets. SharePoint allows teams within an organization to share information anywhere there is Web access. With SharePoint, users can set up websites to share documents, manage projects and publish information. SharePoint also has many social media capabilities, such as blogs, wikis, microblogging and discussion boards.[19]

5. **Case/Matter Management Portals**: If you're unfamiliar with case management software, these programs handle file management, calendaring, contacts, tasks (to-do lists), time entries, communications

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[19] *What is SharePoint?* by Ryan Goodrich, TechNewsDaily, January 30, 2013, see http://tinyurl.com/co8zcyc

(emails and phone calls), document management, document assembly, and can help you manage and share research. More importantly, each component feature is integrated with the others. For example, you can see all of the calendared appointments related to a particular matter (for everyone in your office) from within the electronic file. You never have to go look directly at someone's calendar for those things (which would be hard to find anyway). Anyway, here are some options for cloud-based case management which allow for client collaboration and secure sharing.

a. **Advologix Legal Suite**: www.advologix.com

b. **Clio**: www.goclio.com

c. **MyCase**: www.mycase.com

d. **LawRD**: www.lawrd.com

e. **Houdini Esq**: http://houdiniesq.com/esq.html

f. **Rocket Matter**: www.rocketmatter.com

g. **ActionStep**: www.actionstep.com

h. **Total Attorneys**: www.totalattorneys.com

6. **Virtual Law Office Platform Portals**:

a. **DirectLaw**: www.directlaw.com

b. **UpCounsel**: www.upcounsel.com

**P.** **Be Available Anywhere**: With smartphone and Voice Over Internet Protocol ("VoIP") office phone systems, your office phone can be anywhere you are. Of course, this increases your availability to your clients. "Hosted" versions of VoIP office phone systems generally don't require that you have any phone hardware in your wiring closet. All you need is an Internet connection and VoIP phones. If you choose to, you can even use a headset plugged into your computer as your phone (as opposed to a traditional office phone with a handset).

1. **What Is VoIP**: Voice Over Internet Protocol simply refers to a telephone system that uses the Internet to transmit phone calls. In a physical office, your office phone plugs into a network jack (just like your computer) rather than a telephone jack. In a home office, the office phone plugs into your wired or wireless Internet router. Nothing extra is needed. For example, I can take a VoIP phone home, plug it into my home wireless router, and I'm instantly connected to our office phone system. I can also plug a phone

headset directly into my computer to make and receive calls (using software that gives me a "softphone" option). VoIP gives you a dial-tone just like a POTS system and the phones work exactly the same way. However, you do need to acquire special VoIP phones if you don't want to use a softphone option. They're no more expensive than POTS phones and this link will take you to a good list of models and prices: http://tinyurl.com/5qybbb. However, VoIP providers typically have proscribed phones for use with their system which you can buy directly from the provider.

I use a headset attached to my computer (wirelessly, of course) from Plantronics that looks like this (and costs about $160).

2. **VoIP Options**: Here are some options (there are many more than this):

    a. **RingCentral** - www.ringcentral.com - we have had many clients tell us how much they like RingCentral.

    b. **Hover Networks** - www.hovernetworks.com

    c. **Proximiti** - www.proximiti.com

    d. **Vonage** - http://tinyurl.com/onf25yz

    e. **Vocalocity** - www.vocalocity.com

    f. **Jive** - www.getjive.com

    g. **8 x 8, Inc.** - www.get8x8.com

    h. **PBXtra** - http://pbxtra.fonality.com

    i. **Easy Office Phone** - www.easyofficephone.com

    j. **AVAD Technologies** - www.avadtechnologies.com

3. **Microsoft Lync**: This is "Microsoft's system for unified communications in the enterprise. It includes instant messaging (IM), voice and video calling and Web conferencing both within the organization and externally."[20]

   Lync can be purchased or rented. The rented version is often called hosted Lync or Lync Online. It gives you VoIP phones and a lot more. My company uses hosted Lync and I would highly recommend it. There are many providers of hosted Lync including Microsoft (see http://tinyurl.com/bjkwzdm - best plan is only $5.50/user/month), Intermedia (www.intermedia.net) and Workspace Communications (http://tinyurl.com/ller9wx) among many others.

   Some people in our office have regular desk phones, but 90% of our people use wireless headsets that plug directly into our computers. For a list of Lync certified headsets, see http://tinyurl.com/kfzu4lg.

4. **Smartphones**: The importance of smartphones is self-evident. If you want to be able to communicate from anywhere, have access to practice information, email, your calendar, contacts and tasks, then you need a smartphone. Ideally, you will use either Microsoft Exchange or Google Apps so that all of that information is wirelessly synced among all devices, not just your phone.

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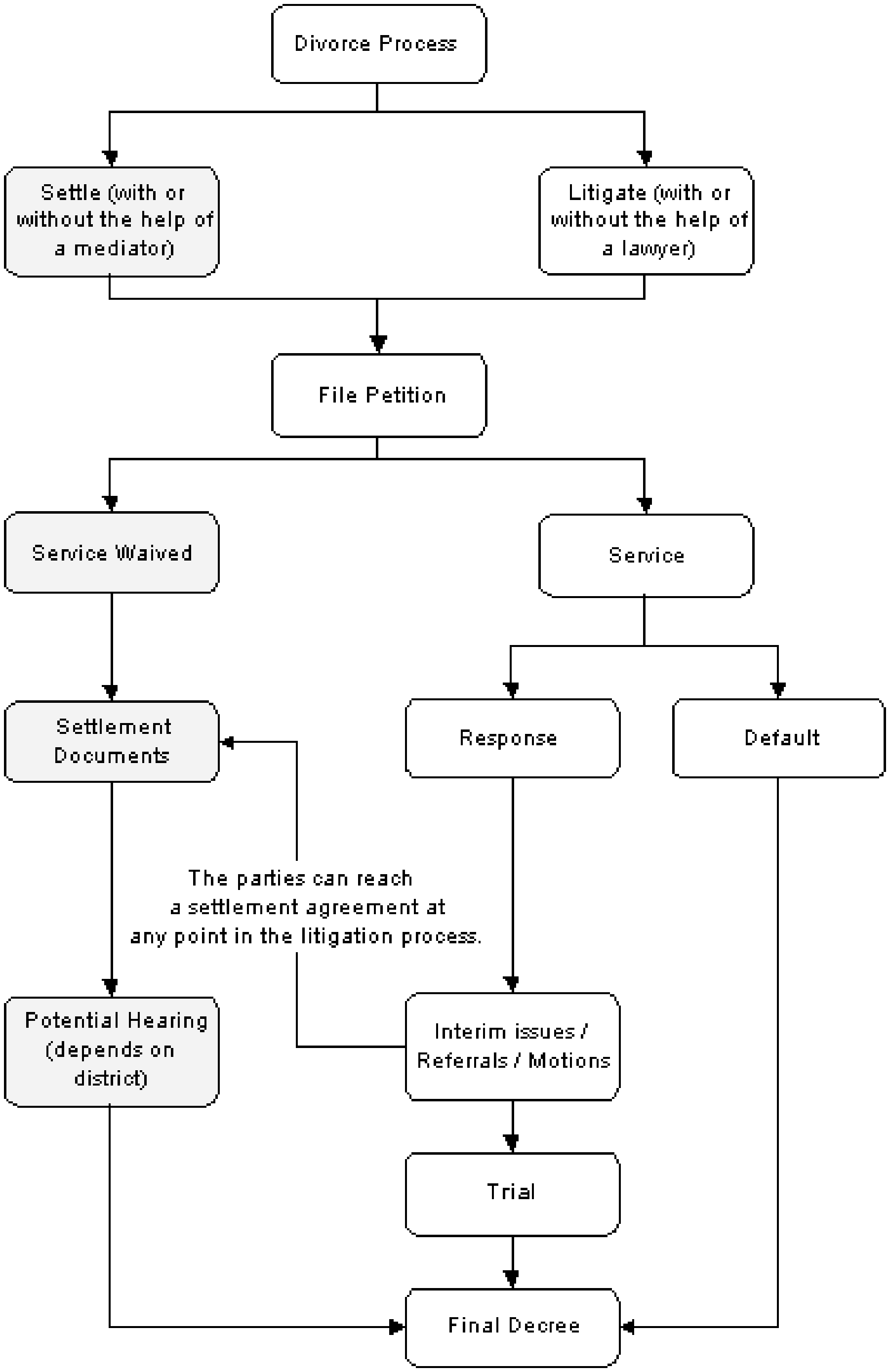
[20] PCMagazine.com Encyclopedia - see http://tinyurl.com/n7pszov

# EXHIBIT A

## The Divorce Process

**Note: The Judge can vary this process.**


Divorce Process
Settle (with or without the help of a mediator)
Litigate (with or without the help of a lawyer)
File Petition
Service Waived
Service
Settlement Documents
Response
Default
The parties can reach a settlement agreement at any point in the litigation process.
Potential Hearing (depends on district)
Interim issues / Referrals / Motions
Trial
Final Decree