

Hanging Out *your Shingle* **LOUISIANA** *Style*

CHAPTER 2

The Actual Law Office



CHOOSING YOUR FIRM NAME

You are entering a profession which will draw on your creative and analytical powers. You may be tempted to be creative when choosing your firm name. Your firm name must comport with the Rules of Professional Conduct and your firm name should be one which conveys professionalism and trust. Choose wisely.

The LSBA Rules of Professional Conduct Committee guidance is as follows:

An identifying name used by a lawyer in connection with the practice of law, whether it is a conventional firm name or a fictitious or trade name, may be used if it otherwise complies with the Louisiana Rules of Professional Conduct and the same name is used consistently and exclusively by that lawyer on all communications concerning the practice of law. A lawyer may not use multiple business identities simultaneously in connection with the practice of law, regardless of whether those identities utilize a conventional firm name or include a fictitious or trade name.²

2. See LSBA, Rules of Professional Conduct Committee PUBLIC Opinion 07-RPCC-012 (the Identification of a Law Practice – Fictitious or Trade Names; Multiple Business Identities).

Whatever your firm name, Rule 7.10 of the Rules of Professional Conduct, which concerns firm names and letterhead, should be your first reference in these regards. It states as follows:

(a) False, Misleading, or Deceptive. A lawyer or law firm shall not use a firm name, logo, letterhead, professional designation, trade name or service mark that violates the provisions of these Rules.

(b) Trade Names. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association, that implies that the firm is something other than a private law firm, or that is otherwise in violation of subdivision (c)(1) of Rule 7.2.³

(c) Advertising Under Trade Name. A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this Rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in More Than One Jurisdiction. A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.

(e) Name of Public Officer or Former Member in Firm Name. The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Organizational Business Entities. Lawyers may state or imply that they practice in a partnership or other organizational business entity only when that is the fact.

(g) Deceased or Retired Members of Law Firm. If otherwise lawful and permitted under these Rules, a law firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the law firm, or of a predecessor firm in a continuing line of succession.

With amendments through June 2, 2016.

3. Rule 7.2 (c) (1) states:

Statements About Legal Services. A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:

- (A) contains a material misrepresentation of fact or law;
- (B) is false, misleading or deceptive;
- (C) fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive;
- (D) contains a reference or testimonial to past successes or results obtained, except as allowed in the Rule regulating information about a lawyer's services provided upon request; (Suspended)
- (E) promises results;
- (F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (G) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;
- (H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;
- (I) includes (i) a portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10); (ii) the depiction of any events or scenes, other than still pictures, photographs or other static images, that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10); or (iii) a still picture, photograph or other static image that, due to alteration or the context of its use, is false, misleading or deceptive;
- (J) the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;
- (K) resembles a legal pleading, notice, contract or other legal document;
- (L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or
- (M) fails to comply with Rule 1.8(e)(4)(iii).

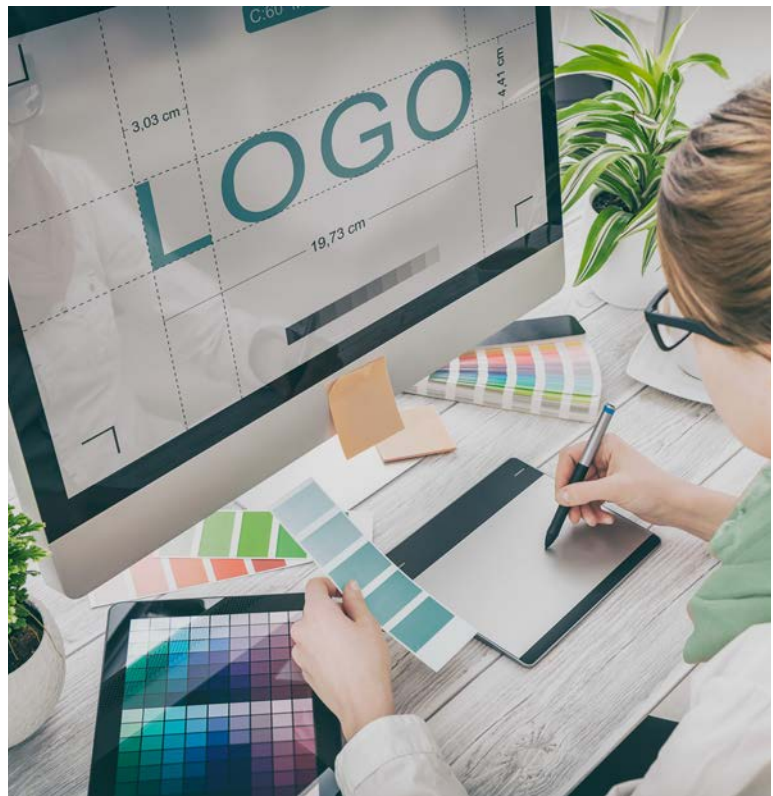
With amendments through June 2, 2016.



Your firm name must comport with the rules and your firm name should be one which conveys professionalism and trust. Your conforming law firm name must be used on your letterhead, business cards, office signage, fee contracts and on pleadings and other legal documents.

If you choose to share fees with another lawyer with whom you are not in partnership or with whom you are not employed, avoid partnership by implication. Use separate letterheads and business cards. Do not carry a joint legal malpractice policy. If sharing a receptionist, have staff use a generic greeting like “law office” or another greeting which does not connect you with unaffiliated lawyers.

Your firm name cannot imply a connection with a government agency, or a public or charitable services organization or other professional association (e.g., U.S. FEMA Law Firm, LLC, won’t work). Your law firm name cannot imply that your firm is anything other than a private law firm (e.g. John Smith, Esq, and Chiropractic Clinic won’t work). Your law firm name cannot guarantee a result (e.g., I Always Win, LLC, won’t work.).



Familiarize yourself with Professional Rule of Conduct 7.2(c)(5) as amended which states as follows:

Communication of Fields of Practice. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may state that the lawyer is a “specialist,” practices a “specialty,” or “specializes in” particular fields, but such communications are subject to the “false and misleading” standard applied in Rule 7.2(c)(1) to communications concerning a lawyer’s services. A lawyer shall not state or imply that the lawyer is “certified,” or “board certified” except as follows:

Lawyers Certified by the Louisiana Board of Legal Specialization. A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is “certified,” or “board certified in (area of certification).”

Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar. A lawyer certified by an organization other than the Louisiana Board of Legal Specialization or another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice by stating that the lawyer is “certified,” or “board certified in (area of certification)” if:

(i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the full name of the organization in all communications pertaining to such certification. A lawyer who has been certified by an organization that is accredited by the American With amendments through June 2, 2016. Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.

Certification by Other State Bars. A lawyer certified by another state bar may inform the public and other lawyers of the lawyer’s certified area(s) of legal practice and may state in communications to the public that the lawyer is “certified,” or “board certified in (area of certification)” if:

(i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.

If you have doubts, you should direct any questions that you may have to Ethics Counsel.

Basically, your firm name cannot be false, deceptive or misleading. Choose your law firm name wisely.

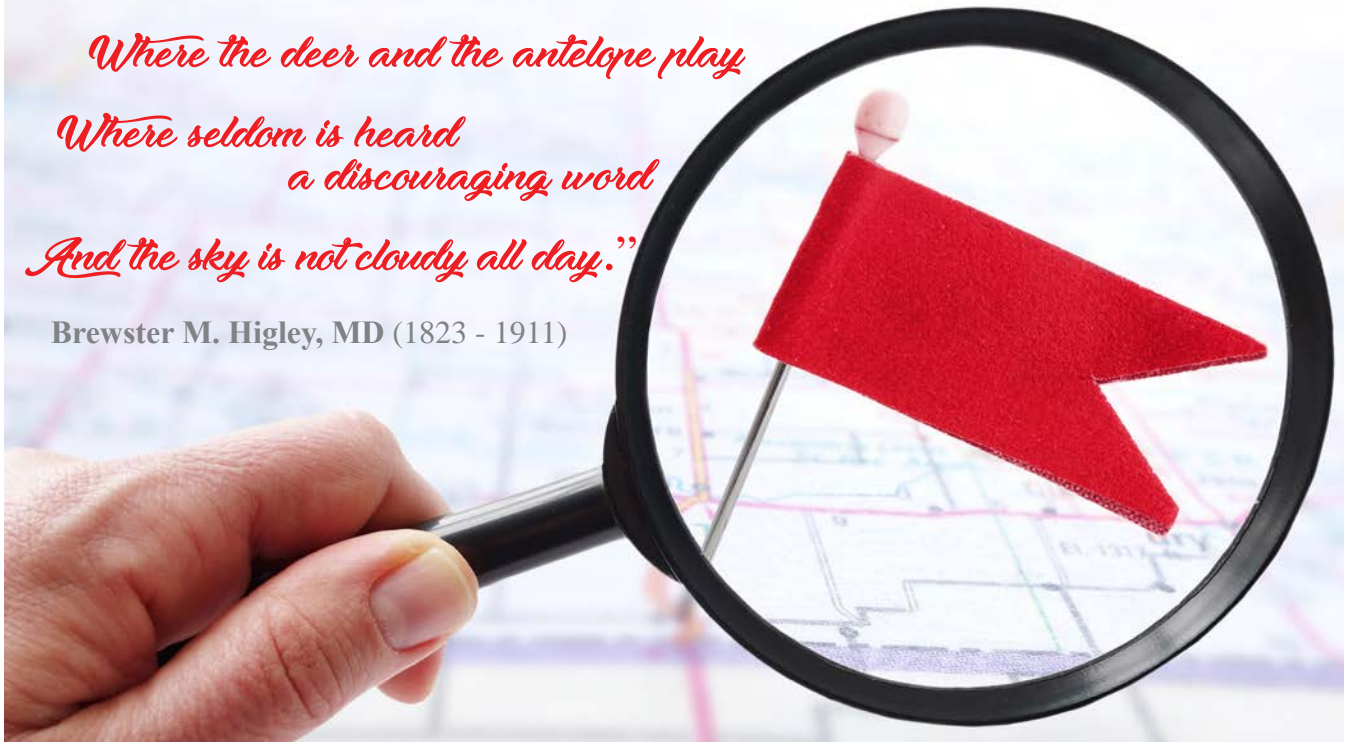
“Oh, give me a home where the buffalo roam

Where the deer and the antelope play

*Where seldom is heard
a discouraging word*

And the sky is not cloudy all day.”

Brewster M. Higley, MD (1823 - 1911)



CHOOSING OFFICE LOCATION

Traditional Office, Shared Office, Home Office, Virtual Practice or Combination

Where will you practice law? And while we are at it, just what is a law office? Many options exist for the new solo or small office lawyer. Among them are:

- Traditional bricks and mortar office
- Shared office space with another lawyer (no partnership)
- Rent-a-desk or co-working spaces
- Virtual (no physical office)
- Home
- Combination

Technology and finances will affect whether you have a traditional law office, a shared office, a home office, a virtual office, or maybe even a blend of these options. The physical location of your office will also affect your marketing efforts and what type of clients who you will attract. Physical location still matters, even for the most virtual of practitioners.

Office location and office appearance is often as important as the quality of the legal work as first impressions are important to the potential client. When choosing an office location, consider whether you need to be close to the courthouse or whether your office must be easily accessible to clients.

Each of these options has its advantages and drawbacks to the solo practitioner. A traditional bricks and mortar law office is likely the most expensive option because of its lengthier leases, furniture, phone and internet costs. Also for a small office practitioner, this arrangement may be too isolating. Rent-a-desk options will have shorter term lease arrangements, and will offer furnishings including fully equipped meeting spaces, kitchen and reception areas. The rent-a-desk option also offers camaraderie, contact with other entrepreneurs and other small office, more experienced lawyers. The downside is the lack of privacy. The cheapest option is the home office; the drawback is that it might prove too difficult to impose the self-discipline necessary to carry it off. Studies indicate that over time lawyers with offices or office-sharing arrangements earn more than home-office colleagues.

Whatever the office situation you choose, you should create a dedicated workspace for your practice.

Consider the primary focus of your practice when deciding on the location of your office. For example, if your practice requires many court appearances, you may want an office near the courthouse. However, the location for a business practice might be better near where your clients are, even if that location is not near a courthouse. A plaintiff based practice might require your offering your clients' easy access and parking, particularly with the injured or elderly. Even though communication with your clients may be mostly telephonic or electronic, some clients feel more secure when their attorneys are physically near.

An important note is that despite the connectedness that technology provides, potential clients inevitably search the web for a lawyer who is geographically near them or near a particular location. The same is true when a potential client asks another for a recommendation.

Special Note About Temporary or Office Sharing Arrangements:

Temporary offices and office sharing are popular cost-conscious options for a new law office. In an attempt to reduce operating costs, newly minted lawyers are increasingly turning to ready-to-go office spaces which provide low cost office areas or desks with month to month lease terms. Some of these arrangements offer the use of communal spaces, like conference rooms for client conferences and depositions. Such arrangements might also include use of internet services, printers, and perhaps even a receptionist.

With temporary offices and/or office sharing, you might share office spaces with other lawyers with whom there is no partnership or an employee-employer relationship.

Short term or shared office arrangements often puts the lawyer in close quarters with others who are not affiliated with your law office. This potentially exposes your client's files and details to others. In such cases, you must use extra care in protecting client confidences and avoiding possible conflicts of interest.



Here are some tips:

- ▶ Do not use names together on websites, social media, letterheads, building directory, etc.
- ▶ Do not share trust fund account.
- ▶ No joint malpractice insurance.
- ▶ Never say partner unless you are partners.
- ▶ Protect client confidences. This may be particularly challenging when working in close quarters.

Special Note About Virtual Offices:

The internet has allowed lawyers to work anywhere. According to the 2011 ABA Legal Technology Survey Report, 77% of the lawyers responding indicated that when they telecommute, 88% report doing so from home, and with about 12% using cafes and coffeehouses as occasional workspaces. The survey also indicated that the most popular client services offered online are:

- Document sharing
- Messaging and communication
- Invoicing and bill payment
- Case status
- Scheduling and calendaring
- Real time consultation
- Fillable forms for online legal document creation and preparation
- A virtual practice might also include a practice without a traditional office at all.

Lastly, if you anticipate meeting clients, make sure that you have access to an appropriate private space for that purpose. Avoid coffee shops and any public areas for confidential conversations with your clients. If in the New Orleans area, you can avail yourself of the LSBA Bar Center's conference rooms which can be used for client meetings and depositions at no charge. Call the LSBA to reserve a room ((504) 566-1600), or reserve it online at lsba.org.

Whatever option you choose, ensure that you have 24/7 access to your office and the ability to access your information remotely.

Do I need an actual street address?

The Supreme Court of Louisiana requires a street address on your annual registration statement. Louisiana Supreme Court Rule XIX, Section 8C (emphasis added) states in pertinent part:

The lawyer shall include an office and residence address on the registration statement, and shall designate either his/her office or residence address as a primary registration statement address. The other address shall be designated as the lawyer's secondary address. The lawyer's primary registration statement address, and the secondary registration statement address, shall each be a physical address and not a post office box. A lawyer may choose either the primary or secondary registration statement address as his/her preferred mailing address, or may designate a third address for this purpose. Service of disciplinary process pursuant to these rules may be made at the lawyer's primary registration statement address. Service or proof of attempted service at the lawyer's primary registration statement address shall constitute adequate notice for purposes of these disciplinary rules.

Each lawyer shall also include an office email address on the registration statement, unless he or she does not have one.

Each lawyer shall thereafter file with the Louisiana State Bar Association any change of physical or office email address within thirty days of the change. Attorneys admitted to practice in the spring shall receive notice for filing the registration statement before July 1st of the year of admission. Attorneys admitted to practice in the fall shall receive notice for filing the registration statement before July 1st of their first full calendar year of admission.

If you intend to advertise or engage in unsolicited communications, under Rule of Professional Conduct 7.2(a) (1) (2), you shall disclose a *bona fide* office location. A *bona fide* office location is defined as a physical location maintained by the lawyer of law firm "where lawyer of law firm reasonably expects to furnish legal services in a substantial way on a regular and continuous basis and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location."

However, Rule of Professional Conduct 7.2(a)(2) also provides for the absence of a *bona fide* office and states that in such a case, "the lawyer shall disclose the city or town of the primary registration address as it appears on the lawyer's annual registration account."

So is paying for and using a street address only for mail sufficient (e.g., using a private mailing address for office mail)? Maybe, not clear. Do you intend to advertise? Are you only engaged in contract work with no client contact? If you have questions about this, you should obtain guidance from the LSBA's Ethics Counsel.



ESSENTIAL OFFICE EQUIPMENT AND STAFFING

Resist buying or hiring more than you need. When you are first starting out, you should stay lean and purchase only what you need. Cover the basics, and do not purchase more than you need in the hope that you might need it later. Same is true for hiring.

So what are the very basic equipment that you need in your law office? At the very least, you will need:

- Computer
- Monitor
- Back Up
- Printer
- Scanner
- Internet
- E-Mail
- Telephone
- Desk, Table, Chairs
- Lamp
- Bookshelves

Used office furniture sales are frequent. Bargains can be found at hotel liquidators companies and through Craigslist ads. Join the LSBA Solo and Small Firm Section and post an inquiry in one of its listservs regarding your need for office furniture.

Technology and Cloud Computing Considerations

Technology sales can be quite tempting and the sales pitches will be alluring. Buy only what you need in the beginning. As your business grows and changes, you will be better poised financially to purchase technology based on an actual need rather than upon a speculative one.

Another reason to go lean with your initial technology purchases is that legal technology is constantly changing. Just when you think you have the latest greatest, in a couple of years, you find that the new shiny fab tech that you invested in a few years ago is obsolete. And, to make matters more complicated, this vicious tech cycle of cutting-edge to obsolescence seems to be getting shorter and shorter.



Further, coincident with new tech are new threats. While tech may make our lives easier in that we are able to practice law from any location and more efficiently, this technologically enhanced mobility requires increased diligence on your part to protect client confidences and to maintain data security. Today's data protective measures may not be sufficient measures for tomorrow. When new technology is adopted, be mindful of additional threats to security. Stay abreast of technology news. Google periodically your products and read lawyer reviews about the technology that you are using.

Keep in mind that whatever technology you purchase, particularly technology that you will use for client data and information, you will need to ensure that client confidences are protected. Rule of Professional Conduct 1.6 (c) regarding the confidentiality of Information governs our obligations in these regards:

(b) A lawyer shall make **reasonable** efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(emphasis added).

While Rule 1.6 (c) does not define "reasonable efforts," it is not a stretch to assume that "reasonable efforts" would include an obligation that the lawyer using certain technology knows how to use that technology, particularly with regard to safeguarding client information.

The ABA's Model Rules of Professional Conducts requires attorneys "to act competently to safeguard [client confidential] information against inadvertent or unauthorized disclosure." The amended Model Rules note that the fact of a disclosure does not mean an ethical violation has occurred "if the lawyer has made reasonable efforts to prevent the access or disclosure."

The prudent lawyer will be vigilant, will review data safeguards regularly and make changes where necessary especially when new emerging technologies.

Be vigilant in choosing your technology. Ask questions about the product. Satisfy yourself that the technology provider safeguards your client information. Carefully examine all technology before buying, whether it's SaaS (software as a service or cloud-based) or traditional. In particular, consider these questions of any cloud-based provider before committing your data to their hands. Vendors that aren't willing or able to answer these questions should be treated with caution.

- Do you offer a trial period or demo of your product?
- What training options are available for customers?
- What kind of documentation (*e.g.*, knowledge base, product manual,, online tutorials) is available for your product?
- How often are new features added to your product?
- How does your software integrate with other products on the market, especially products in the legal market?
- How many attorneys are currently using your product?
- What hours is your human tech support available?
- Do you offer a Service Level Agreement (SLA) and/or would you be willing to negotiate one? (A service level agreement (SLA) is a contract between a service provider (either internal or external) and the end user that defines the level of service expected from the service provider. SLAs are output-based in that their purpose is specifically to define what the customer will receive.)
- What types of guarantees and disclaimers of liability do you include in your Terms of Service?
- How do you safeguard the privacy/confidentiality of stored data?
- Who has access to my firm's data when it's stored on your servers?
- Have you (or your data center) ever had a data breach?
- How often, and in what manner, will my data be backed up?
- What is your company's history — *e.g.*, how long have you been in business and where do you derive your funding?
- Can I remove or copy my data from your servers in a *non-proprietary* format at any time, even upon nonpayment?
- Where does my data reside — inside or outside of the United States?
- What happens to my data if your company is sold or goes out of business?
- Do you require a contractual agreement for a certain length of service (*e.g.*, 12 months, 24 months)?
- What is the pricing history of your product?
- How often do you increase rates?
- Are there any incidental costs I should be aware of?
- What happens if you are served with a subpoena regarding my data? (Gold star answer is that the vendor contacts the account holder (you) to give you a chance to file whatever protective pleadings you see fit.).

Your Computer: Your Firm's Workhorse

Your computer is THE most important item in your office. You will be tempted to keep your law school computer for your law office. If there is wise money to spend for your law office, it should be for a good, solid, bug free computer. Purchase a robust hard drive, adequate RAM, and a fast processor speed. Do not skimp on virus and malware protection.

If you are still considering using your law school computer, ask yourself these questions: Is your computer stable? Does it lock up? Does it connect to the internet quickly? Is the memory just about used up?



If you need to upgrade, do it now rather than making a poor purchase when you are in crisis mode. Keep your old computer for movies and non legal activities. Use your new computer only for work.

Whether a desktop or a laptop will be a personal preference. If choosing a laptop, adding a docking station will allow you to connect a monitor or two which, while not necessary, is helpful when writing briefs, cutting and pasting, or comparing documents.

Data Back Up and Security

You should have a plan in place. Analyze your system. Devise your plan. Implement your plan. Test your plan. Review you plan periodically (e.g., at the end of the year).

What should you back up? You should back up your data wherever it is located. The more redundant your back up plans are, the better. Plan for back ups to fail. Have several locations for your data back up because you may need to access your data from a different location.



- **Back up your email.** Web based email can be lost. Save local copies of emails by installing email software (e.g., Outlook, Thunderbird, AppleMail). Save email to PDF for archival storage.
- **Back up your hard drive.** Consider third party tools such as Acronis True Image, Norton Ghost, or Carbon Copy Cloner. Use Windows' hard drive back up function. Mac OS has one too.
- **Back up your local or network drive.** Arrange for daily backups. Review the back up logs to ensure that files are being backed up. Perform test restores.
- **Back up to the cloud.** There are many services for this purpose. There are sync tools (e.g., Dropbox and SugarSync and online backup tools (e.g., Carbonite, Mozy, Crashplan). Make sure backups are working properly.
- **Back up your servers.** Replicate it to an external drive.
- **Back up mobile devices, smartphones and tablets.** iCloud, Google, Windows OneDrive and Lookout (iPhone/Android phone) back up call history. Local files such as pictures, documents, notes and videos, can be backed up using Micro cards or wireless portable drives.
- **Back up social media.** Preserve your online presence. Backup your blogs though your site host or through WordPress' plugins for backup (e.g., Backup Buddy and BackWPU). Back up social media with Backupify for Facebook pages and Twitter or with Social Safe for Facebook, Twitter, LinkedIn, Google+ and more. Back up your websites with NextPoint Cloud Preservation.
- **Back up your paper files.** Scan them to put them into the electronic backup process. If you need to keep originals, place them in a fireproof, waterproof safe. Keep an electronic index of your files. Keep duplicate paper copies offsite (e.g., Iron Mountain).

Scanners

A scanner is the foundation for the paperless office, which in reality, is not an office without paper, but rather an office which digitizes paper wherever possible. A scanner that you will actually use is the best scanner to have. Having access to a scanner that is down the hall and a function of a huge multi-tasking copier/printer machine is not likely to be used to the extent necessary to make scanning documents work for your practice. Desktop scanners are the way to go – the simpler, the better. By having a scanner on your desk, scanning as paper comes in can become a habit. A good rule of thumb is to think of scanners like printers. For high volume, the large multitasking copier/printers are the way to go. For smaller jobs, a desktop scanner will be fine. Scanners will ask what you want to do with the scanned document – whether attaching to an email, or saving to a computer file.



You should familiarize yourself with programs that manipulate PDF, or portable document format, documents. Adobe and its free Adobe Acrobat Reader are probably the most recognized format. Other programs exist that might be more cost-effective, such as Power PDF and its reader by Nuance. Often, scanners will come with one of these programs included. The Fujitsu ScanSnap is very popular but other brands are in the marketplace with options that are just as attractive (e.g., Canon, HP, Brother, Epson, and others). PDG readers only allow you open and read documents, but do not allow you to combine or manipulate PDF documents, which is key to organizing your digitized documents.

Printers

Get only what you need when first starting. Forego color printers – toners are expensive. Enough said.

Phones

Landlines, who needs them? Ok, it's not necessary to have a landline, but the big advantage in having one is that it helps to keep your personal life separate from your business life. Investigate low cost landline-like alternatives such as VoIP, Google Voice or a call park or call forwarding service.

You might be tempted to try a cell phone only approach. Know that doing so without protections may create an unrealistic 24/7 expectations for your clients. Among the protections to incorporate with this approach is to employ different notification sounds, so that you can know who is trying to reach you.

Alternatives to Staff

Skip full time help until you can pay for it. The potentially biggest overhead you might encounter outside of your law degree will be the hiring of staff. So, the decision whether to hire full time staff should not be made lightly.

In the beginning, you will be tempted to do everything yourself. And, you will have the time to do just that. However, as you build your practice, you will not have the time that you had in the beginning to attend to the myriad of administrative tasks.

Until you are able financially to hire staff, consider outsourcing until hiring someone is financially sensible and feasible.



Bookkeeping and Payroll

Perhaps the most common task to outsource is bookkeeping (and payroll if you have staff). Certainly, software options like Quickbooks can be learned and might make sense in the beginning. However, if you have complicated accounts and even if you can do your own books, be cognizant of the time that you are taking away from the practice of law. Consider hiring a bookkeeper for an hour or so to set up your QuickBooks accounts properly and who can answer your inquiries should you have difficulty with Quickbooks later.

Accounting

When it is time to file tax returns, consider hiring an accountant. Unless you have the expertise, avoid doing your own business taxes. It is complicated and time consuming if you are not sure of what you are doing, and time-consuming, even if you do. Again, this is time away from practicing law. Upon hiring a CPA to do your returns, your CPA might send you worksheets to complete, where your income, expenses, mileage, and charitable giving are listed, and the accountant then creates the quarterly tax forms and returns for your signature.



Virtual Receptionist

The first point of contact that a potential client has with your office can send a powerful message to the kind of attorney you are – whether valid or not. Having an overloaded answering machine, or answering your cellphone yourself will not engender good feelings for long, if at all. You could hire a full time receptionist at great cost or you can contract the services of an outsourced receptionist for much less than the cost of a full time employee.

The better receptionist services will answer your business number seamlessly without the caller knowing that the person actually answering your phone is answering from another state. An outsourced receptionist can answer an incoming call asking for you, put that caller on hold and send a text, email or call you with a message with the identity of the caller on the line. At that point, you can ask the receptionist to take a message or take the call. The service will keep a record of all calls and messages. At no time does the caller have to know whether you are truly in the office. This arrangement protects you from becoming distracted with incoming calls when you are working on other matters. There is variable quality of professional receptionists. Shop for one that you like.

Professional answering services can often fill the receptionist gap on an as needed basis while giving your clients assurances that you will be back on touch with them as soon as you are able. A personal touch goes a long way. Many now exist including Ruby Receptionist, Back Office Betty, Acxiom, Televerde, America's Call Center, Gabbyville and MoneyPenny to name a few. Each has different price structures to service the small office practitioner.

Similarly, temporary secretarial help is available on an as needed basis. Companies such as The24HourSecretary and Home Secretarial Services are among many companies which offer this kind of service. Consider sharing a secretary with another lawyer on an as needed basis.

Research or Paralegal Work

Other assistive work that can be outsourced includes other attorneys, outside paralegals, and law students.

Hiring a *per diem* attorney to appear for routine or trivial matters may be useful. Outsourcing marketing and public relations tasks is also useful.

Paralegals

While nationally recognized paralegal associations exists, there are no certification requirements in the state of Louisiana for paralegals. When hiring a paralegal or contracting one as an independent contractor, look for one with experience. Formal paralegal training is a plus, but not necessary in the state of the Louisiana.

A paralegal cannot practice law for you, but can assist you. Rule of Professional Conduct 5.5 (a) is clear: “A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”

So what can a paralegal do for you?

- Organize and assemble files and documents.
- Locate witnesses.
- Facilitate client and case communication.
- Draft routine correspondence.
- Draft routine pleadings (e.g., Motion for Extension would be fine, but a Petition for Damages would not, particularly if the responsible lawyer does not review and edit before filing or transmission to the client, opposing counsel or the court.
- Schedule depositions, hearings and meetings.
- Review and summarize depositions, medical records.

Paralegals should not:

- Render legal advice or be exclusive client contact.
- Conduct client or witness interviews.
- Prepare clients for depositions, hearings, or trials.
- Have signatory power over bank accounts, especially trust account.
- Do or say anything, making non-lawyer a witness in client’s case.
- Prepare substantive letters or pleadings.
- Be allowed to make decisions that affect client’s rights and/or decide strategy.
- Appear in court for the client.

You should also review Rules of Professional Conduct 5.3 (Responsibilities Regarding Nonlawyer Assistance) and 5.4 (Professional Independence of a Lawyer).⁴

4. Rule 5.3. Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a non lawyer, except that:

- (1) an agreement by a lawyer with the lawyer’s firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer’s death, to the lawyer’s estate or to one or more specified persons;
- (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;
- (3) a lawyer or law firm may include non lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement; and
- (4) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and
- (5) a lawyer may share legal fees as otherwise provided in Rule 7.2(c)(13).

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

With amendments through June 2, 2016.

See Appendix #3 Checklist for Opening Law Office.



DISASTER PLANNING AND BUSINESS CONTINUITY

Will your firm survive a disaster? Having your data backed up is only a part of disaster planning. Another important part of disaster planning is understanding that such planning accounts for unforeseen disasters of various natures. Start your disaster planning by taking a few moments to think about your office's ability to survive these common "disaster" scenarios:

FIRE/HURRICANES/TORNADOES/NATURAL DISASTERS: If your office was completely destroyed by fire or natural disaster like a hurricane or tornado, how long would it take you to contact all of your clients, recreate all your computer data, contact your insurance company, process invoices, contact opposing counsel and generally get your practice operational again? Who would be responsible for performing each of these functions?

ILLNESS: If you had a heart attack tonight, or otherwise had to be out of the office unexpectedly or indefinitely, are your files organized so that someone could pick up your caseload without your clients suffering any disadvantage? Could anyone actually find anything on your desk or in your files? Do your answers change if your assistant was out sick or away on vacation at the same time?

Conversely, if you have a partner/associate who was suddenly disabled, do you or someone in your office know his/her schedule for the next three months? Do you or someone in your office know the status of all matters in your office?

DISABILITY: If you or a partner in your firm is disabled for an extended period of time, will you be able to draw a salary? If so, how much and for how long? If you are a sole practitioner and the only rainmaker, how will expenses of the firm be paid while you are out and unable to make rain?

SUDDEN PERSONNEL CHANGES: If your secretary/legal assistant/bookkeeper suddenly quit, do you know their filing systems so that you can find information in their desks, in their (or your) files or on their computers? Do you have copies or know where they keep the keys for filing cabinets, etc.? Do you know all their respective passwords (including voice mail, computer login, e-mail, the accounting package and any other software applications they use)?

THEFT OR BURGLARY: If all of the computers in your office were stolen over the weekend, do you have all the serial numbers of the equipment, the original cost of the equipment, the value of the equipment and the ability to recreate all of the data on the computers?

MAJOR COMPUTER MALFUNCTION: If your computer(s) were attacked by a virus and/or your data was rendered unusable or unavailable, would you be able to retrieve your data to start anew?

TRUST FUND THEFT: If one of your staff members disappeared with client trust funds, would you have sufficient records to determine what was taken and when?

Disaster Binder:

Prepare a hard copy disaster binder for the possibility of a power outage and/or when electronic access to your data is not possible. Use a small three-ring binder or something similar which should contain hard copies (preferably laminated) of the following items which and should be reviewed yearly:

- *Staff Contact List:* Create a printed list of staff contact information including alternative email addresses, emergency contact information, and a possible location that each person may go if evacuating.
- *Client and Opposing Counsel Contact List:* Create a printed list of your clients and opposing counsel, along with contact information, including email addresses.
- *Directory File List:* Print a list of your directory files on your computer system or “in the cloud.”
- *Trust Accounts/Other Accounts:* Banks; Bank Contact Information; and account numbers.
- *Copy of Insurance Policies.*
- *Inventory of Office Equipment and Furnishings with Photos.*
- *Copies of Software Licenses/Installation Disks.*
- *Important Passwords:* Firm social media and website passwords, account passwords, etc.
- *Vendor and Supplier Contact Information.*
- *Cell Phone Charger* (include a solar cell phone charger).

Make electronic copies of the binder’s contents and place copies of it in several places as follows:

- Email as an attachment to an email to yourself and to someone else you trust who lives in another area from you;
- Flash/Thumb drive (you can keep in your wallet or on your key chain);
- Electronic tablets (e.g., iPad);
- On the Hard Drive of your desktop or laptop;
- Directory on your local server; and/or
- A secure “cloud provider” (Dropbox, Box.net and others).

Also provide an electronic and hard-copy of the binder’s contents to another responsible person (key staff member or partner or other).

Laminated wallet card:

Create a simple, credit-card-size card with key contact information. Laminate the card and keep in your wallet with your driver’s license. One side of the card might contain key staff member contact information and the other side could be court contact information and community emergency numbers. Give a copy of this card to all staff.

Identify Alternative Location(s) for Office:

Create a list of possible temporary office locations should a disaster occur and require a temporary move. You might talk to a colleague about having a reciprocal agreement that either could use the other's office temporarily in the event of a disaster. Your alternative places to work might include your home or someone else's home. Inform staff ahead of time of these potential places. In the event of an area-wide power outage, these potential relocation spots, if known ahead of time, will also optimize your chances of finding or being found by your staff.



Communication Plan for Clients and Staff:

Communication is often the first to go in a disaster. Create a default plan on what to do if you cannot communicate with each other.

- Be able, or have someone on staff able, to post remotely critical firm information on your firm website, email, Facebook, Twitter, LinkedIn, and/or other social media;
- Create a simple post-disaster default message for these sites that informs clients and staff of alternative methods of reaching and finding you; and
- Ensure that all important cell phone numbers and email addresses are stored on each other's cell phones.

Investigate other forms of communication (for example: Skype, Google voice, social media, and other electronic chat formats). Many are free.

Other tips: If you have a traditional telephone company landline, have a plain, non-cordless phone which connects directly into the phone line. When the power goes down, traditional phone lines often remain functional. In extreme situations, the Red Cross will have satellite phones and may allow you to place a call or two.

Check your bar association for communication. During Katrina, the LSBA set up an open forum where people posted temporary location information and contact information. Local bar associations are likely to set up to respond similarly in a disaster.

After a disaster strikes, use all communication tools early and often. Do not assume what communication issues your target audience is having. Be prepared to send the same message several different ways to optimize the chances that your intended recipient will receive it.

For a more particularized information to disaster planning business continuity, please review the LSBA's online *Practice Aid Guide: The Essentials of Law Office Management, Chapter 10 Disaster Planning for Louisiana Lawyers*.



INSURANCE

Malpractice Insurance

Attorneys are not required to obtain malpractice insurance to practice in Louisiana. That said, malpractice insurance is a good idea; and hence, it would be prudent for you to familiarize yourself with the basics of such a policy.

Overview and Background:

The LSBA offers an endorsed insurance program which is administered by Gilsbar, an acronym for Group Insurance Louisiana State BAR. This program is overseen by the LSBA's Legal Malpractice Insurance Committee whose mission is to ensure the most favorable rates, coverage and service for Louisiana lawyers insured under the bar-endorsed legal malpractice plan.

In 1991 at the request of the Legal Malpractice Insurance Committee, Gilsbar created a Loss Prevention Program. The purpose of the program is to assist Louisiana practitioners, whether insured under a malpractice policy or not, in preventing legal malpractice, improving office practices and procedures, and better serving the public. Gilsbar's Loss Prevention Counsel is available for telephone consults with Louisiana attorneys. Gilsbar's Loss Prevention Counsel also conducts law office audits and telephone consults pursuant to a consent agreement with the Louisiana Attorney Disciplinary Board or orders by the Louisiana Supreme Court. Calls to them are confidential and privileged under La. Rev. State 37:220.

Gilsbar's Loss Prevention Counsel:

- Can explain malpractice policy provisions
- Can offer practice suggestions
- Can assist with most ethics questions
- Cannot offer legal advice or legal opinions
- Cannot make professional liability coverage determinations

Do You Need Professional Liability Insurance?

Again, Louisiana attorneys are not required to carry malpractice coverage. Before you make your decision on whether to obtain such coverage, become better informed about malpractice coverage and the statistics regarding malpractice litigation by clients.

According to various studies, an attorney can now expect to be sued at least once during his or her career. A reason for the rise in legal malpractice claims is due, in part, to lawyers retaining work outside of their area of expertise rather than referring those cases to another attorney with more specific knowledge.



According to Gilsbar, seventy percent of business transaction claims involved attorneys who devoted 5% or less of their practice to that area of practice. Gilsbar also notes that not just new attorneys make mistakes. Attorneys with more than 10 years of experience accounted for 92% of reported claims in one survey. And, of particular interest to those considering a small office practice, firms with 5 or fewer attorneys account for most claims, and 65% of all attorneys practice in firms of this size.

Claims resulting in indemnity payments exceeding \$2 million have increased significantly. Fewer claims are being abandoned or are resulting in no payment.

How much is the malpractice premium? How much does it cost to defend a malpractice claim?

The average annual premium for professional liability insurance for a solo practitioner with \$1M/\$1M limits of liability is \$4,300. However, premiums will vary over a legal career depending on the type of law practiced and years of experience. Lawyers change jobs frequently over a career. Your premium will be affected by how far back you want your coverage to go. This is called prior acts coverage. You can obtain career coverage for all acts, a coverage that can be expensive considering the length and type of practice. Or, you and the carrier may agree to certain date when retroactive coverage may begin. You might also opt for only prospective coverage. Claims occurring before the prior acts date will not be



covered even if they are made and reported during a current in-force policy period. Coverage for prior accounts can get quite complicated; you should consult with the malpractice insurer when making this decision.

While premium costs might seem a large expense, defending a malpractice claim can be expensive. The minimal cost of defending a “no liability” legal malpractice claim is about \$10,000. Defending a legal malpractice claim with “possible liability” can run anywhere from \$50,000 to \$150,000. Additionally, defending malpractice claims require considerable time – time away from your regular practice. The average life span of a legal malpractice claim is two years.

What are the common triggers for malpractice claims by clients?

Substantive errors, administrative errors, problems with client relations, and intentional wrongs can contribute to the triggering of a malpractice claim.

Examples of substantive errors are:

- Conflicts of interest
- Inadequate discovery of facts or inadequate investigation
- Error in mathematical calculation
- Failure to know or ascertain deadline correctly
- Error in public record search
- Improper drafting
- Planning error in choice of procedures
- Failure to understand or anticipate tax consequences
- Failure to know or properly apply the law

Administrative errors that may trigger a malpractice claim include:

- Failure to calendar properly
- Failure to react to calendar
- Failure to file documents where no deadline is involved
- Procrastination in performance of services or lack of follow-up
- Lost file, document, or evidence
- Clerical error

Issues with client relations may also prompt a malpractice claim. Such as:

- Failure to follow client’s instructions
- Failure to obtain client’s consent or to inform client
- Improper withdrawal from representation

Intentional wrongs, such as libel or slander, malicious prosecution or abuse of process, violation of civil rights and fraud, can trigger a client to allege legal malpractice.

In Louisiana, what attorney errors trigger the most claims?

From 2013 through 2015, disciplinary matters were by far the most frequent claims under a legal malpractice policy in Louisiana.

Other errors causing claims are in the order of most frequent to least frequent are:

- Failure to settle or unsatisfactory settlement reached
- Improperly drawn and/or record documents
- Failure to follow client's instructions
- Failure to know and/or properly apply the law
- Failure to calendar properly
- Failure to know or ascertain deadlines
- Existence of conflict of interest
- Inadequate representation
- Inadequate discovery or investigation
- Failure to react to calendar
- Failure to file/record document
- Failure to obtain consent and/or inform client
- Malicious prosecution – abuse of process
- Improper handling and/or disbursement of funds
- Improper withdrawal of representation
- Error in public record search
- Fraud
- Planning error – procedure choice
- Fee dispute
- Procrastination in performing and/or follow up
- Personal misconduct
- Clerical error
- Libel and/or slander
- Negligent misrepresentation
- Error in mathematical calculation
- Civil rights and/or discrimination

What areas of law bring the most malpractice claims in Louisiana?

For the period of 2013 through 2015, the top seven areas of law which bring the most malpractice claims in Louisiana, in decreasing frequency, are civil litigation; plaintiff personal injury and/or property damage; family law; wills, estate, trust and probate planning; real estate and residential; collection and bankruptcy; criminal business transaction and commercial law. Other areas of law where there are claims are personal injury and property damage; plaintiff workers' compensation; taxation and labor law.

What size firms bring the most claims in Louisiana?

For the period of 2013 through 2015, 47% of the malpractice claims brought in Louisiana were against solo practitioners followed by 17% against two lawyer firms and followed by 18% against lawyers in a firm with three to five lawyers. In other words, 82% of malpractice claims are against small office practitioners in firms of one to five lawyers.

What does a malpractice policy pay for if the policy is triggered?

Malpractice policies pay for the costs of defense of malpractice claims under the policy's terms and conditions. Additionally most professional liability policies provide reimbursement for the costs of responding to disciplinary complaints.

The policy will also pay for settlements and judgments up to the coverage that you have obtained under policy terms and conditions.

What kind of risks does the malpractice policy cover?

The types of claims that are covered under the policy include the following:

- “Wrongful acts or omissions” committed in the rendering of legal or professional services
- Indemnification and claims expense
- Ancillary services
- Services as a notary public
- Services as a title agent and or Title Agency
- May need a separate Title policy
- Acting as a trustee or executor of an estate in connection with representation of a client
- Acting as an officer, director, or member of a legal professional association

The types of risks that are not covered typically covered by a legal malpractice policy include:

- Intentional acts (dishonest, fraudulent, criminal, malicious)
- Bodily injury or property damage
- Contractual Liability
- Insured v Insured
- Insured’s ownership interest of business enterprise > 10%
- Claims based on insured’s capacity as a fiduciary under ERISA
- Capacity as a public official
- Non-reported claims

Who is covered under a malpractice policy?

These individuals and/or entities are covered under a malpractice policy:

- Named Insured
- Predecessor firm
- Government affairs advisor or lobbyist
- Lawyer, partnership, professional association who is or becomes a partner, officer, director, stockholder-employee, associate, employee of Named Insured
- Of Counsel or non-employee independent contractor attorney
- Lawyer previously affiliated with the Named Insured as partner, officer, director, stockholder-employee, associate, employee
- Any person who is a former or current non-lawyer (staff)
- The estate, heirs, executors, administrators of an Insured in the event of such Insured’s death, incapacity, insolvency or bankruptcy
- The spouse or domestic partner of an Insured, but only to the extent that such Insured is provided coverage under this Policy.

How can I assist in the defense of a malpractice claim?

It is always wise generally to keep detailed notes of everything that goes on in your clients’ matters. This is particularly important if you suspect that a malpractice claim may be or has been filed. This would include confirming all important information in writing, keeping drafts of documents that you produce and send out externally, saving copies of the entire client file, and keeping and retaining files for the required period of time after the attorney client relationship has terminated.



Cyber Insurance

We, as lawyers, have heightened obligations to keep our client confidences and information safe. Our obligations in these regards are no less if the client information is electronic. Cyber insurance is designed to assist before, during and after an electronic security breach. While a professional liability policy may help protect against third party lawsuits, gaps exist when it comes to consequences of a data breach including expenses associated with privacy notification, crisis management, business interruption, cyber extortion threat and recovery of data. Traditional coverage will not extend to injury caused by network security and privacy breaches and cyber insurance coverage will. An average premium for cyber insurance is between \$200 and \$600 per year for a small firm of up to ten employees.

Two coverages are typically offered: for network security liability and for basic privacy injury liability. Network security liability coverage is for network damage caused by a wrongful act that results in a security breach or the insured's network. Network damage includes the inability to gain access to the network, and destruction or alteration of a third party's information residing on the network. Basic privacy liability provides coverage for a claim of privacy injury alleging a wrongful act that results in a security breach of the insured's network. Privacy injury includes the unauthorized disclosure or the insured's failure to prevent unauthorized access to nonpublic personal information or to nonpublic corporate information residing out of the insured's network.

Additional coverages are available including for:

- Laptop computer breach privacy liability (resulting from the loss or theft of an insured's laptop or removable storage device)
- Broad form privacy injury liability (covers information in printed form and in the insured's care, custody or control and covers the rogue employee for whose wrongful act the insured is legally responsible)
- Privacy regulatory proceedings (covers loss due to privacy regulatory proceedings alleging a violation of any security breach notice law; covers civil fines, sanctions or penalties imposed under a privacy regulation proceeding for a violation of a security breach notice law and coverage include the rogue employee for whose wrongful act the insured is legally responsible)
- Privacy event expense (reimbursement for reasonable expenses incurred by the insured to comply with a security breach notice law to respond to a privacy event (including setting up a call center and providing credit monitoring services))
- Network extortion expense (reimbursement for reasonable expenses incurred by the insured to respond to a network extortion or demand).



Health Insurance

Health insurance is heavily regulated at the state level. If you are looking to obtain new coverage, or replace your current policy, you should familiarize yourself with Louisiana's health insurance laws. Go to HealthCare.gov or contact Gilsbar for guidance.

See Appendix #4 Legal Malpractice Policy Highlights.

See Appendix #5 Network Security and Privacy Coverage Highlights (Cyber Insurance)

See Appendix #6 Workers' Compensation

See Appendix #7 Sample of Legal Malpractice Policy with Mandatory Louisiana

Endorsements



FILE FLOW AND ORGANIZATION

Document Management

File management is the creation of a system which results in the filing of every document of every client matter. Good file management helps to discharge your obligation of competent representation, to safeguard client confidences and with the easy retrieval of needed documents. It is important to note that proper file management continues through the life of the representation and for a time thereafter. After a matter concludes, the file should be stored, and eventually destroyed and/or electronically copied to make room for new files.

Effective file management depends on: a system of centralized storage for all files; whether that method is electronic, through a “cloud” service or through local storage on your server or computer; by paper; or both. If storing files electronically, provide for regular redundant backup of your files. If using a “cloud” provider for file management, inquire how documents are backed up on the company’s end. If storing files through a combination of electronic and paper, be clear which documents are to be stored electronically or by paper, and communicate this to staff. Whichever methods are chosen, basic file organization achieves the same purpose – the easy and efficient retrieval of client documents. Regardless of method, good categorization of the documents contained within a file is key to a good file management system.

Assuming you have conducted a conflict check (*see the LSBA’s online Practice Aid Guide: The Essentials of Law Office Management, Chapter 2 Conflict of Interest*), your filing system should start with a useful file naming convention. That filing naming convention will be the label for your files, whether paper or digital. You should create a filing naming convention that provides you information at a glance.

An example of a useful file naming convention might look as follows:

- 2017-4-3: Glitch Enterprises v. Jeanie Thompson

This convention would mean that this file was opened in 2017 for client #4 who is Jeanie Thompson, and it is the third matter that has been opened for this client.

Let's assume that file # 2017-4-3 is a personal injury matter. If digitizing file documents, you would open a folder entitled "2017-4-3." If organizing paper files, you would label an expandable folder sleeve "2017-4-3" for the entire matter. Then, whether electronic or paper, you would open subfiles and collect documents by function. The subfiles you might open for a personal injury matter might include:



- File Opening Form: Client contact information; file opening date; fee arrangement; opponent and opposing counsel contact information; court information; prescription dates
- Engagement Letter or Retention Agreement
- Correspondence/Email: You might consider a file naming convention that incorporates a date. For instance, instead of "Client Letter 1" and "Client Letter 2" to identify documents in your Correspondence subfolder, use "Client Letter 8-15-2016."
- Pleadings
- Discovery
- Depositions
- Medical Records
- Expert Opinions
- Research
- Your Notes
- Documents from Clients

You may have other headings depending on the file. Your subfile names may differ if your matter involved business litigation or a trusts and estate matter. The point is to create a filing system whereby you can retrieve documents quickly and efficiently.

Organize documents that you have on computers using the same categories that you would use if the file was a paper file. Create and adhere to a standard document naming and storage convention for your electronic file. Each file should have its own electronic file name with subfolders for the particular document categories. If you have many client matters that need organizing electronically, do one file at a time and chip away at the files, starting with the ones which are the most active.

If scanning documents, make sure that the scanned document finds its way to the correct subfolder for the client matter.

Good, secure electronic file management services in the cloud will offer ways to organize a file for easy document retrieval. Adapt them to meet your file needs.

Practice management systems manage all aspects of a matter in the cloud. Features will vary among the services. Typical services provided are:

- Case/matter database
- Calendaring
- Email management
- Time tracking and billing
- Accounting
- Form assembly

Examples of practice management systems are Clio, Cosmolex, MyCase, Rocket Matter and Time Matters.

Document management systems help firms organize just documents in the cloud and no other features. This might be the best option for the new lawyer on a budget. These systems offer:

- Structure for organizing documents
- Indexing and searching function
- Comparison tool for document reviews
- Microsoft integration
- Tags
- Email management
- OCR conversion of documents

Examples of document management systems include Worldox, iManage, NetDocuments and LegalWorks.

Appropriate technology will force you to become organized. Take the time to devise a good filing system and make sure that anyone who works with you complies with it.

File Retention:

Document retention is insusceptible of a simple answer without knowing about the particular records. But, there are guidelines for you to consider.

In 2006, the LSBA's rules of Professional Conduct Committee issued Public Opinion 06-RPCC-008, entitled Client File Retention. It begins with the admonition: "Unfortunately, there are no hard and fast rules regarding a lawyer's obligation to retain and store client files in which the work has been concluded and the file close." You should review this in full for guidance.

Code of Professional Rule 1.15(a) provides:

... Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Louisiana Civil Code article 3496 states:

An action by a client against an attorney for the return of papers delivered to him for purposes of a law suit is subject to a liberative prescription of three years with prescription commencing from the final judgment in the law suit or the termination of the attorney-client relationship.

A good rule of thumb is that document should be kept for five years, *unless* good reason exists for maintaining file; e.g., promissory notes, wills, trusts or similar documents. You should also note that should there be a disagreement about your fees, the best evidence will be your file contents. So keep that in mind too.

Review book #72, *The Lawyer's Guide to Records Management and Retention* (2d Ed) by George C. Cunningham (2014) from the LSBA Lending Library (www.lsba.org/PracticeManagement/LendingLibrary.aspx) at no charge. This publication speaks to the mechanics of storing documents and the establishment of a retention schedule.

For additional information, please review the LSBA's online *Practice Aid Guide: The Essentials of Law Office Management, Chapter 5 File Management*



CALENDARING

Time is relative to the position of the observer. When the new client calls, next month looks wide open and promises flow freely. When the promised deadline approaches, things look different. Calendar control methods help us make promises we can keep.

A calendar system needs six elements for safe and effective calendar control:

- **Calendar control person:** This person is responsible for daily maintenance and backups and for making sure that everyone properly uses the calendar. If you are the only person, calendar back up and redundant sources of your calendar are critical.
- **Events (or Appointments):** Your calendar system must account for date driven dates. Any dates, particularly court imposed deadlines, should be double checked for accuracy before you put away the source documents, such as a deposition notice or an order that sets a case for trial.
- **“To-Do” items (or Tasks):** This list may be date-driven but are usually not time-driven. Examples are the steps in writing a brief or preparing for trial. Also, add a to-do item as a reminder to follow up an important outstanding task, such as obtaining the clerk’s confirmation of filing a suit well before prescription runs.
- **Alerts (or Reminders):** Find a tool which provides warnings of an event or a “To-Do item” in the future. Set the alerts so that the reminder leaves with time enough to complete the upcoming task. For example, set alerts one-month ahead for brief due dates or three-month alerts for discovery deadline dates. Repetitive alerts for the same task are advisable, particularly for crucial court deadlines and tasks.
- **Maintenance:** Search for a tool that makes maintaining your calendar easy. You should devise or have a calendaring system that allows changing, removal, and modification of dates and events easy makes to easy.
- **Backups:** Internet calendar systems with reliable vendors will provide the back up you need. It is prudent notwithstanding to make hard copies of your calendar in the event that you are unable to access your electronic calendar. Have redundant ways to access your calendar.

Numerous electronic tools exist for calendar, task management and docketing. Search online for independent reviews by lawyers to assist in your choice. Visit product websites for these calendaring tools, and take advantage of free trial periods to find one which works best for you. The tools offer varying services. For some, a stand alone calendaring tool is sufficient, while for another, a tool which allows shared schedules is necessary. Here are some suggestions (the following list is not an exclusive list; there are numerous tools):

- Microsoft Outlook users and upgrade to Outlook Express
- One person offices might benefit from Kiko or Yahoo! Calendar
- Small offices which need to share schedules might consider WebEx Web Office, Visual Day Planner or Google Calendar
- Stand alone calendaring software can be found at CompuLaw and Deadlines on Demand
- Practice Management systems, such as Perfect Practice ProLaw and Time matters and others also offer calendaring functions.
- Apps such as Wunderlist and Todoist are useful tools also and can send lawyer email and text messages when tasks are due and before.
- Evernote and other syncing tools can add dates to your calendar through your smartphone.



TIP:

Email, voicemail or text yourself dates for entering onto calendar at a more convenient time if you are unable to access your calendar. You will have a written record of the date.

Electronic calendars work well, and are very efficient and reliable. Creating paper copies of your calendar should be a part of your system in the event that you are unable to access your calendar electronically.

What do I calendar?

You should calendar these items:

- Prescription dates
- Abandonment dates
- Court dates and deadlines
- Client imposed deadlines
- Periodic review of client files
- Schedule time to contact client
- Personal dates