

Digital Files in the Law Office

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(Portions of the following materials are taken from the author's "Technology: Probate" columns and his book "Wills, Trusts, and Technology: An Estate and Trust Lawyer's Guide to Automation.")

More and more law firms find that more and more of their files, documents, and records are electronic, and that managing the digital files is as important (perhaps more important) than managing the paper files.

These materials will address some of the general problems in dealing with digital files, describe some procedures for "closing" digital files once the paper file is closed, explain a popular format for digital files (Adobe PDF), and then describe one program that has become very good at managing digital files (Scansoft Paperport).

Digital Document Management

Goals and Benefits

Digital document management should allow lawyers and legal staff to find documents (and information within documents) much more quickly and easily than paper systems. Studies have shown that law firms typically spend hours each month looking for files and information in files, and putting the information (and documents) on computers can save those hours of searching. For example, if a client calls and asks about a filing deadline on a particular case, a lawyer or paralegal at a computer should be able to find the information within seconds, and without touching the physical file. Similarly, tax returns and other documents that have been filed can be kept on the computer as digital images and retrieved within a few seconds if a question should arise about deductions that were claimed or any other issue.

Document Management Systems

What is often described as "document management" started out as a way to deal with the short file names ("8-dot-3") imposed by the DOS operating system. Since then, document management has been expanded to include not just the files we create (word processing and spreadsheets), but also the documents and files we receive from others, and not just "documents" in the sense of things that will be (or have been) printed to paper, but also faxes, emails, voice mail, pictures, videos, and anything else that is in digital form.

For lawyers, document management systems should address some or all of the following issues.

Creating or Scanning

There should be a system for making sure that every document that comes into the firm is scanned and saved in digital form before it is placed in the paper file. Which raises two issues, one human and one electronic. The human issue is who is going to do the scanning and when, and the electronic issue is making sure that the digital images generated by the scanner can be effectively saved within the document management system (which is usually the simplest problem or not a problem at all).

For documents created within the firm, there is also the issue of the file format to be used for saving the finished document. Continuing to save documents in the original word processing format is easiest, but may result in problems later if the firm switches word processing systems or word processing upgrades make the original documents unreadable for all practical purposes. There is also the danger that a "final" document might be revised accidentally, meaning that the firm no longer has an accurate electronic copy of the paper document that was generated. And a word processing file will not show the signatures (or signatures or interlineations) on a document that was printed and signed. For all of those reasons, it may be better to reduce final documents to PDF using Adobe Acrobat, or to "print" the document into an electronic image using software such as Scansoft's Paperport, then add scanned images of any signature pages. (Both the PDF file format and the Paperport software are explained later in these materials.) In either case, the file will be in a format that is more likely to be readable in the future and less likely to be altered accidentally.

Saving

If special software is used for document management (i.e., not just the Windows operating system), then the software that creates the file must be able to communicate with the document management software to make sure that the file is properly named, indexed, and placed in the appropriate client folder. The document management system should be able to record some or all of the following information about the document:

- Dates (created or last modified)
- Creator (who was logged in when the document was typed)
- Author (who wrote it or who is taking responsibility for it)
- Client and matter
- Name or description
- Type of document (i.e., memo, letter, contract, or pleading)
- Contents, special features, or summary of the document
- Path (the disk drive, directory, and subdirectory in which the document was saved)

Document management software can also record the history of documents, showing who worked on them, modified them, or printed them, and when.

It is strongly recommended that firms save files by client and matter, and not by lawyer, and agree on ways to name or describe common types of documents, so that documents can be found easily if a lawyer, secretary, or paralegal is on vacation or otherwise unavailable.

Searching

Of course, once the document is saved, the document management software must have a way of searching for the document, finding it again, and retrieving it, based on some or all of the information that was used to save the document. So it should be possible to retrieve not only all documents saved for a particular client, but all correspondence for a particular client, or all document written by a particular lawyer for any client within a particular date range.

Most document management software includes the ability to perform full-text searches, either based on an index that is created of the documents as they are saved (which results in very fast searches but

uses up some disk space) or by searching "on the fly" within each document saved within the search range.

Some software will also perform optical character recognition (OCR) scans of document images automatically or at periodic intervals and then save and index the words found in the document image, so that it is possible to do full-text word searches on scanned documents and documents saved as digital images.

Viewing

The document management program should be able to open retrieved documents within the same program that created them (e.g., word processing files should be opened in word processing programs, spreadsheets should be opened in spreadsheet programs, and digital images should be opened in imaging programs) so that the file can be viewed, edited, and printed, but some document management programs also allow the user to view the contents of the document immediately, without actually opening the file. This can be useful if all that is needed is information from the document (such as a number from a tax return) and the document does not need to be edited or printed. (It is also useful to make sure that the document is the one the user really wants before actually opening the file, which typically takes more time for the computer, particularly if the application that created the file is not already running and must be launched before the file can be opened.)

Version Controls

When a document is edited, it is often useful to save the previous version along with the edited version, not only for historical purposes, but also so that the two documents can be "compared" to create a "blacklined" version for the client (or opposing counsel) that shows what words have been added and what words have been deleted. Some document management programs provide automatic versioning control, so that users can easily save multiple versions of the same document under the same name and same document information. Typically, only the most current version is visible in file listings or file searches, but prior versions can be retrieved with a few extra mouse clicks.

Revision Controls

Another problem with some law firms with networked electronic files is that two people might try to edit the same file at the same time, or that someone might accidentally (or deliberately) change a file that is the responsibility of another lawyer. Another growing problem arises when lawyers copy documents to laptops, edit the documents on the laptops, and then want to copy the document back into the firm's computers, because someone else might have edited the same document while the lawyer was editing the same document on the laptop computer. Some document management programs provide solutions to these problems by allowing users to impose restrictions on who can view or edit files, and by providing a "check out" system that prevents anyone else from using or viewing a file while another lawyer is working on it, whether the other lawyer is working on the firm's computers, on a laptop, or at a home or other remote computer.

Archiving

At some point, inactive files should be transferred out of the working directories of the law firm, and yet lawyers will still want access to those files, and will still want a record of the files within the document management system. Even if the firm's computer system has the storage capacity to hold the files, there is still the problem of "tripping over" inactive clients and matters while searching for current

files. A document management system should therefore allow for "archiving," keeping information about the files within the system but allowing the files themselves to be moved to a different directory, hard drive, CD, DVD, or tape until needed again.

This process is described in more detail in "Closing the Digital File," below.

Intranets and Extranets

Newer document management systems are moving beyond the walls of the office and allowing lawyers to access documents from outside the office, while at home, at a client's, or on the road, and are also allowing clients, co-counsel, and outside counsel to have access to selected documents within the firm's computers. (With proper passwords and other security measures, of course.) This is usually accomplished through software tools that either use the Internet itself or the protocols of the Internet. When that kind of system is internal to the law firm, it is sometimes known as a "intranet," and when it is accessible to people outside the firm, it is sometimes known as an "extranet."

Closing the Digital File

Once the wills and trusts have been signed, the estate or trust has been distributed, and the final bill has been paid, lawyers and their staffs will want to "close the file," transferring the paper file from the file cabinets in their offices to either on-site or off-site storage (or perhaps destroying some or all of the paper records). Regardless of how the paper file is handled, there should be a procedure for "closing" all electronic files as well, either deleting them or archiving those electronic files by removing them from the active computer directories and transferring them to an archival directory, tape, CD-R, DVD-R, or other separate storage medium.

This kind of "electronic file closing" has two benefits. One benefit is that it reduces the clutter in the firm's computers. It is both annoying and time-consuming to be looking for information for a current client and have to work around or through files and subdirectories of former clients. The other benefit is that all of the information about the completed matter will be collected in one spot and can be retrieved if it is ever needed. For an estate planning client, there may be a need for new wills or other documents in the future and it is often easier to work with the old word processing documents without having to create new documents from scratch. Similarly, it may be easier to update estate tax calculations starting from the old data than to create new calculations, especially if the calculations are in the form of spreadsheets. For estates or trusts that have terminated, questions sometimes arise about the income tax basis of assets or other details about the distributions and having the records available in electronic form can be easier and faster than looking through the paper files. And then there is the possibility of a malpractice claim, for which electronic records may be helpful.

One of the problems with electronic archives is that any document or data that is saved in a particular electronic format might become useless if the software that was used to create the document or record is revised by the vendor or no longer used by the firm. So, for example, a will or trust that was created in the word processing program you are now using may become completely unreadable in the upgraded version of the same word processing program released five years from now. Or billing information that you archive today may become useless when you switch to a different billing system in two years. So it may be desirable to save documents and records in relatively generic or stable formats, such as Adobe's "portable document format" (or "PDF") for documents, or a "field delimited" file format for databases.

Exactly how each firm should deal with different types of electronic records depends to a great extent on the kinds of programs used in the firm, but every firm (including solo practitioners) should have a “file closing” checklist to make sure that, when a matter is completed, both the paper file and all of the electronic records relating to that file can be collected and archived in a way that will make them accessible in the future or simply deleted. The exact procedures will depend on the different kinds of programs used by the firm, how those programs are used, and what kinds of records should be kept and for how long (which will depend on the nature of the case and the documents and records created by the firm), so some forethought and planning will be needed.

The following suggestions may be helpful.

Document Management Software

If the firm is using any “document management” programs, such as Worldox, iManage, or DocsOpen, then file closing should be much easier, but only if the firm is using the program to the fullest. This means using the software to organize as many different types of electronic documents as possible. Not just word processing files, but also spreadsheets, emails, and electronic images (such as faxes and scanned documents). Document management programs can also be configured to require the user to select a client or matter code for a document when it is saved, so that it is easier to locate all of the documents for a particular client regardless of where the documents are saved. Document management programs also simplify the file closing process by providing tools that make it easier and faster to move or archive the documents in a particular file or related to a particular client.

Client Directories

Regardless of whether or not the firm is using document management software, the electronic file closing process is a lot easier if all client documents are kept to the greatest extent possible in a separate directory (or “folder”) for each client or matter (if some clients have more than one separate paper file due to multiple matters for that client). This can require some work in configuring software (and training lawyers and secretaries), because most programs by default will save files in a directory that is separate from the directories of all other programs, but the effort to keep documents organized by client/matter will usually be worth it in the long run.

Client Documents

Although the “bread and butter” of most law firms will be the letters, memos, wills, trusts, and other documents created (and saved) as word processing files, there may be other electronic files, such as spreadsheets, PowerPoint presentations, data files for estate planning calculation software, etc., that contain information, calculations, communications, or presentations for the client.

Faxes, Scans, and Other Images

Many firms now receive “faxes” through the Internet or through fax servers that save an image of the fax as an electronic file instead of (or in addition to) printing the fax to paper. Many other firms will scan all incoming documents (whether papers received through the mail or faxes) so that there is an electronic record of all incoming correspondence.

There are similar advantages to keeping an electronic record of all outgoing correspondence as well, so that there are images on file of (for example) an outgoing letter and all of its enclosures, or tax returns or accountings as they were filed. As explained in an earlier column, the Adobe Acrobat program can

be used to create “portable document format” files out of both word processing documents and scanned documents, so that images of both incoming and outgoing documents can be saved in a stable and commonly used format. (See “PDF for Lawyers,” March/April 2003, page 51.)

Regardless of the format of the PDF or image files, they should all be saved to the client directory, and when the client file is closed, those fax, incoming correspondence, outgoing correspondence, tax returns, accounts, pleadings, and other document images should be archived along with all other electronic documents relating to that client.

Emails

If there has been email correspondence by or about a client, those emails should be saved with the client’s electronic file. There are several different ways to do this.

The email program itself should be able to save email messages to a separate file in the client directory. Saving a message in this way is usually desirable from a records point of view because the message will be saved in the same form it was received, i.e., as a text file with header information showing how and when the message arrived through the Internet. If there are questions about the message in the future, the message can be opened and viewed as an email message like before, or it can be opened and viewed as a text file (which may not be as readable if the email message used HTML or other formatting).

If the firm uses Adobe Acrobat for file archiving and other purposes, emails can be “printed” and saved as a PDF file. In that case, the firm will have an archive in the same form as a printed email message (i.e., with only some of the header information).

But rather than wait until a file is to be closed to archive old emails, it may be better to have a regular procedure for saving client emails as they are read and answered (or forwarded, printed, or otherwise dealt with). Or it may be possible to set up a “rule” or “filter” that will automatically save client emails to the appropriate directory as the emails are sent or received (assuming that emails for a particular client can be identified by the email addresses, subject line, or other information in the header), so that little or no effort is required by lawyers or staff.

Case Management Events

Generally speaking, case management programs such as Amicus Attorney or Time Matters work as a large database with the records for different clients mixed up together, so that there is no separate electronic file for any particular client. However, firms that use these programs should realize that there is valuable information in those programs such as notes of telephone conversations, dates and times of meetings, and descriptions of time spent, and that kind of event information should be archived with the client’s file if possible.

One fairly simple solution is to “print” a file chronology that includes information about telephone calls, time recorded, and other events recorded for a client in the case management system. The file chronology is usually generated as a word processing (or PDF) file so it can be saved in the client directory and archived along with the other client documents.

When a file is closed, the file (and client) should also be marked as “inactive” or “closed” in the case management system, so that their names will not appear when searching or selecting current files and clients. In most cases, the information is still in the case management database and still accessible, just not as visible. This means that it is still possible to find information about an estate planning client

if (for example), an inactive client should suddenly call and ask a question about something that was done several years before.

For clients that have died and estates that have been closed, so that it is fairly certain that there is no reason to ever consult the file again (at least, once the statute of limitations for malpractice has passed), it may be possible to either archive (i.e., export to a separate file) or purge (i.e., delete) all of the event information related to that client/matter.

Billing Records

Before closing a file, a final bill should be generated so that any unbillable time is written off and all fees collected are applied to the accounts receivable. Because bills often have useful information about what was done, when, and by whom, it might also be useful to “print” either each separate bill or a consolidated statement of all time that was spent to a PDF or other electronic file that can be saved with the other client documents. (Which may or may not be possible. Some billing programs keep only a limited number of bills available after they have been issued, while other programs allow you to recreate any number of past bills.)

What happens after that depends on the billing software used. Some programs have ways of “closing” a billing matter or making it inactive, so that it doesn’t show up on the current client list, while other programs will “purge” the historical records so that the details of the time records that have been billed is either archived or deleted.

PDF Files in the Law Firm

Sometime during the last few years, Adobe Acrobat and its “portable document format” (“PDF”) stopped being a solution in search of a problem and started appearing on the “must have” list of software for law firms. This column will explain the PDF format and why the Adobe Acrobat software can be so useful for law firms, with particular attention to the needs of estate and trust lawyers.

Overview of PDF

The principle of the “portable document format” developed by Adobe Systems Incorporated (www.adobe.com) is that users can read (and print) documents created by various kinds of software without owning a copy of that particular software. The Acrobat software accomplishes this by recording essential information about the fonts, lines, and graphics used to create the document, as well as the words and numbers themselves that appear in the document. The resulting file (usually using the extension “.pdf”) therefore contains all of the information needed to recreate the image of the document as it would be printed by the original software. And Adobe gives away the “reader” software that anyone can view the document, as well as print it.

It is important to understand that most PDF files are *not* pictures or images of documents like a TIF (or “TIFF,” for “tagged image file format”), PCX (“Paintbrush”), GIF (“graphic interchange format”), JPG (or “JPEG,” for “Joint Photographic Experts Group”), or BMP (Windows “bitmap”), but are more like a word processing file that contains the words and the information needed to display the words on the screen and the page. As a result, it is much smaller than an image file of the same document. Because the file contains the words themselves, and not images of the words, it is also possible to search for words and phrases, or cut and paste words or phrases into another document. (It is also possible to save an image file as a PDF file, and there will be some file compression, but the resulting PDF file will still be much bigger than a PDF file created directly from an application.)

Some applications (such as Corel WordPerfect) can save (or “print”) directly into a PDF file, without the user needing to purchase the Adobe Acrobat software. However, most law firms wishing to create and manipulate PDF files will find it most useful to purchase the Acrobat software.

There are also competing programs that provide the same functions but with different file formats, such as Corel’s Envoy. PDF has become the de facto standard, however, and so these materials will concentrate on the functionality and uses of PDF and Adobe Acrobat.

Law Firm Uses of PDF

The major uses of PDF files can be summarized as follows:

Fillable Forms.

Both the IRS and many other governmental agencies are now publishing tax and other kinds of forms in a “fillable” format that can be downloaded (or purchased on CD-ROM). This means that, by using the free “reader” software, users can type information directly into the form and print the completed form. (There is one warning, which is that it is necessary to have the latest version of the reader in order to be able to save the form with the typed-in information.) In addition to tax forms, courts and agencies have made available cover sheets for court filings, probate pleadings, articles of incorporation, limited partnership declarations, and many other types of applications and forms in a “fillable” format.

Even if the PDF form is not fillable, a law firm with a copy of Acrobat can edit the form and make it fillable, so that a downloaded form can be modified, distributed within the firm, and filled in and used much more easily.

Finally, many publishers of document assembly software (such as HotDocs) are adding links from their programs to fillable PDF forms. It is therefore possible to complete PDF forms using information already in an estate planning or estate administration document drafting system.

Electronic Exchanges

The original purpose of PDF was to allow users to exchange readable versions of documents produced by different programs, and that function has become more important to the legal profession as more and more lawyers communicate electronically with both clients and co-counsel (or opposing counsel). Even though most law firms (and most clients) use either Microsoft Word or Corel WordPerfect, there are still firms (and people) who use one but not the other, an older version, a different word processor, or have some other compatibility issue. Many times, it is easier to send out a PDF file for a client or co-counsel to review than it is to worry about (or even think about) compatibility issues. (And using PDF instead of word processing files also insures that clients or other lawyers can’t easily modify your documents without your knowledge.)

Electronic Filing

More and more courts (including probate courts) are experimenting with electronic filing of pleadings, and the PDF file format is one of the most popular (and generally accepted) formats for filing electronic pleadings. Most law firms will have to invest in at least one copy of Adobe Acrobat to comply with the emerging standards for electronic filing with courts.

Internet Publishing

There are advantages to sharing documents with the public at large as well as with clients and other lawyers, and PDF files may be superior to HTML web pages for some kinds of documents.

A firm seeking to attract estate administration clients might want to publish commonly used probate forms for the benefit of those who might want to try to probate a will and administer an estate themselves, without a lawyer. Providing this kind of simple, basic, information is unlikely to lose any clients (do you really think that someone who is going to download a probate form is going to want to pay your fees?), but can increase the popularity or (and cross-links to) the firm's website, which might attract people with problems that can't be solved with simple forms (which is where your firm comes in).

A firm might want to publicize a recent court victory by publishing the opinion of the court and the firm's briefs, and it may be easier (and more effective) to "print" them as PDF files than to convert the documents to HTML format.

There may also be other recent developments, such as tax rulings or regulations, or legislation, that a firm might want to publicize for the benefit of its clients and the profession generally, and it may be easier to copy the official PDF versions of those rulings, regulations, or acts than to create HTML files.

Archiving

Just like most lawyers have always liked to have accurate paper records of the documents that were mailed, signed, or filed, many lawyers now like to have accurate electronic records of the final versions of documents. There are several advantages to using PDF files for this kind of electronic file-keeping or archiving:

- A PDF file may be more stable and longer-lasting than a word processing file because the PDF file should still be readable and printable even after the firm has changed word processors, whether from one brand to another, or from an older version to a newer version.
- A client file might include documents from many different sources, include word processing, scans of incoming documents, faxes, emails, spreadsheets, tax returns, tax projections, and graphics programs. All of those different kinds of files can be saved as PDF files, so only one kind of reader will be necessary to review the file in the future, regardless of what kind of information is needed.
- Word processing files (and spreadsheet files) can be edited, and it is possible for the "file copy" of a word processing file to be altered accidentally, destroying the validity of the electronic document. A PDF makes a better "file copy" because it is more difficult to edit, and so less likely to be changed.
- PDF files are often smaller than the word processing files or graphic files that they replace (or supplement).

However, there is one problem with using PDFs as electronic "file copies" of client documents, which is that a document that is printed by a word processing program is almost never exactly the same as the PDF for the same document. Subtle differences in font, line, or page sizes almost inevitably result in different line endings, page endings, and pagination. Therefore, if a firm wishes to keep electronic file copies of wills, trusts, and other outgoing documents, the best practice is to create the PDF file *first*, then print the paper copies from the PDF file and not the word processing program.

Paperport

Although not usually considered to be a document management program, the Paperport program from Scansoft (www.scansoft.com) is very good at scanning documents and then managing both the scanned images and other kinds of documents.

The usefulness of Paperport as a system for managing various kinds of digital documents can be illustrated by explaining some of its features:

Desktop Organization

Paperport uses the “desktop” metaphor that has become so familiar, showing a miniature “thumbnail” of the appearance of each file, and allowing most files to be viewed and manipulated with a few mouse clicks. So:

- Different types of documents (letters, memos, tax returns, wills, etc.) can usually be recognized by sight alone, making it much easier to find documents by browsing through a folder. (Folders can also be resorted by name, date, size, or type.) Files can be moved from folder to folder by clicking and dragging.
- Documents can be OCR'd (i.e., scanned images converted to word processing files), faxed, or emailed just by clicking and dragging the file to the appropriate program icon. So, for example, a document will be converted to text and opened in Microsoft Word just by clicking on the file and dragging it to the Word icon at the toolbar at the bottom of the window.
- Files can also be opened, renamed, copied, or printed with a right-mouse click.
- There are ways of physically manipulating files on the desktop. So, for example, files can be combined simply by stacking them on the desktop. That means that the schedules and attachments for a tax return can be “printed” to the Paperport desktop and then assembled in the right order by dragging them together and stacking them in the correct order. Similarly, documents can be “unstacked” and then restacked in a different order.

PDF Compatibility

Paperport was originally developed with its own proprietary file format for images, but can now use the Adobe PDF file format as its “native” file format. The software therefore comes with the ability to “print” to PDF from any program, and to edit and manipulate PDF files. (See the explanations of the PDF file format at the end of these materials.)

File Viewing

The Paperport program can be used to view (and print) not only the image files it creates, but also a variety of word processing, spreadsheet, photographic, and other file formats. (Although it doesn't yet seem to understand emails.)

Searching Files

The program comes with its own search engine for finding files based on words in the file name, properties, or body, and can create an index of files for faster searching.

FormTyper

Scanned forms can be filled in easily using the built-in FormTyper, which creates fillable blanks with the scanned image. All that is necessary is to scan a form, click on the form on the desktop and drag it into the FormTyper icon. A special window will open up, and the program will automatically assign blanks for data entry wherever the form contains a blank line. Any unnecessary blanks can be deleted, and new blanks added manually. The user can then tab from blank to blank to fill in the form, then save and print the completed form. The same form can later be re-opened, and the data that was filled in can be easily edited.

Image Editing

Scanned images can be automatically or manually straightened, resized, cleaned up, and edited. The program can also be used to touch up and print color photographs, whether scanned or transferred from a digital camera.