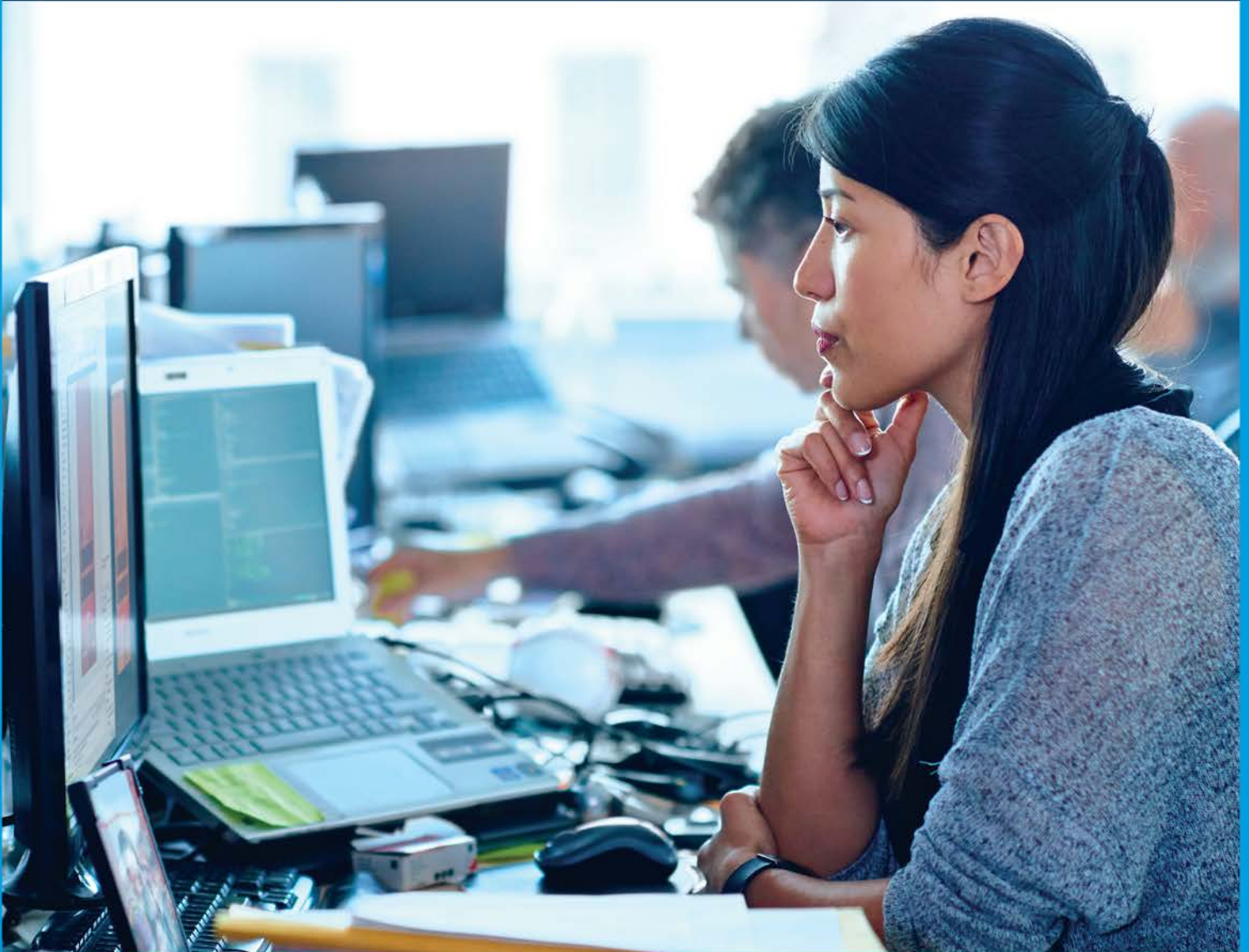


Ninth Edition

Law Office Technology

A Theory-Based Approach

Douglas Lusk • Cynthia Traina Donnes



Law Office Technology

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Douglas E. Lusk, J.D.

National Society for Legal Technology

Cynthia Traina Donnes, M.A.

Tulane University



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Law Office Technology: A Theory-Based Approach, Ninth Edition

Douglas E. Lusk, J.D. and Cynthia Traina Donnes, M.A.

SVP, Higher Education Product Management:
Erin Joyner

VP, Product Management, Learning Experiences:
Thais Alencar

Product Director: Jason Fremder

Product Manager: Abbie Schultheis

Vendor Content Manager:
Arul Joseph Raj, Lumina Datamatics, Inc.

Product Assistant: Nick Perez

Creative Studios Designer: Erin Griffin

Digital Delivery Quality Partner: Mark Hopkinson

IP Project Manager:
Anjali Kambli, Lumina Datamatics, Inc.

IP Analyst: Ashley Maynard

VP, Product Marketing: Jason Sakos

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Preface

Our lives are constantly intertwined with technology. We do everything using computers, and there is a software or computer application for each task in our life. This trend holds true for the practice of law. Everything is digital! We communicate with our clients, opposing counsel, and even the courts through email or online messages. We store and sort documents digitally. We keep track of our time and expenses, and pay our bills electronically. Every task we perform in the law office will involve technology, so it is crucial that you understand the role that technology will play in your career.

Law Office Technology: A Theory-Based Approach (Ninth Edition) is designed to give students an understanding of the theory and application of technology in a legal setting. This textbook has been reimaged by the authors to address the “why” and “when” a software program is used, and we removed all the prior editions’ content that addressed “how” a software program is used. This textbook is designed to be a companion guide to the National Society for Legal Technology (NSLT) Legal Technology Certificate (LegalTechSociety.org). The NSLT’s revolutionary method for teaching software using Web-based software simulations means gone are the days of students needing to download and install limited trial versions of the software. It also means no more textbook full of software screen shots and difficult-to-follow instructions taking up most of the pages in the book. The NSLT’s interactive tutorials teach the “how” of software functions in a way no textbook can. This textbook is a way to introduce the theory and application of when and why the software programs would be utilized in a law office. Together, the textbook and the NSLT lessons make the perfect pairing for teaching a law office technology course. It truly is the best of both worlds!

Although *Law Office Technology* and the NSLT Legal Technology Certificate program go nicely together, each is not exclusive, nor are they reliant on the other. You can use this book without utilizing the NSLT program and vice versa.

Organization of the Text

This text book consists of 14 chapters. The first chapter is an overview of why legal technology is an important part of your education and a look at how the COVID-19 pandemic and the work-from-home movement has affected the work cycle for legal professionals everywhere. We then dive into the heart of our book in the following 13 chapters, which cover every major category of legal technology. They cover videoconferencing software, word processing, data spreadsheets, document management, case management, document automation and collaboration, presentation software, eDiscovery, electronic court filing, litigation support, time-keeping and billing, and trial presentation. Each topic is presented in a clear and organized manner and discusses ethical issues that are presented by each type of software as well as how the software is used by legal professionals in a law firm. Inevitable change is the only consistency in this inconsistent area of law that is legal technology. While “how” a software functions is constantly changing with each new feature update, the “why” behind the software use remains steadily constant and unshaken. This constancy is the reason the authors have elected to shift the focus of this edition to strictly discuss the theory behind the technology.

Learning Features Included in This Edition

Chapter features include the following:

- Learning objectives open each chapter to focus the student’s attention on the main learning outcome for the chapter.
- NSLT tasks to accomplish are associated with each chapter to reinforce the reasons why each software is being studied and to encourage students forward as they work to complete their NSLT Legal Technology Certificate.

- Glossary terms are boldfaced in the body of the text, and definitions appear in the margin for easy review and reference. A comprehensive glossary appears at the end of the book.
- *Stop and Think* sections are included with each chapter to encourage readers to contemplate key concepts or new ideas as they continue reading the chapter.
- A section titled *Tech This Out!* is in each chapter. This section highlights new emerging technology or points out software features that are associated with each chapter's topic.
- Discussion questions at the end of each chapter allow students the opportunity to reflect on what was learned and encourage independent thinking about each topic.
- Additional resources are listed at the conclusion of each chapter to promote learning beyond the information included in the book.

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Additional instructor resources for this product are available online. Instructor assets include an Instructor's Manual, PowerPoint® slides, and a test bank powered by Cognero®. Sign up or sign in at www.cengage.com to search for and access this product and its online resources.

The Cengage Instructor Center is an all-in-one resource for class preparation, presentation, and testing. The instructor resources available for download include:

- **Instructor's Manual.** Provides activities and assessments for each chapter (including business cases with corresponding assessment activities) and their correlation to specific learning objectives, an outline, key terms with definitions, a chapter summary, and several ideas for engaging with students with discussion questions, ice breakers, case studies, and social learning activities that may be conducted in an on-ground, hybrid, or online modality.
- **Test Bank.** A comprehensive test bank, offered in Blackboard, Moodle, Desire2Learn, and Canvas formats, contains learning objective-specific true-false, multiple-choice, and essay questions for each chapter. Import the test bank into your LMS to edit and manage questions and to create tests.

- **PowerPoint Slides.** Presentations are closely tied to the Instructor's Manual, providing ample opportunities for generating classroom discussion and interaction. They offer ready-to-use, visual outlines of each chapter that may be easily customized for your lectures.
- **Transition Guide.** Highlights all of the changes in the text and in the digital offerings from the previous edition to this edition.

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Chapter 1



Law and Technology Uses in the Legal Profession

Chapter Objectives

- Identify basic hardware and software to function effectively and efficiently in the legal profession.
- Explain the concept of technology competency and its importance to the practice of law.
- Recognize and evaluate technology issues affecting the practice of law.

NSLT Tasks Associated with This Chapter

- Complete all learning modules and knowledge checks in the NSLT learning portal in order to complete various exercises assigned and ultimately obtain a Legal Technology certificate through NSLT.

Introduction

It is inescapable: Computers and technology go hand and hand with the practice of law. Before the 1980s, the most sophisticated technology in a law office was likely an electric typewriter and a collating copy machine. Today, technology advances have expanded to include artificial intelligence (AI). Now we can use automated computer systems to enter data into word documents and spreadsheets and to conduct research and discovery during litigation. Given the rapid changes in technology and its integration into the legal profession, it is imperative that lawyers, paralegals, and their legal staff be familiar not only with electronic and computer **hardware** but also with application **software** programs used in the legal profession.

Along with having a good handle on the hardware and software used in the legal profession, lawyers, paralegals, and their staff must appreciate the importance of legal technology competency. Technology has no value in a law practice if it incorporates a lot of sophisticated computer systems and software programs that no one can operate efficiently. In fact, the lack of knowledge could turn out to be

Hardware (Computer)

The physical components of a computer system.

Software

A list of instructions for the computer to follow that is stored in the computer's memory.

an ethical nightmare for the law practice. Lawyers, paralegals, and their staff must understand how to use technology so that client information is protected and ensure that general information provided to the public does not violate ethical rules with unauthorized practice of law.

Technology in Today's Law Office

Technology has changed the appearance of every law office. Thirty years ago, no one could imagine seeing a **computer** on individual office desks. A typewriter, yes, but not a computer. Today, not only is a desktop computer common, but everything on that computer is now synced to a smart device that is portable and accessible at any time, day or night. So, lawyers and paralegals entering today's legal profession should have a working knowledge of computer technology and legal software. **Information technology** knowledge is essential in developing an efficient and productive law practice as well as giving lawyers and paralegals a competitive edge in the job market.

Electronic Hardware Used in the Legal Profession

First, it is important to distinguish between "computers" and "technology." The computer receives, processes, stores, and transmits data, while technology is the activity associated with designing, constructing, operating, and programming the computer. When we think of a computer, we most often visualize a **desktop computer** with a monitor to see the data or maybe a smaller version known as a **laptop computer** that is portable and fits in your lap. However, your phone, your car's media source, your fitness tracker, and even your electronic watches are likely functioning as computers. In fact, with today's technology, these smart devices are more powerful than the computers NASA had when it sent Apollo 11 to the moon and back. More important, the new devices are automated so that we can communicate with them.

In recent years, technology has most notably changed to include **wireless networks** and mobile technology, with the concurrent ability of these devices to receive data passively. For example, most **smart devices** or smartphones are enabled with various geolocation devices that allow for tracking without any input by the user. This constant data processing allows the device to retain information so that it can automatically develop additional resources. One popular use of this passive data is map directions that will include arrival estimates based on traffic conditions because the device is tracking in real time. Another commonly used feature is receiving text messages with time and date information that can be immediately transferred to a calendar with reminders. This data is then synced across all devices to ensure that a meeting or an appointment is consistently reflected. Although this textbook is not intended to provide technical and scientific information on how a computer operates, it is important to briefly cover some basic computer concepts.

As mentioned earlier, a computer is an electronic device that receives, processes, stores, and transmits data or information. The system contains a **central processing unit (CPU)** that organizes and processes the information: It is the "brain" of the computer. It performs logical operations—in accordance with the **operating system**

Computer

An electronic device that receives, processes, outputs, and stores data or information.

Information Technology

The technology details involved with the development, maintenance, and use of computer systems, software, and network uses for processing and distributing data.

Desktop (Computer)

A device designed for regular use at a single or stationary location, often with all components that fit on top or near a desk due to its size or power requirements.

Laptop (Computer)

A portable, personal computer, also known as a notebook. It carries out the same functions as a desktop.

Wireless Network

A network where users can access the Internet without the use of fixed cables.

Smart Device

An electronic gadget that can connect, share, and interact with its user; despite its size, it typically has enormous computing power (gigabytes).

Central Processing Unit (CPU)

Also known as the microprocessor; the brains of the computer.

Operating System

Software used to control the computer and its peripheral equipment.

Exhibit 1–1 Storage capacities

Kilobyte (K)	=	One thousand bytes	(1,000)
Megabyte (MB)	=	One million bytes	(1,000,000)
Gigabyte (GB)	=	One billion bytes	(1,000,000,000)
Terabyte (TB)	=	One trillion bytes	(1,000,000,000,000)
Petabyte (PB)	=	One quadrillion bytes	(1,000,000,000,000,000)

software. It also coordinates and communicates with auxiliary storage devices and input, output, and communication devices.

At the heart of the CPU is the processor chip. One or more processor chips perform the actual arithmetic computations and logic functions. The speed of the processor and thus of the computer is determined by how many bits or bytes of information the chip can process at a time and how fast it acts to process the information. The more bits that can be processed in one cycle, the faster the computer will be. For example, a processor that processes 64 bits at a time is considerably faster than one that processes only 32 bits. The number of bytes of information a computer can hold is measured in kilobytes (KB), megabytes (MB), gigabytes (GB), terabytes (TB), or petabytes (PB) (see Exhibit 1–1).

The computer hardware also includes peripheral devices: additional equipment connected to a computer that performs special functions. For example, auxiliary storage devices or external hard drives are used to permanently store information. This should not be confused with **RAM (random access memory)**, which is where information is temporarily stored on the computer and erased when the computer is shut down or turned off. Removable drives, commonly referred to as flash drives or thumb drives, are used to immediately access the computer through the computer's USB port and copy large files from one system to another.

The computer also operates with input devices and communication devices. Input devices include the mouse, keyboards, printers, copiers and scanners, and **voice recognition** devices. Communication devices allow the computer to exchange information and include Wi-Fi, modems, **Voice Over Internet Protocol (VoIP)** to make telephone calls, and **videoconference** programs to conduct face-to-face meeting using the Internet.

In most law offices, the computer will be connected through a **server** to network with other office computers. This is an efficient method for interoffice **online collaboration**. However, some small offices or solo practice lawyers may just have a **workstation**. In some shared offices, the computer operates as a **thin client**, allowing multiple individuals to use the same desktop and the Internet to access their own software programs and work remotely.

Software Uses in the Legal Profession

Computer hardware is useless without computer software to make it operate. Computer software (i.e., a computer program) is a set of step-by-step instructions that direct a computer on how to function and perform tasks. Three basic types of software are available: operating system software, utility software, and application software.

RAM (Random Access Memory)

The area on the computer's workspace that stores the information and data for processing by the computer's CPU.

Voice Over Internet Protocol (VoIP)

A technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analogue) phone line.

Voice Recognition

The use of software to convert spoken words to text.

Videoconference

A virtual meeting using a network or the Internet to connect two or more people in different geographic locations and share data by electronic means.

Server

A computer or computer program that manages access to a centralized resource or service in a network.

Online Collaboration

Using the Internet to conduct meetings and share documents.

Workstation

A computer that runs a desktop operating system and connects to a network.

Thin Client

A computer terminal that resembles a desktop but has limited capabilities and relies on a network for resources to operate programs.

Drivers

A group of files that enable one or more hardware devices to communicate with the computer's operating system. Drivers allow the computer to send and receive data correctly to the hardware devices.

End-User License Agreement

A license agreement between the software creator and the software user.

Backup

A copy of a user's hard disk or other storage device that can be restored if the hard disk is damaged or lost. Backup utility programs allow users to schedule times to ensure reoccurring backups to protect the data.

Uninterruptible Power Supply (UPS)

A device that provides backup power when the electrical power fails or drops to an unacceptable voltage level.

Virus

A destructive program that harms data, hard drives, operating systems, and computer programs.

The operating system software instructs the computer hardware that ties the hardware and software together. Application software instructs the computer to perform specific functions or tasks, such as word processing, spreadsheet, or presentation software. Today, especially since the COVID-19 pandemic, everyone over the age of one year likely has skills to use a computer. It goes without saying that most lawyers and paralegals are sufficiently prepared to handle computers in a modern law office. The computer will also use **drivers**, which, as the name implies, will direct the computer to communicate with the operating system to correctly send and receive data.

It is important to be familiar with use rights of software programs. Nearly all software programs are subject to an **end-user license agreement**. The license agreement provides terms for the uses permitted by either an individual or a group of people along with any restrictions, such as making copies of the software program. Some license agreements are based on the number of computers on which the software can be loaded, whereas others are based on the number of people who can use the software. Copyright infringement should be a concern of any lawyer or law firm because the software limitation, if violated, could result in lawsuits.

Utility software helps manage either the hardware or the software aspects of a computer. Some utility programs come as part of the operating system; others are separate programs. Utility programs include compression software like WinZip, designed to reduce the data space to transmit large files quicker over the Internet. Other utility programs include **backup** programs to create hard drive copies, something that is invaluable when the computer system has crashed or files are corrupted. As a side note on backups, make sure to always have backup power. An **uninterruptible power supply (UPS)** is extremely important when there is a power failure or voltage drop that could also cause the computer to shut down unexpectedly, and damage data.

There are also utility programs designed to protect the computer from **viruses** or other "malware" caused by some unfamiliar application software programs or other unknown files downloaded from websites.

Application software will be discussed throughout this text with specifics related to technology utilized within the legal profession. It is worth noting that there are thousands of application software programs (applications, or apps) developed and continuing to be developed. In the legal profession, the most common application software programs include word processing, PDF creation, spreadsheets, office and/or case management, timekeeping, and billing programs. Additionally, many lawyers and law offices use litigation support programs for discovery and computer-assisted legal research along with presentation software for trials. And many application software programs are now entirely cloud based or, if not, contain both downloaded software and Web-based access as well as cloud storage.

There is also document management software that organizes, controls, distributes, and allows for extensive searching of electronic documents, mostly found in a networked environment. As the legal community moves to the "paperless office," each legal organization will most likely have to use a document management program to manage electronic files. Document management software also provides extensive searching capabilities and allows users to add a profile of every document, which can be easily searched on later.



Tech This Out!

Zoom Court Is Here to Stay!

Online meetings have been available for several years. At first, the technology made conducting meetings over the Internet both difficult and unsecure. There were a limited number of programs that could be used, and real-time interaction was “spotty” at best. In recent years, the technological advances have made online communications common. When the recent pandemic locked down the world, working remotely was not an option, it was a necessity. Programs like Zoom became common software used to connect to the outside world without being together. It was next best thing to being in person. Zoom was used not only for education but also throughout the court system. The success of conducting meetings remotely expanded to include having court hearings online. Now that restrictions are lifting and society is going back to in-person meetings, you would think that remote meetings over the Internet would diminish significantly, but that is not the case. The time and cost savings associated with meeting online versus travel expenses with meeting in person have found that it is beneficial to continue with online hearings and meetings. Does this present more advantage than disadvantage? So far, the jury is still out, but most people can see the benefits of both sides.

Trends in the Legal Profession

Legal technology is continuing to move forward, and technology trends are significantly changing how legal professionals will be performing their jobs in the future. Legal professionals have dramatically changed the ways they communicate with the use of laptops, tablets, netbook, and smartphones. These smaller, portable devices are extremely powerful and operate with the same functions as the office desktop computer. With constant access to the Internet, you can send and receive emails, maintain appointments, review and edit files, and synchronize with a user's desktop system. Small laptops or tablet computers can store millions of pages of documents electronically, fully access online legal databases such as Westlaw and Lexis on the go, and remotely access files and records nearly globally. This kind of mobile and immediate access to information will continue to change and drive the way legal professionals practice law.

Another trend is the expansion of electronic filing and discovery. The Federal Rules of Civil Procedure and many state court rules now require electronic discovery, and all federal courts require case filings electronically. This fact is forcing legal organizations to develop internal systems that can produce, store, search, and handle the production of electronic information in a variety of formats and across multiple computing platforms (desktops, servers, laptops, etc.). Electronic filing may sound easy, but there are procedures that must be followed that can make filing electronically somewhat daunting. Issues concerning standardization, control, security, and the establishment of hardware and software systems to support electronic filing have all had to be overcome. Nevertheless, many states, courts, federal agencies, and other regulatory bodies have successfully implemented electronic filing, and many others are currently entering the implementation stage.

Cloud computing has also changed the legal profession. Although cloud computing is relatively new, the concept is as old as the Internet. For example,

Exhibit 1–2 Example of cloud-based law office technology

Westlaw is a form of cloud computing. So is Web-based email, such as Google's Gmail. Cloud computing has affected law offices in several ways. One is the use of hosted software applications. These are software applications that are not downloaded onto the user's computer; rather, users access the software via the Internet. This allows each user to store information on the host computers, ensuring that the user always has the latest version of the software, and eliminates the need to download and install applications. Another use of the cloud is as a place to store documents and other data. This raises ethical issues: How secure is the data stored with a third party, and what is the law firm's liability for any breaches of confidentiality? There are more questions than answers as the law struggles to keep up with emerging technologies. See Exhibit 1–2.

Remote Collaboration

A process in which two or more parties work together on common documents and other resources regardless of their location.

With the expansion of online and **remote collaboration**, we have also seen technology take over the courtroom. Many courts have installed sophisticated electronic systems that can display evidence via monitors to everyone simultaneously. The master controls are located at the judge's bench so that he or she can control all monitors, sound systems, and cameras in the courtroom. In some cases, the courtroom technology can offer out-of-state witnesses with the ability to testify at a trial without being present in the courtroom. Since the recent pandemic, many courts conducted hearings via Zoom and in many cases are continuing this method.

Of course, we cannot ignore the trend surrounding the legal profession and social media. Many law firms and lawyers have created websites that include components that allow people to communicate via the Internet. Some lawyers use sites like Facebook, Twitter, and LinkedIn to market and network. Some lawyers include blogs and resources on their websites. For legal professionals, social media is the new frontier, but they do face challenges, both practically and ethically.

Technology Competency

Using technology in the legal profession has tremendous benefits, but with it comes tremendous responsibilities to understand it. Attorneys along with paralegals and their staff must be aware of communications via electronic sources that could violate ethical duties. This could result in disqualifications and/or malpractice issues with client representation.

Ethical Duty Regarding Technology

Attorneys have a duty to perform legal services in a competent manner. Computers, though incredibly helpful, can also be a vehicle for incompetence and legal malpractice. If a user fails to understand how a computer or a piece of software works, they will likely fail to anticipate or discover an error. Computer-related errors resulting in legal malpractice and ethical breaches can take place in a variety of ways. For example, ethical issues could result from legal research inadequately or less than thoroughly performed. Or, when new documents are prepared using previously saved word processing documents that contain old information from previous clients. This is not only embarrassing but may present an ethical issue concerning confidentiality.

Malpractice issues could arise from using improper computerized forms or templates which result in improperly filed case records. And, using automated software with arithmetic and logic formulas for calculating settlements and compensation is great. But, a lack of oversight in proofreading/review by the attorney or legal professionals could cause a client major financial losses, resulting in a malpractice claim against the attorney.

Attorneys are responsible for their work product. It does not matter whether it was prepared by or with the assistance of a computer: If the end product has errors in it or is incompetently prepared, the attorney is still ultimately responsible. If the error or incompetent work product causes harm to the client, the attorney may be subject to attorney discipline charges and a legal malpractice claim.

The exercises performed with the NSLT programs will help develop the skills needed to ensure that you can efficiently perform word processing, spreadsheet, and accounting/billing software programs. Additionally, you will become familiar with features to develop safeguards to avoid common errors and mistakes that often result in technology incompetence and disciplinary actions.

Education and Certification

Today, most paralegal programs have a least one technology course that is required in their curriculum, especially if it is an American Bar Association (ABA) approved program. Several programs also have advanced technology training courses as well as courses dedicated to specialty software, such as litigation and discovery software training. Some programs are dedicated to subject areas that include specialty software utilized, such as bankruptcy practice and family law practice courses. Additionally, several law schools have an elective course for learning about technology uses in the law practice. With the National Society for Legal Technology (NSLT), you can obtain a certificate in legal technology that is extremely valuable when interviewing in the job market.

Keep in mind that almost every software program on the market, especially the ones that are used in the legal profession, offer tutorials and training videos. These can be found on the software programs' websites as well as thousands of YouTube video creations. The amount of help resources associated with application software can be overwhelming, so it is recommended to start with the help features within the program. This is usually connected to the program's website but may also be linked to video produced outside their resources. In most cases, the built-in help features will provide instructions to perform the task and operate the software efficiently. If you cannot find the answer within, simply do an Internet search.



Stop and Think!

If It's Not Broke, Don't Fix It: When Should You Update Equipment?

The truth is that as software developers create advanced features, it takes more RAM and faster processors to run the programs correctly. Today's software has numerous basic features, along with tremendous graphics and animation. Hardware manufacturers are constantly expanding the capacity to keep up with software updates. Most software updates take place automatically, being connected through Internet downloads. This includes operating systems as well as specific programs being used. However, some software advances may not work with older hardware equipment. The question becomes, do you need the updated software, which would then require new computers? Several factors should be considered when upgrading, including cost. But make sure not to compromise needs, which in the long run will be very costly.

Technology Issues Affecting the Legal Profession

Outdated Hardware and Software

At one point, updating computer hardware and software was a complicated task. During the 1980s, a desktop had a motherboard with 256K of RAM, which meant the computer could store about 5,000 words of text. Software programs were operated from floppy disks or hard disks, and data was saved on additional disks. By the 1990s, computer hardware equipment was developed with larger internal drives. This allowed software programs to be loaded within the computer system and the data created to be saved to the system. This also meant that software and hardware updates occurred frequently. This trend has remained the same.

Some businesses have a two-year upgrade policy, but depending on the office budget and software needs, your computer system and software could last a little longer. So, the rule of thumb is to consider upgrades somewhere between 18 months and three years. Depending on the office size and needs, this can be a tremendous expense. Make sure to review software updates for **compatibility** with minimum and recommended hardware requirements. Do not compromise minimum needs when it relates to critically utilized software. For example, an older word processing program may function perfectly for the law office's needs, but the litigation software updates can't run on the older system. You do not want to compromise this important software update because the computer is outdated.

Compatibility

In technology, the ability of the computer hardware to effectively operate the application software and communicate with software updates.

Security Issues

Considering the sensitive nature of client information. Protecting confidential information is not only critical but also ethically required. If confidential information is accessed, attorney-client privilege may be compromised, which could result in ineffective representation and malpractice lawsuits. In most cases, your Internet service provider offers security features, including at minimum a **firewall**.

Firewall

A computer security system (hardware and software) designed to block unauthorized access.

Along with a good firewall, computers, as well as any mobile devices that sync with office equipment, should have anti-malware applications. An email attachment or download from websites may appear to be reputable but be disguised

to infiltrate your computer to access personal client information. Clients may send records and material that come from sources that contain viruses to infect or destroy your computer systems. Symantec and Norton are two popular companies that offer protection software that can be installed on computers and run in the background to detect security breaches.

Another concern to address with security is cloud storage. Many lawyers and law firms back up client data with cloud services, such as Microsoft Office. They may also use private cloud services and/or **outsource** their record or document management. If outside cloud storage services are being used, encryption methods between the office computers and the cloud are a must. The law firm may also consider additional protection methods, such as Boxcryptor or similar encryption applications.

Networking Issues

Networking the law office is essential for communication. It is important to have a reliable network that includes a high-speed connection for accessing courts and clients. With the recent explosion of videoconferencing use, slower network connections have been quickly recognized. We have all experienced the talk lag time with spotty connections or large-group meetings where the video would not transmit. These issues are more noticeable when communicating over wireless networks. Small law offices may find networking issues difficult to handle because they lack the resources to hire the proper Internet technology staff. Today, many paralegals as well as lawyers have some training with technology that will be helpful in addressing network issues.

For the most part, the law office will be working with **local area networks (LAN)** and **wide area networks (WAN)**. The networking within the office allows internal communication, while access outside the office will require routers and service providers to communicate outside the internal offices with other locations, even globally. As a rule, the wired network (Ethernet) tends to offer higher speeds, but today's wireless systems (Wi-Fi) are efficient and monitored regularly for security and updates, mostly by the Internet service provider. In some cases, it may be necessary to include dual-band Wi-Fi to provide the law office with both public and private networks. This will provide additional protection for the office's internal records while allowing clients to access the Internet from your office location. You may also consider a virtual private network (VPN) to create additional security with connecting remotely to the office computers. In any case, the network plan should include both a wired and a Wi-Fi setup with help support available continuously.

A network concern that many lawyers and paralegals face is working remotely on unsecure networks. Consider working at a coffee shop on an open network that has public access: a **hot spot**. Many security issues arise using these hot spot connections. It is important to make sure that data being worked on and transmitted remains secure, but remember that you have no guarantees and hackers are everywhere.

Outsourcing

A decision to have independent outside parties handle the business's workload and production responsibilities.

Local Area Network (LAN)

A computer network that interconnects computers within a limited area such as a residence, school, laboratory, university campus or office building.

Wide Area Network (WAN)

A network that covers a large geographic area and includes other networks; a "network of networks."

Hot Spot

A place where a wireless Internet connection is available.

Conclusion

Technology has become an integral part of the legal profession and in turn has created a more efficient method for handling the practice of law. Computers replaced typewriters, and in many cases, have replaced hard copies with electronic documents. This has resulted in federal courts becoming entirely electronic, and the trend is following in the state courts also. Along with the expanded use of computers, technology advances have grown to include text-to-talk transmissions and artificial intelligence (AI) to aid in legal research and litigation support.

To be successful and competitive in today's legal profession, lawyers, paralegals, and their staff must have a working knowledge of computer hardware and software. This includes understanding basic computer components and operating systems along with identifying specialty software programs used in the legal profession. As technology continues to evolve, it is important to stay up to date with advances to remain competitive in the legal market. Keeping up with technological changes often requires updating computer systems and programs. It is important to be familiar with program updates and the current hardware to ensure their compatibility to avoid operating problems with outdated hardware and software.

It is also important to keep up to date with security and networking issues. The trend in the legal profession is to work remotely and collaboratively across local and wide area networks using communication software. Client information and data must be protected. Using off-site cloud storage as well as transmitting data over wireless networks present major security risks. It is imperative that lawyers, paralegals, and their staff create safeguards that will ensure information and data on the computer are retrievable and secured from access by hackers and unauthorized users. Advanced knowledge with computer systems and technology will ensure a competitive edge in today's legal profession.

Key Terms

Backup	Information Technology	Software
Central Processing Unit (CPU)	Laptop (Computer)	Thin Client
Compatibility	Local Area Network (LAN)	Uninterruptible Power Supply (UPS)
Computer	Online Collaboration	Videoconference
Desktop (Computer)	Operating System	Virus
Drivers	Outsourcing	Voice Over Internet Protocol (VoIP)
End-User License Agreement	RAM (Random Access Memory)	Voice Recognition
Firewall	Remote Collaboration	Wide Area Network (WAN)
Hardware	Server	Wireless Network
Hot Spot	Smart Device	Workstation

Discussion Questions

1. What are the minimum computer hardware and software requirements for today's law office?
2. How has technology and technological competency impacted the legal profession? Make sure to provide examples.
3. Should all areas of technology be used in the legal profession (like voice recognition software and videoconferencing)? Explain why or why not. Make sure to provide examples.
4. What are technology issues that can affect the practice of law? Make sure to provide examples.

Additional Resources

Gabriel Teninbaum. " Law Firms Either Keep Up With Tech Or Get Left Behind, ABA Journal, Your Voice, The American Bar Association, February 14, 2019. Retrieved from: <http://www.abajournal.com/voice/article/time-for-a-hard-reset-to-the-legal-industrys-approach-to-innovation-technology>

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Chapter 2



Word Processing, Document Drafting, and Legal Formatting

Learning Objectives

- Explain the function and purpose of word processing.
- Recognize the common features used in document drafting.
- Identify and explain special features available in word processing software to efficiently prepare legal documents.
- Identify and explain security features to protect documents and confidential information.

NSLT Tasks Associated with This Chapter:

- Complete all the modules and knowledge checks in the Microsoft Word 2019 learning path in the NSLT's learning portal.

Understanding the Function and Purpose of Word Processing, Document Drafting, and Legal Formatting in the Law Office

Word processing software is used by lawyers to edit, manipulate, and revise text to create documents. Word processing involves the typing of correspondence, memorandums, pleadings, discovery, and briefs. It is perhaps the most widely used application software by lawyers and paralegals. Some examples of word processing programs used by lawyers and paralegals today are Microsoft Word and Corel WordPerfect, with Word being the program of choice today. The legal profession is built on the preparation of pleadings, letters, corporate documents, forms, and more.

Centralized and Decentralized Word Processing

Law firms use various approaches to word processing, including decentralized, centralized, or a combination of both. Law offices today typically have decentralized word processing, which relies heavily on the lawyers, paralegals, and secretaries to process documents at their desk. Medium-size to large law offices may have a combination of decentralized and centralized word processing. Centralized word processing is conducted in a specialized department, sometimes open 24 hours a day, for the purpose of typing documents. In this setting, the lawyers and paralegals will likely use a combination of both, performing some word processing tasks for themselves while sending overflow word processing projects to the centralized word processing department for completion. Due to the expense, small law offices will likely not have a centralized word processing department.

Features of Legal Document Formatting

Law offices use a variety of basic and advanced word processing features, including copying, pasting, deleting, inserting, formatting of text, printing, page numbers, footnotes, and **tables**, to name just a few. It is not uncommon for legal documents to number in the hundreds of pages, for footnotes to run across several pages in a document, or for a table to be extremely complex. Law offices also use more advanced word processing features, such as tables of authorities, macros, and merges.

One major waste of time is the need to repetitively retype the same information over and over for various documents. One of the fastest ways to get around repetitive typing of documents is to use macros, Revisions, and AutoText.

Table

A grid of cells arranged in rows and columns. A table is an office application feature used in Word to easily enter and present data.

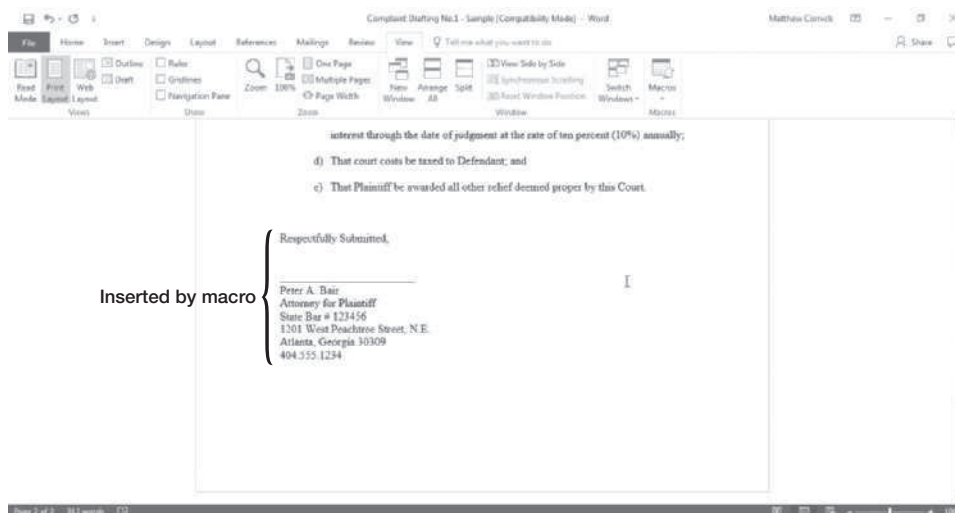
Macro (Macroinstruction)

A sequence of input instructions or keystrokes performed by a command.

Macros: **Macros** are recorded keystrokes that play back in a document. Macros can add standard blocks of text to letters, pleadings, and forms. They are easily generated by simply turning on the keystroke recorder in Word, going through the keystrokes, and saving and naming the macro. For example, it may be useful to create a standard signature block for letters or pleadings that, with a simple macro, will insert the signature block that you use frequently. See Exhibit 2–1.

Exhibit 2–1

Macro in Word



Source: Microsoft.

AutoText: **AutoText** enables users to reuse text and graphics by clicking a button or typing a few keystrokes. For example, if you wish to create an AutoText of the name and address for your client Samantha Stone, you simply record your keystrokes and name the AutoText “Stone address,” and each time you type “Stone address,” the client’s name and address will be inserted into your document as:

Samantha Stone
1111 E. Manhattan Blvd.
New York, New York 10001

Formatting: Formatting allows the user to format paragraphs and entire documents to a predefined standard. After completing the document, you then apply an AutoFormat tool to apply, for example, a pleading format, a memo format, or an appellate brief format or apply other formatting of your choice. A document is like a roll of paper towels, where the pages freely flow and are connected one to another. The page separations are visualized by a dotted line on the document. The formatting and the words will flow from page to page. To force the words to start on a new page, you would insert a **page break**. To stop this flow of formatting from one page to another, you would create a section break. A **section break** would be like ripping the roll of paper towels and separating each page into independent sections.

Track Changes: **Track Changes** allows the recipient of the document to determine where text has been added, deleted, or moved. Fortunately, it is no longer necessary or efficient to print a **hard-copy** a document on paper in order to review it. Instead, when using Track Changes, you and others are able to simultaneously make changes to your document. Changes by various authors can be tracked to show who made the requested changes. The changes will show as *suggestions* that the person controlling the document can choose to either approve or reject instead of having them immediately take effect. This is important when various counsel are attempting to draft a settlement agreement or a joint motion, for example. Documents routed to other counsel can be protected from permanent change until final decisions are made.

Tracking changes saves significant time in eliminating the need to redraft copies and rechecking the entire document each time a new draft is prepared and routed to counsel. The reviewer can also accept or reject changes one by one throughout the documents or all at once. See Exhibit 2–2.

In addition to Word’s widely used Track Changes, there is software called Compare by Jurisoft that also tracks changes in documents.

Templates: A **template** is a blueprint of formatting and language used in your routine documents. A template is document you custom-made and drafted to fit your firm’s specific requirements and needs. In contrast, a **boiler-plate** form utilizes generic wording and commonly used layouts. A template can contain the fonts, formatting, AutoText entries, AutoCorrect entries, styles, and macros for the specific document you are creating. It can also be linked to a database where the database automatically creates a document, such as a complaint, and fills in the templated formatting and language. In the legal field, boiler-plate language are generic in nature, and contain standard language commonly found in basic legal forms and documents.

Auto Text

Entries that are inserted automatically when you type a specific set of characters.

Page Break

A feature used to create a layout where a page ends, and a new page begins.

Section Break

A feature used to create layout or formatting changes in a portion of a document.

Track Changes

A feature that keeps a record of the modifications made to a document.

Hard-copy

a printed version on paper of data or documents that are also electronically held in a computer.

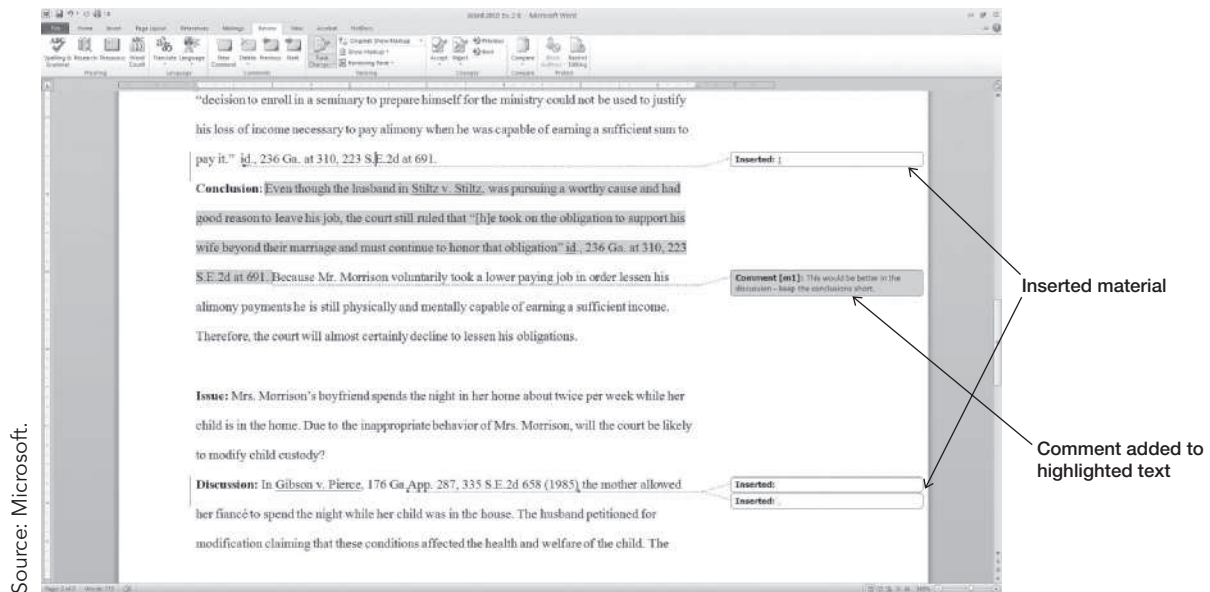
Template

A pre-designed document.

Boilerplate

A document using standard language and/or fill-in-the-blanks to create a form.

Exhibit 2–2 Track changes in Word



Mail Merge

A feature that helps create a batch of documents personalized for each recipient, such as a form letter or notice sent to multiple recipients. A data source, like a list, spreadsheet, or database, is associated with the document.

Mail Merge (or Data Merge): The **Mail Merge** features enable you to merge names and addresses as well as other data into any document of your choice. For example, you can set up a database to control a series of dates, times, and locations, and those data can be merged with a Notice of Deposition to produce notices to the parties involved. The Mail Merge feature can be used with client letters, complaints, answers, interrogatories, requests for production, and more.

Automatic Paragraph Numbering: Legal organizations extensively use a hierarchical numbering format, such as (A, B, C), (1, 2, 3), or (I, II, III), to mark paragraphs. When the Automatic Paragraph Numbering feature is used and a paragraph is deleted or one is added, all other paragraphs will be automatically renumbered. With the use of Automatic Paragraph Numbering, you are also able to indent paragraphs and position numbers and determine whether to continue a numbering sequence.

In addition to Microsoft Word's Automatic Paragraph Numbering, you may wish to use Payne Numbering Assistant (<https://new.thepaynegroup.com/numbering-assistant>). Payne enables you to insert Word paragraph numbering and tables of content; create, apply, and customize or delete client numbering schemes quickly; insert style separators, embedded headings, multiple number schemes, and complex features with just a few clicks; reset numbering and remove direct formatting to fix problematic documents with the click of a button; and work with existing paragraphs or start from scratch. If you find yourself often working on lengthy legal documents, Payne's Numbering Assistant is worth investigation.

Styles: Lengthy legal documents take significant time to put together, particularly when you also need to format the document. Fortunately, everything you do in Word has a style attached. Styles are formatting instructions that you can use repeatedly

throughout the document. If you want each heading in your document to be in a larger font, uppercase letters, centered, and bold, you simply store the formatting commands in a style and apply the style to each heading in your document.

A user should also tag or identify parts of a document, such as a title, body of text, heading, footnote, or hyperlink, in order to apply certain styles. Word offers preformatted, standard styles that are ready for your use.

Footnotes and Endnotes: **Footnotes** and **endnotes** are frequently used in legal briefs. A footnote is a numbered reference that appears in the body of the text referring to material printed at the bottom of a page or multiple pages. An endnote also has a numbered reference in the body of the text but appears only at the end of a document. Word allows a user to easily insert footnotes and endnotes into the document.

Hypertext Briefs: In litigation, courts now prefer attorneys to use hyperlinks inside their briefs. One example is the linking of the citations to the brief. The judge need only click on the hypertext to immediately read the referenced case. This is a significant time-saver.

It is now possible to create hypertext HTML documents, which permit you to choose a word, phrase, or symbol that is linked to other information. After clicking on the word or other symbol, you are immediately taken to the other information, such as a cited case. It is also possible to link exhibits, deposition pages, video, and any other text for the reader's view. Hyperlinks are useful in a variety of legal documents.

Tables: Tables are created in rows and columns to display information. Tables can include text, numbers, and formulas. Word's Table command allows you to build a table by selecting the numbers of columns and rows you wish to use. Once you have done that, the table is displayed. A table is also useful if text in your layout needs to be positioned side by side or float at specific locations on the page. Tables are often used by law offices to separate the caption on a pleading, with the parties on the left and the case number on the right.

Headers and Footers: **Headers** and **footers** are usually where you will find the page numbers, document name, disclaimers, confidentiality designations, and other useful information. The footer is the area in the bottom margin of your document. The header is the area in the top margin of your document. Most legal documents require the page number and document name to be printed in the footer on each page of the document. Word allows you to add headers and footers with built-in, ready-made layouts or add your own custom headers and footers.

Table of Contents: A **table of contents** provides organization to a lawyer's brief. The table allows readers to easily navigate from the brief to find the section or information they are looking for, much like the index to a book. The table of contents includes a list of all the headings and subheadings used in the brief and the page number on which each appears. In Word, you simply need to click in your document where you wish to insert your table of contents, choose References and Automatic Table of Contents from the Style list. The table of contents will be automatically generated for you, assuming that you have pre-marked your headings.

Footnotes

Material that is printed at the bottom of a page; marked in text by a numbered referent.

Endnotes

Notes at the end of a document acknowledging sources and providing additional references or information.

Header

The area consisting of the top margin of the page.

Footer

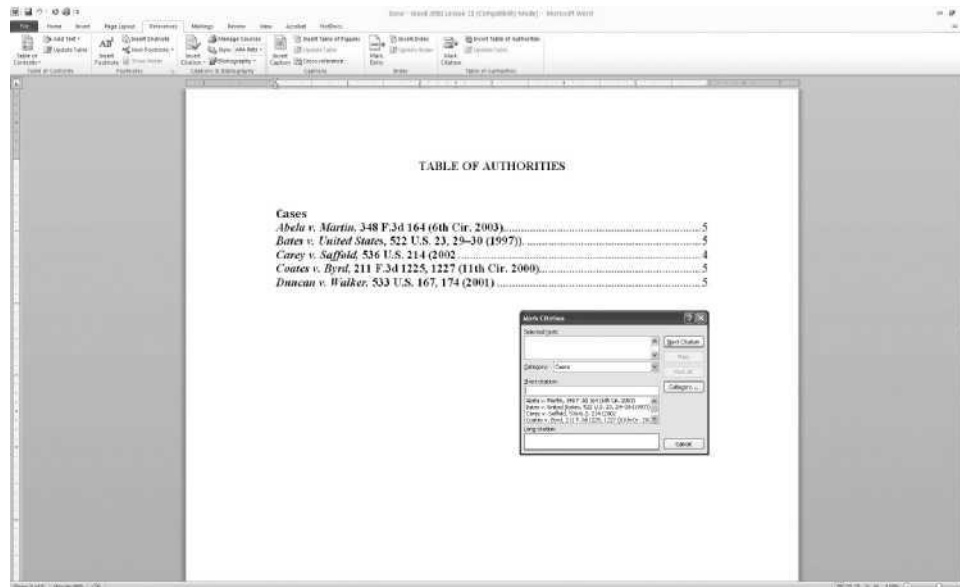
The area consisting of the bottom margin of the page.

Table of Contents

A snapshot of the headings and page numbers in a document that can be updated as changes are made.

Exhibit 2–3

Table of authorities in Word



Source: Microsoft.

Table of Authorities

Used in legal documents and pleadings to index cases, statutes, and legal authorities contained within the material.

Table of Authorities: A **table of authorities** frequently accompanies an attorney's brief. The table includes a list of all cases, statutes, and other authorities referenced in the document or brief. The table of authorities is similar to the table of contents except that it lists cases and other reference materials, along with the page numbers on which they appear in the document. Creating a table of authorities can be very time consuming when done manually. However, with Word, you simply need to mark each citation, statute, and other authority in the document, and Word is then able to quickly generate the table. If changes are later made to the document, you can simply and quickly regenerate the table to include any additional authorities. See Exhibit 2–3.

Reveal Formatting: Word's Reveal Formatting feature allows a user to see hidden formatting codes, such as spacing, boldfacing, margin changes, font sizes, and more. Because these codes are hidden from the user, once Reveal Formatting is turned on, it is easier to then delete, edit, or change the formatting of your document by simply deleting the command in the Reveal Formatting screen.

Comments: Lawyers often collaborate on a document using Word's features, such as Comments, Compare Documents, and Track Changes. Word's Comments feature allows a user to annotate and make notes or comments on a document without actually changing it. Once a comment is inserted, the reviewer can respond, and the original user can then make changes, delete the comment, and/or respond to the reviewer. Many times, documents are reviewed by multiple people, including attorneys, cocounsel, and clients. In this instance, Word assigns a different color to each reviewer's comments so that it is easy to determine who made the changes.

Ribbon

A Microsoft user interface that consists of tabs, each with specific groups of related commands, providing quick access to commonly used commands needed to complete tasks.

Collaboration: If you wish to share your document, select Share from Word's top **ribbon** toolbar, enter the email addresses of the recipients, and select Send. The recipients then receive a document link that can be opened in their browser or on their desktop. Sharing can be done with people either inside or outside your

firm. When the recipients open the link, they will be able to collaborate in real time, and you will be able to see who is working on the document along with the changes. To use the collaboration tools, you need to have an account with OneDrive (Microsoft's cloud-based storage tool).



Stop and Think!

Get on the Same Page

IT is typical for a law firm to have multiple people work on the same document. A paralegal might complete the first draft, then send it to the attorney to work on. The attorney then adds to the document and sends it to a partner to assist review. The partner adds to the document and sends it back. The cycles continue through many different people over and over again. Keeping track of what version is the most current draft of the document is crucial the efficiency and effectiveness of the office. This issue is exacerbated by employees working from home that rely solely upon email attachments to send the documents back and forth. Far too many opportunities for someone in the workflow to accidentally be working off of the wrong version of the document. It is crucial that a law firm find a way to manage the workflow of a document and ensure that everyone in the cycle know which file is the most current version of the document. What methods can a firm put in place to ensure everyone is working on the most current version of the document?

Comparing Documents: Word's Compare Documents feature enables you to compare two separate documents. Word is able to compare the two documents and produce a third document that shows the differences between the two versions. Law offices find the Compare Document feature to be useful in comparing joint motions and other pleadings, contracts, and agreements. Note that Word allows you to synchronize the documents so that they scroll side by side on your screen as you move through the documents.

Security Features: There are features in Microsoft Word that focus specifically on security and protection of the document. One of these ways, is **password protection**. Creating a password for the document is an easy way to ensure that only those with the password can access the document. When the restricted editing option is enabled, it will prevent readers from adding or deleting content, thus protecting the authenticity of your content. You can also enable formatting restrictions, which will allow the reader to edit the content but not alter the formatting of the document. Documents can also be set to **read only** mode, which prevents the user from making any alterations of any kind to the document and only allows them to view the document.

Version Control: It is important that each team member is working on the same version of a particular document; otherwise, valuable time is lost. This is where version control becomes important. One way this can be accomplished is through Microsoft's SharePoint tool (as Microsoft Word lacks a version control built-in tool). With SharePoint, the team create sites on which to share documents and information with colleagues and partners. With SharePoint's "enable versioning"

Password Protection

A security process that prevents access to information via computers and requires authorization codes for reveal.

Read Only

A setting that allows a file to be read or copied but not changed or saved.

tool, you can see the history or prior versions or restore a prior version of the document in order to see the changes made.

Proofreading

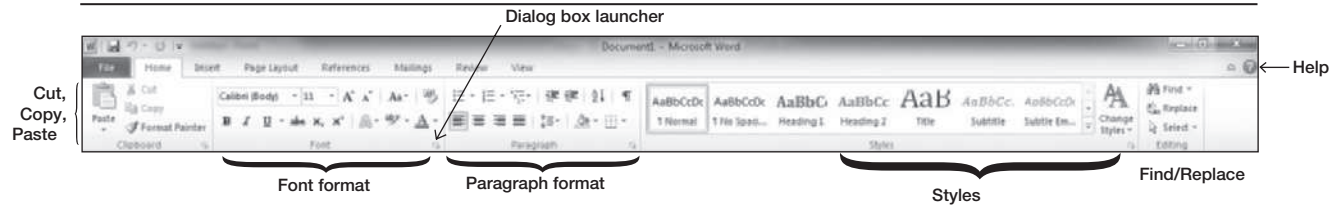
An editing feature in Word that checks spelling and grammar as a document is typed.

Spell-Check, Grammar Check, and Proofreading: Word enables you to run what is called spell and grammar checks on your documents. You should use these features on every document you prepare. However, you should never rely on spell and grammar checks alone. There are many typographical errors that a spell checker will not catch and that can be picked up only with careful proofreading. For example, a complaint should demand a jury *trial* and not a jury *trail*. Every document should be carefully proofread for errors.

According to the Writing Center of the University of Wisconsin, Madison (<https://writing.wisc.edu/handbook/grammarpunct/proofreading/>), “proofreading means examining your text carefully to find and correct typographical errors and mistakes in grammar, style, and spelling.” Here are some tips:

- Spotting mistakes requires concentration, which means getting rid of distractions and potential interruptions by switching off the cell phone, television, or radio and staying away from email.
- People read differently on-screen than on paper. Instead, work from a printout of your document instead of the computer screen.
- You may find it helpful to use a blank sheet of paper to cover up the lines below the one you are reading to prevent you from skipping ahead.
- Reading your document out loud is helpful in spotting run-on sentences. You will also hear other problems that you may not see when reading silently.
- Homonyms are words that share the same spelling or pronunciation but have different meanings. Switching *accept* with *except* or *complement* with *compliment* are errors that should be caught and corrected.
- People often mix the words *their* and *they're*, *its* and *it's*, *your* and *you're*, and so on. If there is something that can hurt the credibility of your text, it is a similar mistake.
- Stating that the value of an acquisition was \$10,000 instead of \$100,000 is definitely not the same thing. Check and double-check all numbers.
- Use the Search function of the computer to find mistakes you are likely to make. Search for “it” if you tend to confuse “its” and “it’s.” Search for opening parentheses or quote marks if you tend to leave out the closing parentheses or quote marks.
- End with a spelling/grammar check, keeping in mind that a spell-checker won’t catch mistakes such as “he” for “the” or the misuse of words such as “they’re,” “their,” and “there.”
- It is important to validate cited cases in a document before using them to make sure they are still good law. Also, it is important to validate fact citations to make sure the fact is valid. Avoid the chance that the validity of the cited case or fact is inaccurate by always checking before citing.
- The most common error in legal word processing is leaving old information in a newly generated document.

Word Quick Reference Guide: Learning these keyboard shortcuts can save you time in document editing. See Exhibit 2–4.

Exhibit 2–4 Word Quick Reference Guide**Word Quick Reference Guide****HOME RIBBON****NAVIGATION**

UP 1 SCREEN	[Page Up]		BEGINNING OF DOCUMENT	[CTRL]+[HOME]
DOWN 1 SCREEN	[Page Down]		END OF DOCUMENT	[CTRL]+[END]
BEGINNING OF A LINE	[Home]		Go To	[F5]
END OF A LINE	[End]			

KEYBOARD SHORTCUTS

COPY TEXT	[Ctrl]+[C]		UNDO A COMMAND	[Ctrl]+[Z]
PASTE TEXT	[Ctrl]+[V]		REDO / REPEAT	[Ctrl]+[Y]
CUT TEXT	[Ctrl]+[X]		PRINT A DOCUMENT	[Ctrl]+[P]
BOLD TEXT	[Ctrl]+[B]		SAVE A DOCUMENT	[Ctrl]+[S]
UNDERLINE TEXT	[Ctrl]+[U]		SELECT EVERYTHING	[Ctrl]+[A]
ITALICS TEXT	[Ctrl]+[I]		OPEN FILE	[Ctrl]+[O]
FIND / REPLACE	[Ctrl]+[F]		NEW FILE	[Ctrl]+[N]
Go To	[Ctrl]+[G]		REVEAL FORMATTING	[Shift]+[F1]
SPELL, GRAMMAR CHECK	[F7]		HIDE RIBBON	[Ctrl]+[F1]

WORD FEATURE**COMMAND STRUCTURE**

ATTACH DOCUMENT TO AN EMAIL	File Tab, Share, Email
CHANGE CASE OF TEXT	Home, Font, Change Case
CLEAR ALL FORMATTING OF TEXT	Home, Font, Clear Formatting
CLIP ART FROM INTERNET (INSERTING)	Insert, Illustrations, Online Pictures
CLIP ART / FILES / CHARTS, SHAPES (INSERTING)	Insert, Illustrations
COMPARE DOCUMENTS	Review, Compare
FIND / REPLACE	Home, Editing, Find / Replace
FONT CONTROL	Home, Font
FOOTNOTES / ENDNOTES	References, Footnotes, Insert Footnote
HEADER / FOOTER	Insert, Header & Footer, Header or Footer
INDENT TEXT	Home, Paragraph, Dialog Box Launcher
LINE SPACING CHANGES	Home, Paragraph, Line Spacing
MACROS	View, Macros
MAIL MERGE	Mailings, Start Mail Merge
MARGINS, PAPER ORIENTATION	Page Layout, Page Setup, Margins
SHADING	Home, Paragraph, Shading
STYLES	Home, Styles
TABLES (INSERTING)	Insert, Tables
TABS	Home, Paragraph Dialog Box Launcher, Indents and Spacing, Tabs
TRACK CHANGES	Review, Tracking, Track Changes
NEW DOCUMENT	File Tab, New
OPEN (EXISTING) DOCUMENT	File Tab, Open
SAVE A DOCUMENT	File Tab, Save
PRINT AND PRINT PREVIEW	File Tab, Print
TABLE OF AUTHORITIES	References, Table of Authorities

Source: Microsoft.



Tech this Out!

At the Touch of a Button

The LegalBoard (www.legalkeyboards.com) is a keyboard designed for legal professionals, which allows the user to access over 35 different legal-specific functions by switching the keyboard into legal mode. Once in legal mode, you can insert a section (§) or paragraph (§) symbol in Word or Outlook with a single key, add a comment or a footnote and toggle back to the text afterwards, insert common terms like “id.”, turn track changes on/off, and much more. The LegalBoard can be switched back to function as a standard keyboard with just the touch of a button.

Do you feel a legal specific keyboard would be worth the investment? Can the same thing be achieved by utilizing the special features that are contained in the software program already?

Merging and Document Assembly

Merging: Many letters, pleadings, and other documents used in law offices are essentially the same. The client names change from case to case, but the letters and documents produced are typically the same. Word’s Merge feature allows you to save these forms so that you can simply retrieve them and quickly fill in the blanks. For example, if you want to send out the same letter to a list of clients but you want each letter to be personalized, you can use Word’s Merge feature to quickly do this for you. The body of each letter remains the same, while the name, address of the client, and salutation change. This is accomplished by placing markers in the letter where the information is to be inserted and then creating a separate list of name/addresses/salutations and merging the two together.

There are also separate document assembly programs that work together with Word to create standardized templates, forms, correspondence, pleadings, contracts, and other legal documents in the fields of wills and trusts, domestic relations, corporate, immigration, criminal, and more. For example, if creating a template, users can respond to a series of questions and prompts to fill in the data. The document assembly program merges the template or form with the answers and builds a new document.

For firms that require a stand-alone document automation software, there are many software options, such as HotDocs, Documate, and Pathagoras. Small law practices that are not document intensive use document management features built into many *law practice management systems*, such as Clio, Smokeball, Rocket Matter, and MyCase. These programs will often be sufficient and more cost effective than using both law practice management software and document assembly software.

Helpful Add-Ins to Word: It is possible to install certain add-ins to improve your use of Word, such as the following:

Adobe Sign: Adobe Sign works inside of Word, allowing you to place an electronic (digital) signature on a document with a few keystrokes. After using Adobe Sign, you can send the document off from the app.

Grammarly: Microsoft Word has a built-in grammar/spell-checker, but it is by no means highly effective. Instead, with the use of software such as Grammarly, you can check grammar, punctuation, spelling, writing style, and tone.

Office Tab: Office Tab enables you to open, view, and edit multiple Word documents in a single window, like your browser. You can also open, save, and close all files at once and identify the files by marking each tab with a specific color. When working on multiple cases at once, Office Tab can be helpful.

Microsoft Word Meets Artificial Intelligence (AI)

Microsoft Word is now introducing **Artificial Intelligence (AI)** to its rich features. According to J. Brandon, “What This New A.I. Feature in Microsoft Word Teaches Us about Ourselves” (February 28, 2017),¹ “Word’s newest feature, called Editor (offered in Office 365), can now look for weak language, passive voice, word choice problems, and many other writing problems on the fly while offering suggestions along the way. When the Editor flags something, you can choose to select from a suggested alternative (if one is available), or research the suggestion more and see explanations in the Editor window.” Lawyers and paralegals will find Editor helpful in improving their legal writing. For more experienced lawyers and paralegals with extensive writing experience, it is a good reminder for creating exceptionally well-written documents. Look for more AI features in Word with each new version.

Artificial Intelligence (AI)

The capability of a machine or computer to imitate human behavior. Also known as machine learning.



Tech this Out!

Naturally Speaking

Dragon Naturally Speaking by Nuance Communications (www.nuance.com/dragon.html) is speech to text technology that allows users to dictate to the computer and it turns the dictation into typed text. This allows for hands-free working and legal professionals can now dictate their briefs and memos while commuting to work, or other multi-tasking moments. Many people can speak faster than they can type, and often have to slow down their thinking or repeat the phrase they just said, in order to get it typed out into the document. With Dragon Naturally Speaking, the brief can now be written at the speed you dictate it. Do you think there is a cause to be concerned about the program picking up background noises or conversations it should not be listening to?

¹<https://www.computerworld.com/article/3175788/what-this-new-ai-feature-in-microsoft-word-teaches-us-about-ourselves.html>.

Conclusion

When preparing legal documents, it is important for users to carefully review their work to ensure that metadata is deleted, old information is not left in documents, research is updated and current, and there are no typographical errors.

Key Terms

Artificial Intelligence (AI)
Auto Text
Boilerplate
Endnotes
Footer
Footnotes
Hard-copy

Header
Macro (Macroinstruction)
Mail Merge
Page Break
Password Protection
Proofreading
Read Only

Ribbon
Section Break
Table
Table of Authorities
Table of Contents
Template
Track Changes

Discussion Questions

1. Have word processing programs had an overall negative or positive impact on the legal profession? What has created the positive effects? In which way have they had negative effects?
2. What are some basic and special features of the Microsoft Word interface ribbon?
3. How are special features (including security features) used for creating common legal documents? Provide an example to support your viewpoint.
4. Why or why not is it important to adapt to software changes/updates as well as to work with different word processing applications (Microsoft Word, GoogleDocs, Corel WordPerfect, Pages, etc.) and know where to locate "Help" resources? Provide examples to support your viewpoint.

Additional Resources

For your ease of reference, here are several links to free Microsoft Custom Word Guides (basic, intermediate, and advanced). Cut and paste the links into your browser:

www.customguide.com/cheat-sheet/word-2019-basic-quick-reference.pdf

www.customguide.com/cheat-sheet/word-2019-intermediate-quick-reference.pdf

www.customguide.com/cheat-sheet/word-2019-advanced-quick-reference.pdf

Chapter 3



Email Communication in the Law Office

Learning Objectives

- Identify and explain how to manage Address Books and Contacts to send Outlook items, create messages, and maximize the efficiency of the message using Quick Parts.
- Identify and explain organizational tools in Outlook, including creating folders, using Quick Steps, sorting, searching, and correctly using Categories.
- Identify and explain the Calendar options in Outlook to create calendars and schedules, share calendars, and send calendar information.
- Identify and explain how to efficiently use Outlook to work with others by delegating access to files and sharing folders.

NSLT Tasks Associated with This Chapter:

- Complete all learning modules and knowledge checks in the NSLT learning portal under Outlook 2019 and submit your completion certificate and software review.

Understanding the Function and Purpose of Outlook

Microsoft Outlook is one of many popular programs used for communications and personal information management (or PIM) by lawyers.

Outlook's email (electronic mail) capabilities provide lawyers, clients, associates, paralegals, and secretaries with the ability to send electronic messages and computer files to each other and then to save them into electronic file cabinets for later retrieval.

Outlook's PIM provides lawyers with capabilities such as calendaring, billing and docket control (**docketing** is a legal-specific term referring to entering,

Docketing

Entries that track a list of court proceedings and hearings that must be attended.

organizing, tracking, and controlling appointments, deadlines, and due dates for a particular case), and more.

Outlook and Email Communication in the Law Office

Email

Messages distributed by electronic means from one computer user to one or more recipients via a network.

Facsimile (Fax)

Technology that transfers images electronically using telephone lines.

HTML (Hypertext Markup Language)

The predominant language used to create web pages.

Outlook is the application most users have open on their computers more than any other program in the suite. **Email** has replaced the **fax** as the preferred method for sending documents. As the use of email has increased, fax volume has declined. Email is convenient, effective, inexpensive, and accessible.

Email has the advantage of the written word, which can be edited before sending. It is easy to save messages for future reference or share them with colleagues and coworkers for collaboration.

Today, email can contain more than just plain text due to **HTML (hypertext markup language)** which allows for the addition of many kinds of rich content such as images, tables, charts and more.

Typically, a file folder is created in Outlook for each client by name. Inside the client's folder are additional folders that divide up the documents for ease in locating, such as the following:

- Correspondence
- Emails
- Pleadings
- Contracts
- Workgroup ideas or discussions
- Billing

Email Retention

Email boxes are not intended to be a place for storage of client information. In the past, lawyers would send a client a letter by mail and keep a copy for his or her file. Today, law firms have record management software to store electronic case information in a central networked environment that permits searching and other access. Many states require lawyers to not only keep a record of email communications but actually store a copy of the email and any attachments in the firm's record retention system.

Record retention policies are in place so that email (and case records), subject to the firm's record retention rules, are destroyed at the proper time.

Record retention rules help firms manage the amount of storage the email system must continually use, help the email system retain speed of operation, and reduce liability for retaining records that are not needed but may contain information harmful to the legal organization or its clients.

Email Encryption and Digital Signatures

Clients often demand email access to their lawyers and paralegals. However, the security of email has long been a concern for lawyers. Many legal organizations indicate that they send confidential or privileged communication or documents to clients via email. The issue of security is managed by (1) requiring clients to provide oral or written consent to having confidential information sent via email, (2) adding a

Record Retention Policies

General principles determining the length of time that records, in which data is stored, must be maintained in accordance with policies and law.

confidentiality statement at the end of an email message, (3) using encryption software, or (4) simply not using email at all to send confidential information.

Because email passes through many **network servers** before it reaches its destination, it is subject to being read by **system administrators**, hackers, and others. Email is more like a postcard than a sealed letter, so some legal organizations use encryption software to protect confidential email sent to others. **Encryption** software locks email so that it can be opened only by the intended recipient.

When the sender runs the email through the encryption program, an **encryption key** is created that scrambles the file. The sender then sends the encrypted email to the recipient and separately transmits the **decoding key**, which is usually a password or a data file. While running the same encryption program, the recipient uses the decoding key to unscramble the message.

Secure Client Portals

According to the American Bar Association (ABA) ethics opinion, Opinion 477 (ABA 14-006, May 4, 2017, Securing Communication of Protected Client Information) establishes a new standard for secure client communication. In an ABA article, lawyer Nicole Black states that “using unencrypted e-mail may be appropriate for routine or low sensitivity communications, due to cyber-threats.” However, “the proliferation of electronic communications devices changed the landscape [therefore] it is not always reasonable to rely on the use of unencrypted e-mail. One way around the problem with encrypted e-mails is to set up an encrypted online portal for each client. These are often built into other software programs such as legal practice management software. All communications occur within the portal, so once you log into the portal, your activities occurring therein, along with your communications, are encrypted from prying eyes.”

Black further states that “as with all encrypted communications, client portals require a buy in from your clients. However, in light of the new ABA e-mail guidelines, the time saved by avoiding the case-by-case communications analysis and the security gained by using client portals will likely outweigh any push back from clients. Also, the ABA opinion gives new teeth to requirement that communications be secure, making it easier for you to explain to clients why such measures are needed” (N. Black, “Check Out Some Secure Communications and Collaboration Tools for Lawyers,” *ABA Journal*, October 26, 2018).

Email Etiquette and Tips

The following tips will help you write your email messages to your intended readers in an effective manner:

- Be succinct and clear.
- Be sure to mention the topic in the subject area.
- Mark messages as urgent or ASAP only when absolutely necessary.
- Signature files included at the end of each email should reflect your name, firm name, address, phone number, fax number, and email address.
- Use spell-check and review your email for errors.
- Double-check the spelling of all names in the email.
- Be careful to treat email as business correspondence. These are formal documents requiring formal language (for example, do not use the letter “u” as a substitute for the word “you”).

Network Server

A powerful, central computer with special software and equipment that enable it to function as the primary computer in the network.

System Administrator

A person in charge of managing and maintaining computer systems within a business or institution.

Encryption

A process of encoding messages to keep them secret, so only “authorized” parties can read it.

Encryption Key

A binary input to the encryption algorithm—typically a long string of bits used to scramble the file or message to render it unreadable.

Decoding Key

A password or a data file that allows a message or document to be decrypted.

- Do not address a recipient by his or her first name unless you are sure it is appropriate to do so.
- Do not use ALL CAPS, which is the equivalent to shouting.
- Be careful not use “Reply All” unless you intended to do so.
- Check email twice daily if not more often as time permits.
- Do not use email to communicate with clients regarding sensitive information. For sensitive communications, it is better not to use email at all.
- Double-check the email address(es) of the intended recipient(s) before sending.
- When possible, limit each email to one specific topic (this is done for filing purposes).
- Password protect any word processing documents you are attaching.
- When attaching a Microsoft Word document, make sure to first scrub your document of any metadata.

Special Email Features of Outlook

- **Choose the Number of Lines in the Subject Area**

Outlook displays a preview of each message showing you a limited number of lines, including the sender, subject line, and one line from the body of the message. You can easily change the number of lines, giving yourself a better view of the topic involved.

- **Choose Which Folder Displays First on Outlook’s Launch**

If you have multiple Outlook email accounts, you can select which email account inbox you want displayed first when you open Outlook.

- **Create an Outlook Search Folder**

It is helpful to set up a virtual Search Folder for words or phrases commonly used. You can create your own Search Folder, or Outlook provides some templates for your use. For example, Outlook’s template Unread Mail Search Folder shows you your unread mail in one folder, even if they are physically located in different folders in your email account. The messages are not “moved” to the Search Folder. The original messages remain in their original folders.

- **Clean Up an Outlook Folder**

To clean your inbox and improve space, it is helpful to use Outlook’s Clean Up Folder command, which removes redundant messages in a thread or folder by sending them to the Deleted Folder by default.



Stop and Think!

Dangers of “Reply All”

Replying to all on an email is not always the wrong choice, but it should not be the default thing that you do. It is more than just for etiquette reasons that we do not reply all (especially for nonsubstantive messages like “thanks”) as it can possibly transmit confidential information to people who should not have it. On average, people receive three times more email than they send. The majority of which are messages they are carbon copied (CC’d) on. Also, consider all the junk email this causes when an autoreply “out of office” email from one of your addressees now goes out to all on the list. This can result in an avalanche of new messages in the inbox and leaves the reader to determine which messages are junk replies and which messages are important to read and reply. What features in Outlook can you employ to prevent this catastrophe from happening?

- **Flag Outgoing Emails**

You may wish to flag an outgoing email, which is useful when the response you need is time sensitive. Rather than count on the recipient to respond in a timely manner, attach a flag and reminder for yourself to follow up with the recipient.

- **Pin Emails to Your Inbox**

You pin an email by clicking the Pin icon at the top of a message to keep it at the top of your inbox. If there is a message you know you need to handle ASAP, pin it to the top of your inbox so that when you come back to your Inbox later, you won't lose track of it among all the other email that has trickled into your inbox.

- **Automate Repetitive Emails with Quick Parts**

If you find yourself responding repeatedly to often-asked questions, do not waste time by typing the text each time. Instead, use **Quick Parts** to save the text, and the next time you need to respond to the same question, just click on Quick Part and select the text you wish to use.

- **Drag and Drop Emails to Create a Calendar Entry**

When an email contains a deadline or appointment, rather than create a new calendar entry and copy that information to it, drag and drop the email onto your calendar. That action will turn the email directly into a calendar entry, and the contents of the email will appear in the notes field of the calendar entry.

- **Send an Email at a Future Date**

Outlook's Delayed Delivery feature allows you to write an email and send it at a later time. After writing an email or replying to one, you can click Delay Delivery and select the "Do Not Deliver Before" box to select a date and time for delivery. You might also use Delay Delivery to schedule an email reminder to clients the day before they are due in court. If you change your mind, you can easily turn the feature off.

- **Use of Quick Steps**

On the Home tab of Outlook is a Quick Steps section, which provides one-click access to common actions. You can also create your own Quick Steps, such as marking selected email messages as read and having them automatically moved to a certain folder.

- **Open Multiple Outlook Windows**

Multiple Outlook windows are helpful for emailing, scheduling, and tasks. Multiple windows allow you to see your email, calendar, and tasks at the same time instead of using the continually switching views.

- **Create and Manage Rules**

Outlook Rules are useful in allowing you to set specific events to occur automatically based certain actions. For example, you can create a rule that will move messages with specific words in the subject line in the body of the email, or from a specific person to a particular folder and mark the messages as read at the same time.

- **Change Your Outlook Account Name**

The default name for your Outlook account is your email address. If you have a number of Outlook email accounts, you can change the account name to a more descriptive one, such as a client's name or case name, making it faster to locate the account you are looking for.

- **Focused Inbox**

Outlook offers a Focused Inbox, which automatically sorts messages. The Focused Inbox is designed to keep email clutter at a minimum and to organize your inbox into two categories: "Focused and Other." Outlook then categorizes important messages into the Focused tab and the not-so-important messages, such as marketing messages, into the "Other" tab. Outlook prioritizes messages sent from people you have previously interacted with.

Quick Part

Building block you create from frequently used text, such as a name, address, or slogan, and then save so that you can easily access them.

- **Read Aloud**

Outlook's Read Aloud feature reads text from a message out loud. This feature enables better accessibility for users and allows you to multitask.

- **@Mentions**

The @Mentions feature in Outlook allows you to tag people into your messages. Simply type the "@" symbol, and a drop-down list of contact names will appear for you to choose from. All recipients mentioned will also receive a copy of the message.

- **Time Zone Scheduling**

Outlook has the ability to schedule meetings in multiple time zones. This is helpful for anyone who often has meetings with colleagues or clients in different time zones. This feature allows you to add a second and third time zone that you can label with a client name or branch name instead of the actual time zone name.

- **Add Groups**

Outlook allows you to create and collaborate in Office 365 Groups. You simply invite people to join a group by sharing a URL through email. Groups offer a platform where you can discuss and collaborate on various topics.

- **Create a Signature**

Outlook allows you to create a **digital signature** that will appear in the footer of every email you send. Signatures are fully customizable. You can control the font, color, size, and justification of your signature, and you can also create different kinds of signatures for different kinds of messages. You can decide whether you want to include a signature on replies and forwards, and you can include your law firm logo on each signature.

- **Payment Reminders**

The Outlook Payment Reminders feature retrieves details from bills you receive in email. Outlook shows you a summary of the bill and adds a calendar event by due date. You can also set up a reminder before the due date to ensure that you make payments on time.

- **Use Keyboard Shortcuts**

There are many keyboard shortcuts associated with Outlook. You can use Windows keyboard shortcuts for your most frequent Outlook actions, such as the following:

- *Compose new email:* Ctrl + N
- *Send:* Ctrl + Enter
- *Reply to sender:* Ctrl + R
- *Delete:* Ctrl + D
- *Flag for follow-up:* Ctrl + Shift + G
- *Switch to mail:* Ctrl + 1
- *Switch to calendar:* Ctrl + 2
- *Switch to contacts:* Ctrl + 3
- *Switch to Tasks:* Ctrl + 4
- *Make a new appointment:* Ctrl + Shift + A
- *Create a new contact:* Ctrl + Shift + C
- *Start a new message:* Ctrl + Shift + M
- *Send message:* Alt + S
- *Reply to a message:* Ctrl + R

Digital Signature

A means of electronically signing a document with data that cannot be forged.

Email Issues and Tips

- Do not assume that because an email was sent, it has been read. Email relies on computer technology that occasionally fails or is delayed.
- Be careful what you say in emails, as they can be forwarded to others.
- Remember that email is not necessarily confidential. Email security can be breached in many ways, such as leaving confidential email open on your computer screen for others to read, leaving your office for lunch or break while logged into your email program, printing email that others can find at a network printer, or using a password such as “password” or names of family members that would be easy for others to guess.
- **Phishing** is a user’s hope of gaining personal information from a user, such as a Social Security number, passwords, bank account information, and more. Phishers send fraudulent emails impersonating legitimate senders and may ask you to confirm or reenter personal or confidential information because attempts have been made to access your account. They may also pose as a government agency alerting you to security issues. Often, phishers create exact replicas of real websites that look legitimate; however, anyone who follows links in such an email will end up at a false site where your information may be stolen and used for fraudulent purposes.
- Email and Internet users should always be suspicious of any message that ask for personal information. It is important to simply delete the email without clicking on any of the associated links inside the email. If you have genuine concerns, go to the actual website and sign in to see if you have fraud alerts. If you do not, you can ignore the phishing email you received.
- **Spam** is another concern for law firms. Due to the proliferation of spam, many law firms have spam filters in place that limit the amount of spam that gets through to your inbox.

Phishing

An attack that sends an email or displays a Web announcement that falsely claims to be from a legitimate enterprise in an attempt to trick the user into surrendering private information.

Spam

Unsolicited email.



Tech this Out!

Are you a Slacker?

Slack is a communication application that allows businesses or law firms to communicate with their employees. Slack brings team communication and collaboration into one place. The application allows users to do group chats, chat rooms, or private messages. The instant method of communicating has become a popular method for reducing the number of emails being sent internally and eliminating inbox clutter. The user-interface is very sleek and easy to understand. The intuit design of the interface eliminates the need to train employees on how to use the system, thus speeding up its adoption in the workplace. One of Slack’s most prominent features was that private channels and direct messages could not be read by admins without either the open consent of the members or a message being sent to all the users saying that an export of messages had happened. This provides a sense of privacy and security to users that other products (especially email) do not offer. What ethical issues are raised by utilizing this type of platform for inter-office communication?

Outlook and Personal Information Management

Personal Information Management

A system and software program utilized to acquire, organize, maintain, retrieve, and use information.

Calendaring

The software that helps you manage email, calendars, and tasks.

Outlook is just one kind of **personal information management (PIM)** tool used by law offices today. Outlook is a generic PIM, but attorneys also have access to legal-specific PIMs, such as Amicus Attorney, Time Matters, Lotus Organizer, LawBase, and more. Each PIM varies, but all PIMs are generally designed to manage case or transaction information, **calendaring**, docketing, managing client information, tracking time and billing, email, and more.

Outlook consolidates many different tasks into one computer program, including calendaring; things to do; a contact database that tracks names and addresses of clients, counsel, and judges; note taking; email; and other tasks. Outlook often comes bundled with the Microsoft Office suite of products, which is one reason it is commonly used.

Outlook can sync with mobile devices so that paralegals and attorneys can manage their appointments, scheduling, and to-do lists wherever they are located. For example, if during a court hearing the judge gives the attorneys the next hearing date, the attorneys can easily enter the date into Outlook on their phones, eliminating the need to write down the date and enter it once back at the office.

Most PIMs now have network-based group scheduling capabilities that enable users to share information (attorney to paralegal or paralegal to attorney or among cocounsel) related to scheduling and case management.

The firm's PIM should have the ability to share information easily with the firm's word processing program in order to eliminate the reentering of common case data for pleadings (such as captions or case numbers), correspondence (such as an inside address), and other legal materials.

Scheduling of Appointments

Legal professionals will have a number of important appointments, such as client meetings, meetings with cocounsel, witness interviews, interoffice meetings, and more. See Exhibit 3-1.

Calendaring of Deadlines and Reminders

There are case deadlines throughout any particular case matter. For example, one of the most important deadlines is the statute of limitation, which sets a limit on the length of time a party has to file a lawsuit. Statutes of limitation force parties to bring their lawsuits in an efficient and timely manner. If the suit is not brought in a timely fashion, the defendant could be prejudiced by the loss of evidence, the inability to find witnesses, or the inability of witnesses to recall relevant information.

If an attorney allows a statute of limitation to expire without filing a case, he or she will likely be liable for legal malpractice. Each state's statutes of limitation vary depending on the particular matter, such as personal injury, breach of contract, and so on. It is vital to know and understand your particular state's statutes so that the deadline date can be added to your calendar. Many firms take out additional firm malpractice insurance to cover calendaring mistakes should they be sued for missing a deadline.

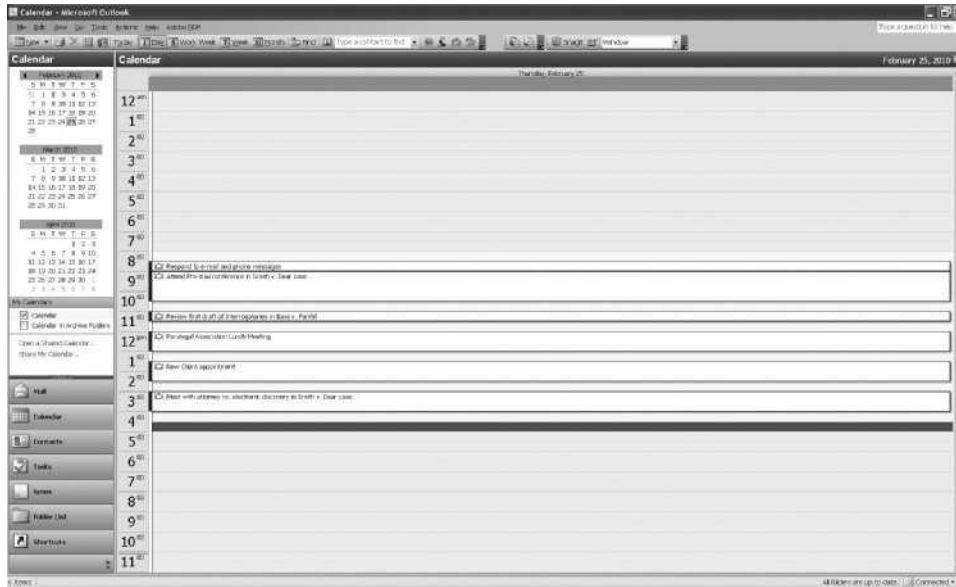


Exhibit 3–1

Calendaring/PIM program:
Microsoft Outlook

Source: Microsoft.

Many court dates and deadlines are set after a case has been filed. In many courts, the judge and the attorneys on both sides meet and schedule the deadlines for the case. These deadlines must be tracked carefully and followed. An attorney who does not adhere to the deadlines may cause the case to be dismissed by the court or may be sanctioned. Courts are generally reluctant to extend the case deadlines once they are established. Below is an example of some typical court deadlines:

- Motion to dismiss = February 1
- Response to motion to dismiss = April 10
- Reply to motion to dismiss = May 15
- Propound interrogatories = June 30
- Response to interrogatories = July 15
- Summary judgment motion = August 10
- Pretrial order = October 1

Because attorneys and paralegals are usually busy working on more than one case at a time, the firm must have a system for tracking upcoming deadlines. This is done not only by calendaring the deadlines but also by creating reminder notes or ticklers in the calendar in advance of the deadline so that the deadline is not inadvertently missed.

It is important to understand that you will be calendaring not only the deadlines that must be met by your attorney(s) but also the deadlines to be met by opposing counsel. For example, if opposing counsel files a motion to dismiss with the court, it is important that you calculate your attorney's deadline date to "respond" to the motion and defense counsel's deadline to "reply" to the motion. If opposing counsel fails to "reply" to your attorney's "response," your attorney can then move to have the motion dismissed if done by the due date. Each of these actions is controlled by a due date. Calendaring can seem challenging at first, but with some practice, you will become accustomed to accomplishing it.

Hearings, Court Due Dates, and Court Deadlines

Court dates and hearings are formal proceedings before the court. It is very important that these dates be carefully tracked, as judges have little tolerance for attorneys who fail to appear for a court hearing. In some instances, the attorney can be fined or disciplined for missing a court date.

A large case that is being litigated may require hundreds of entries into the docket system, such as the dates and deadlines for the following:

- Complaint
- Answer
- Motions
- Discovery
- Hearings
- Appeals
- Appellate briefs
- Statutes of limitation
- Trial court appearances
- Trial court briefs
- Judgment renewal

Client Billing

Outlook can simplify and automate the law firm's billing process when used in association with a professional billing system, such as Clio, My Case, TimeSolv, Smokeball, LawPay, Zola Suite, Abacus Law, and Practice Panther, to name just a few. These billing software programs can be integrated with Outlook in order to obtain the stored PIM information for each client, such as the client billing number, client address, phone number, email, invoices, time sheets, expense reporting and more. Different features are included in different software billing programs and may include the following:

- Outlook forms for time sheets and expense reports are easy to use, improving the accuracy of customer billing. These forms are linked to projects and tasks. Users can quickly and easily charge time against their assigned tasks or expenses against travel/lodging and other business expense categories. This simplifies reporting and minimizes the error potential inherent in paper or spreadsheet processes that require manual entry.
- Review and approval **workflows** are automated, allowing the law firm to generate invoices for customers in a timely and consistent manner.
- Reminders are automatically sent to ensure that employees report their billable hours consistently.
- Automated approval routing delivers time sheets and expense reports directly to designated approvers via Outlook.
- Audit trails and electronic signatures are stored for every time sheet, expense report, and invoice, creating a trail of responsibility for every item.
- Reports are provided on the firm's billable activities, simplifying the generation of invoices for managing partners of the firm.
- Invoices are stored in a client's folder, establishing an accessible invoice history.

Workflow

Includes the tasks, activities, and responsibilities required to execute each step in a business process.

Conclusion

When preparing legal documents, it is important for users to carefully review their work to ensure that metadata is deleted, old information is not left in documents, research is updated and current, and there are no typographical errors.

Key Terms

Calendaring
Decoding Key
Digital Signature
Docketing
Email
Encryption

Encryption Key
Facsimile (Fax)
HTML (Hypertext Markup Language)
Network Server
Personal Information Management
Phishing

Quick Part
Record Retention Policies
Spam
System Administrator
Workflow

Discussion Questions

1. What benefits are there to a firm using Microsoft Outlook? Provide an example to support your viewpoint.
2. Why should a firm use Outlook instead of just having a Gmail or Yahoo! account that they check in their browsers? Provide examples to support your viewpoint.
3. Take a moment and read the article "GMail Messages Read by Human Third Parties."¹ Identify the possible ethic violations if a law firm were to use Gmail.

Additional Resources

For your ease of reference, attached are two references to free Microsoft Custom Outlook Guides (basic and intermediate). Cut and paste the links into your browser:

www.customguide.com/cheat-sheet/outlook-2019-basic-quick-reference.pdf

www.customguide.com/cheat-sheet/outlook-2019-intermediate-quick-reference.pdf

¹<https://www.bbc.com/news/technology-44699263#:~:text=Google%20has%20confirmed%20that%20private%20emails%20sent%20and,given%20human%20staff%20permission%20to%20read%20their%20messages>.

Chapter 4



Ethics and Professionalism

Learning Objectives

- Identify and explain the difference between legal ethics and professionalism.
- Become familiar with the American Bar Association's *Model Rules of Professional Conduct* along with the professional rules promulgated by NALA and NFPA.
- Explain the unauthorized practice of law and the attorney's supervisory responsibilities with paralegals and other legal team members.
- Identify ethical issues associated with technology and Internet communications.

NSLT Tasks Associated with This Chapter:

- Complete all learning modules and knowledge checks in the NSLT learning portal under OneNote and submit your completion certificate and software review.

Introduction

Today's law practice is filled with technological advances that allow attorneys and paralegals to collaborate and to work remotely on various tasks. First, it became almost impossible to practice law without a computer. Then it became necessary to have email, which in turn required Internet service. Then, as courts began to encourage and in some cases to require electronic filings (federal courts), computers and the Internet were essential. After that, it was all but malpractice not to use computerized citation checking. Electronic data production, storage, and communication broke the floodgates long ago. Today, many lawyers own their domain names, publish a Web page, participate in online forums or chat rooms, use online referral services, and transmit and store all documents electronically. Handling technological issues would seem to be outside the scope of practicing law, but it is not.

Technological skills are not lawyering skills, and it is not uncommon to hire paralegals with technology training and/or technology staff to assist with integrating

technological advances within the law practice. Although the attorney must oversee the work to ensure that no ethical violations occur, delegation of this type of work would be appropriate. However, there are times when attorneys delegate duties that clearly must be performed by a licensed practitioner, and this can result in ethical violations. At other times, a lawyer's behavior may be not unethical but unprofessional. Lawyers are also responsible for every team member, including paralegals and legal assistants. Technology and Internet communications create additional ethical issues for the legal profession. This chapter provides a quick review of the code of professional conduct that attorneys must follow, focusing on rules that are commonly violated, including the unauthorized practice of law. Additionally, this chapter explores technology's impact on practicing law and client relations along with developing legal documents (templates) to protect client information.

Distinguishing Between Ethics and Professionalism

When evaluating ethics and professionalism in the law, these two concepts may at times overlap, but they are distinctly different. First, **ethics** or **legal ethics** addresses the standards of conduct (the duty) that lawyers shall maintain to ensure proper representation of their clients and the legal profession. This duty extends to the legal team, including paralegals, law clerks, and staff. The duties to protect the lawyer–client relationship, advocate for the client, and maintain professional conduct is set forth in rules that, if not followed, may result in disciplinary actions ranging from reprimands to disbarments. These rules, which set forth standards or guidelines, were promulgated by the *Model Rules of Professional Conduct* of the American Bar Association (ABA). All states have adopted these rules in some form, but it is each state, through its rules or laws, not the ABA, that will govern ethical violations by attorneys.

Professionalism or legal professionalism, on the other hand, focuses on how a lawyer should treat the profession and those involved with it. An immediate response about legal professionalism may be that the client should come first or even emphasize the importance of being an officer of the court. However, focusing on professionalism through the client does not consider the entire profession. Legal professionalism considers not only the lawyer's conduct but also the moral character and fitness of the lawyer within the legal profession. This will include everything from the lawyer's appearance to one's behavior, temperament, and demeanor.

Although legal ethics and professionalism are distinguishable, it is easy to see how the concepts overlap. If a lawyer acts unprofessionally, this will likely affect one's reputation and ability to grow a practice, but it does not mean that the lawyer has violated any ethical rules. In contrast, a lawyer who violates ethical rules will likely be seen as acting unprofessionally as well and be sanctioned for one's overall conduct.

Ethics or Legal Ethics

The minimum standards of conduct required by an attorney in practicing law.

Professionalism or Legal Professionalism

The proper morals and behavior one should exhibit in the representation of clients and the law profession.

Model Rules of Professional Conduct

The ABA was developed in the late 1800s with the goal of creating a national organization to unify the law profession. One of the most important purposes for the ABA was to create a set of rules and guidelines for lawyers to follow that would ensure the integrity of the profession and protect the public from any unscrupulous

Model Rules of Professional Conduct

The rules developed by the American Bar Association to govern the conduct of lawyers in practicing law.

Competence

Rule 1.1: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Confidentiality

Rule 1.6: A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, or the disclosure is impliedly authorized in order to carry out the representation or otherwise permitted by rules.

Conflict of Interest

In law, representing one client that will directly and/or adversely affect the client's interest, the attorney, or another third party that is not a client.

behavior on the part of lawyers. The ABA initially developed the *Canons of Ethics* in the early 1900s, which over time and modifications became the **Model Rules of Professional Conduct**. Although membership in the ABA is voluntary and the ABA's *Model Rules* are suggested guidelines, over time, all states have adopted the ABA's *Model Rules*, almost verbatim. In doing so, the states enforce the rules through laws to discipline lawyers for unethical and unprofessional behavior.

The rules in general address the lawyer's responsibility to the profession and the public. They are written in such a way that certain rules are imperative, using the terms "shall" and "shall not" to impose disciplinary actions against a lawyer. Other rules use the term "may," indicating permissive requirements that a lawyer should consider in order to maintain professionalism with the practice of law. The rules are categorized with a focus on the various relationships that may exist between the lawyer and the public whom they will represent or interact with while practicing law.

Rule 1.1: Competence

Among those relationships with a lawyer is with that with the client. The first section of the model rules deals with the lawyer–client relationship. A lawyer must be competent to properly represent a client. **Competence** does not mean that a lawyer is required to have special training or prior experience to handle a legal matter for clients, but it does require the lawyer obtain the necessary knowledge about the law of a particular area. This can be done through research and study. In 2012, the ABA added comments to Rule 1.1 (Competence) as well as Rule 1.6 (Confidentiality) to include that lawyers must be responsible for maintaining technological competency.

Technological competency covers a wide spectrum of work performed in a law practice. Consider, for example, maintaining paper documents. If your documents are on a computer (entirely electronic), will there be any requirement to keep backup hard copies? Communications are no longer just phone calls and letters mailed to clients and other parties. They include emails and attachments in electronic form. Attorneys and their staff, including paralegals, must ensure that client communications are confidential and preserve attorney–client privilege. Something as simple as an "auto-reply to all" by a staff member responding to emails could destroy privilege and expose confidential information, which in turn may lead to a malpractice claim against the attorney.

Rule 1.6: Confidentiality

Not only are electronic communications at issue, but access to online client files within the firm creates problems with **confidentiality** as well as potential conflicts. It is invaluable for the attorney and the staff to be familiar with methods to encrypt or protect access to avoid conflicts that could cause the attorney to be disqualified from client representation. Also, communications and information provided through a law firm's website have been the focus of much controversy, particularly in the area of unauthorized practice of law.

Rules 1.7–1.10: Conflict of Interest

Another area of ethical concern involves **conflicts of interest**. Although most if not all conflicts involve the lawyer's previous or ongoing client representations, paralegals may create conflicts since they often work with different law firms and/or lawyers. The new law firm or lawyer may find that after hiring the paralegal, that a

current or potential new client has litigation matters that the paralegal worked on at their previous employer. At this point, the new employer must determine if they can avoid a conflict by preventing the paralegal from working on the case file. If not, the new employer may be prevented from continued or future representation with the client. If the paralegal fails to disclose working on a case file that is adverse to a current or new client, the law firm or lawyer may be disqualified from representation.

This can be problematic with freelance paralegals who work with multiple attorneys from different firms at the same time. The ABA's *Model Rules* address this problem, recognizing that conflicts are not cut and dry (meaning that if you represent or did represent a client, you can never represent a client that is an adverse party to them). There are options that includes client waivers and conflict checks within the firm to avoid interactions by another lawyer or paralegal with previous client relationships. Conflict checks or law firm screening are critical to avoid ethical issues that result in disqualifying not only the lawyer but also, in some cases, the entire law firm. If conflicts arise, prompt notice and immediate removal of the attorney and/or paralegal from the case could avoid disqualification under ethical rules.

What is the Unauthorized Practice of Law?

There are many areas in which paralegals and nonlawyer staff members assist attorneys in their law practice. Some of those areas include conducting legal research or drafting pleading. Paralegals are trained through education and internships to properly research and prepare legal documents. However, there are times when lawyers delegate duties to nonlawyers or give legal advice outside a jurisdiction where they are not authorized to practice law. This would be considered the **unauthorized practice of law (UPL)**.

It is imperative that not only attorneys but also paralegals and other staff members understand what constitutes UPL. This means that members of the legal team, including paralegals, must be familiar with the rules so that they not only avoid performing tasks that would constitute UPL but also be able to support the attorney to ensure that client representation is properly handled and that **attorney–client privilege** is protected. UPL can occur not only when nonlawyers give legal advice but also when attorneys provide legal services in a jurisdiction where they have not been authorized to practice.

It is also the attorney's responsibility to supervise nonlawyer team members to ensure that their conduct would not result in UPL. This **nonlawyer assistance responsibility** is specifically set forth in the in the ABA's *Model Rules*. The ABA has noted that paralegals are responsible in their profession to be aware of what constitutes UPL and to make efforts to avoid it. There are times when workloads are overwhelming, and time crunches unavoidable. This is not the time to compromise ethics, but this is likely when such will occur. Having a paralegal run over to court to stand in for a hearing or to sign papers to file in court are examples of prohibited activities. Additionally, when clients are speaking with paralegals, they should not leave clients with the impression that they can advise or consult. This could happen when the lawyer has come to rely on an experienced paralegal. But this should never happen because it is UPL.

Unauthorized Practice of Law (UPL)

Rule 5.5: The practice of law by a person, typically a nonlawyer, not licensed or admitted to practice law in a given jurisdiction. This also applies to lawyers not admitted to practice in a particular jurisdiction as well as a disbarred or suspended lawyer.

Attorney–Client Privilege

A rule of evidence requiring that communications between a client and his or her attorney be kept confidential unless the client consents to disclosure.

Nonlawyer Assistant Responsibility

Rule 5.3: A requirement that lawyers having direct supervisory authority over nonlawyers make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

Are Law Firm Website Chats UPL?

Law firm websites are often set up for live chats. When that operator icon appears with the comment “Can we help?” that open dialogue might be language constituting UPL. It is important to create responses that distinguish gathering information for the attorney to meet with a potential client to avoid any miscommunication that would establish the attorney–client relationship. Something that may create an attorney–client relationship and cross the line with UPL would be directly answering questions. Even though some questions may not necessarily be legal in nature, the context of asking questions within a potential representation inquiry could blur those lines.

Another issue that arises with website information is publishing newsletters about legal issues or blogs on legal topics. Lawyers must think about how the Internet will access clients outside of their jurisdiction and be careful when they do answers questions with clients, especially using online portals and the type of material they publish. Professor Lancot’s 1999 *Duke Law Review* article discussed the attorney–client relationship and cyberspace, noting that much of the live chat activities between attorneys and clients would be sufficient to form an attorney–client relationship. He pointed out that relationships arise when an individual believes the attorney will provide legal services they are requesting and the attorney either establishes an intent or fails to clarify that they do not intend to represent the individual. If the individual reasonably believes the services will be provided and the attorney failed to clearly establish otherwise, then a client relationship would be established. In short, when is a client a client? When the client believes the attorney represents them. Attorneys should make sure that websites and online chats are designed to avoid attorney–client relationships or UPL where they are not authorized or admitted to practice law. Additionally, they provide disclaimers with published material that it does not contain legal advice.



Tech this Out!

Chatbots and the UPL

With the onset of artificial intelligence, up pops the “chatbot!” So what exactly is a chatbot? The advances in technology have now expanded to preprogrammed software that acts as a conversation piece to answer questions without a human involved. This should immediately raise a few eyebrows. First, how does this affect the legal profession and the unauthorized practice of law? Imagine that the computer is programmed with an if/then logic sequence (this should make lawyers shutter in fear recalling the LSAT). So, if a potential client accesses the law firm website and the automated chatbot” appears and then the potential client asks whether you handle bankruptcy cases” and the program responds with your programmed answer, “Yes,” that seems generic. But then the potential client asks about the rates and how soon they can file their case. What now? Chatbots can be developed to answer many rule-based conversations that may seem generic and nonbinding, but has an attorney–client relationship been established? Is UPL being performed? And who is responsible?

Ethical Issues Involving Technology and the Law

Every advance in technology that impacts the practice of law will also impact competency and diligence required by the attorney in representing clients. Lawyers today must be able to perform basic online research activities and perform routine email and attachment functions with security features. Given the ABA's modification of competency and confidential rules regarding technology, lawyers now have a duty to gain technology experience in their law practice. Since documentation, advertising, communications, and court filings all have some aspect of technology tied to them, improper handling of matters in any of these areas could lead to ethics issues.

Cloud-Based Storage Issues

Since nearly every piece of documentation can be or is in electronic form these days, electronic storage of this information is a concern. Considering client confidentiality and privilege concerns, third-party storage services must be carefully evaluated to ensure that they understand how to protect data to avoid any breach in access to private client information. Security issues (cybersecurity) present additional concerns for attorneys and the law practice. The federal courts have been addressing this issue since the early 2000s when bankruptcy courts transitioned to the electronic court filing system. By 2006, the entire federal court system had incorporated the electronic filing system. Many security features have been implemented to protect data, including PDF (Portable Document Format) files used for submitted pleadings online and password-protected access. When considering third-party cloud storage services, many factors should be reviewed, including protected access, potential breach issues, licensing and user agreements, and cost.

Artificial Intelligence Issues

Legal research and discovery are essential parts of any law practice. Over the past 25 years, electronic databases have been developed by case law textbook companies to have all reported cases that lawyers use for research online and accessible from the Internet. Law libraries still exist, but it has not gone unnoticed that the stacks and shelves are absent of people. Computer terminals are constantly occupied, not necessarily in the library but anywhere the Internet is accessible. The technological advances of key words and connectors, along with voice-prompted inquiries, can perform research requests expeditiously. Artificial intelligence has also assisted with the efficiency of discovery in litigation, particularly eDiscovery. Using these tools has many benefits but must be handled with tremendous care and oversight. Recently, research and discovery have been compromised by an overreliance of systems to provide responses without proper review and oversight. In the end, attorneys, as well as their staff, must check the information to ensure proper details to avoid costly mistakes and disciplinary complaints.

Cell Phone and Videoconferencing Communications

With the technological advances of videoconferencing (Zoom and the like), court hearings, some trials, and status conferencing are routinely conducted remotely. Imagine that the office is shut down (not hard to do these days) and everyone is working remotely. The client has a few questions to ask the attorney, but the call is forwarded to a paralegal, maybe through FaceTime or Zoom. The paralegal tries