THE VIEW
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Seven Simple Rules for Managing Paper Files and Digital Information

As more firms adopt document scanning procedures for their filing system, it's time for lawyers to rethink a few things about file organization.

By Todd C. Scott
VP of Risk Management

Chances are you've had to modify your client filing system in the past few years as you take on the challenges of organizing both paper and electronic information vital to the client's file. For some lawyers, the change was sudden, following the adoption of new procedures for scanning documents. But for others, the change may have come gradually, when trying to tackle problems like how to get e-mails in a file for example.

Improving the way your files are created and managed is a necessary undertaking if you plan to keep up with changing times. As more information flows into the firm in both paper and electronic formats, finding ways to keep all the information together in the file is vital so it is always available to whoever is working on the file.

But if your filing system is one that was created by default, your system for organizing client files might have creeped to where it has become a medley of client information in both paper and electronic files. You want to avoid the information mish-mash of saving some client documents in the file, some documents as scanned files, and having some electronic files in the computer that never made it to paper at all. The new filing system is no system at all if it doesn't pull together all the client information in one place for the purposes of streamlining your workflow and preserving the entire legal matter.

Although client information now comes to the firm in many forms, the basic principles of file maintenance haven't changed. High on the list of file fundamentals:

- All information relating to the client matter is added to one, centrally stored client file — whether the file is paper or electronic.
- The file is organized in defined sections that are standard to all the files within the firm.
- The file is assigned a number or naming code that can always be tracked or traced by the firm and saved according to a pre-defined file retention policy established by the firm.
- Determining the lifespan of the file, and particularly the decision to destroy old files, is a job that always belongs to the attorney and should never be delegated to staff.

Assuming your filing system was already in good shape before the introduction of electronic information such as e-mails, text messages, and PDF attachments, what modifications should you make to the system to avoid a firm-wide information disconnect? The following is a list of seven suggestions you may want to consider for organizing electronic client information within a traditional file system.

1. **Your filing system is not paper or paperless. It's both, and that's okay.**

   In truth, very few law firms, even those with the capacity to scan a large quantity of documents daily, are paperless in the sense that they work exclusively with electronic files. Regardless of the firm's ability to scan paper, most lawyers maintain a paper file during the duration of the legal matter, while saving some or all of the file information concurrently in electronic format. The purpose of the mixed-file system is to have a paper file that serves as a storage home for documents while at the same time, making digital copies of everything in anticipation of the eventual destruction of the file soon after the conclusion of the legal matter. It may help for lawyers to start thinking of the paper file as a temporary file that is handy to use while the legal matter is ongoing, while the real, long-term file is the one that is being accumulated digitally for eventual long-term storage.

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2. All incoming documents get scanned the day they arrive at the firm.

You can be sure that all your documents have successfully been converted to PDF format if the scanning is done as soon as the document arrives at the firm. Generally, this means that the scanning function is performed daily when the mail is opened and sorted. You can find a device that scans the mail quickly and efficiently at any computer electronics store (the best being those from manufacturers making document printers such as Hewlett-Packard, Cannon, Epson, and Ricoh). A good scanner may only be as far away from you as the distance to your photocopier since many copiers now have features that will allow them to scan documents as quickly as they copy them. Fujitsu scanners are popular devices for firms since they scan documents quickly and can come bundled with Adobe Acrobat software for PDF creation (a $200 value).

3. Time for the firm to have good document naming procedures.

File naming conventions and organized computer directories are more important than ever for a firm that scans and saves document images. Because the system often requires that you save multiple copies of certain documents (in both Word and PDF format), you need a file naming system that will allow you to save documents in a way that the document can be easily identified in a list. A typical firm set-up is to organize file directories in a common database by client name or file number and incorporate into the document name the date and type of document that was created. So files for the fictional client Bruce Wayne might be named as:

4. Your document is finalized when it becomes a PDF. The Word file is just a working copy.

It is important to remember that not only are incoming documents converted to PDF format, but all documents produced by the firm should be converted to PDF also. Saving all files to the PDF is important because it is a stable, secure format that can be stored and delivered electronically with little chance that it will be corrupted or lose its file formatting. That means the document will look the same every time it is opened up using any software tool that can read the widely-popular PDF format. Also, since it is a legal document, it is important to use a file format where someone may have a chance of opening up and reading the document on a computer 50 years from now. Because PDFs can be created and read using low cost and abundant tools with open source coding, the odds of that happening increase greatly.

5. Backing up your data is more important than ever.

By keeping digital copies of all documents you provide yourself with more options for getting rid of unnecessary paper, while significantly reducing the chances of a long-term, firm shut down in the wake of a paper file nightmare (a flood or fire for example). The tradeoff for the extra savings and sense of security is a greatly enhanced responsibility for ensuring that the digital files are backed up safely and often. Backing up your computer data, whether by disk, tape, or secure cloud-based storage, has always been the hallmark of a well-organized law office computer network. For the firm whose primary method of preserving files long-term is scanning and saving documents electronically, making sure the firm's data is backed up and safely secured should be a top-level concern. To put it bluntly, the firm's survival depends on how safely the data is backed up and stored. Redundancy is the key to good backup systems and the backed-up data should always be up-to-date and offsite.

6. Don't sweat the small stuff. E-mails, text files, hand written notes all stay with the file.

Documents like e-mails and text messages are an important part of the file so they should be printed and saved with the file if the firm only uses a paper system. For firms saving files digitally, you can save the e-mails in file directories just like Word and PDF documents. Text messages can be saved using an SMS backup application on your smart phone that will forward the messages to an e-mail account. Handwritten notes leftover at the conclusion of a legal matter can be scanned and saved as one PDF file.

7. Save the paper file until the matter is closed, then consider shredding it.

If you have a complete digital copy of the file, and the paper file was merely a document holder during the life of the legal matter, how long should you keep the paper file? The key phrase here is, "You have a complete digital copy of the file." If that's the case, and your backup systems are working well, then it should be okay to destroy the paper file (excluding all original documents) in a secure, confidential manner. Some firms offer the file to the client at the close of the matter. Always remember that the file is created by you on behalf of the client, so if it is the firm's policy to destroy it at the conclusion of the legal matter, you may want to inform the client of your policy up front in the firm's engagement agreement. ▪

HOW TO PROTECT YOUR PRACTICE FROM CRAZY CLIENTS

By Dustin A. Cole, President, Attorneys Master Class

Over the last 20 years, I have worked closely advising dozens of family law clients, so I fully understand how difficult family law can be even under the best of circumstances. As they say, it's dealing with good people — and sometimes not-so-good people — at their worst. Keeping control of good clients who go astray, and making sure you filter out the not-so-good clients is essential if you are to hold on to your sanity.

In family law or any practice area, one of my basic rules is that if you don't fully explain how you will work together, clients will make it up for themselves — and you'll be wrong. That's especially true — and especially dangerous — in family law. Many attorneys move directly into the technical details and requirements of the matter, and skip over the all-important education process — often to their dismay later. Here are some steps I recommend to my clients to help them control their clients and protect their finances — and their sanity.

The First Rule of Control: Choose your clients carefully. Guarding your practice against crazy and/or unreasonable clients is always important, not only for your bottom line but also for your sanity. But when business slows, those filters often develop gaping holes. Jay Foonberg offers his famous quote: "It's better to NOT do the work and not get paid..." and I offer my own version: "It's better to NOT do the work and not go crazy..." Attorneys often equate "busy" with "successful," and accept bad clients just to stay busy.

When worried attorneys accepts too many clients that don't fit their financial and/or psychological parameters (you DO have specific standards for clients, don't you?), they discover they're working too hard and being driven crazy by clients from hell — but not making money. The fact is that clients who don't intend to pay don't care how much of your time they take — so they'll take plenty. The result: not enough time to focus on marketing activities and referral relationships. Then, because business is down, they accept even more of the "D" clients. Thus the downward spiral continues. How to ramp up your marketing? That's another article.

The Second Rule of Control: Set the rules of engagement. It's important to remember that most clients have never been through the process of divorce, or at least have not been through it with you. That means they do not have any clear picture of how the process will go, or how they will work with you. In fact, many clients want to dump the entire matter on the attorney and avoid it until it's over.

In advising my family law clients, I suggest that every engagement begin with an "Integrity Agreement" between client and attorney. This is completely separate from the retainer agreement, and is designed to imbue clients with a full understanding of their own roles and responsibilities in the matter, as well as those of the attorney. During the initial conversation, the attorney talks through each point, both attorney and client sign it, and the original is given to the client.

The purpose of this step is to set the stage for a smoother relationship and create an agreement which you can refer to later. Rather than having to essentially step on clients who have launched themselves into the stratosphere or have not paid a bill, this allows the attorney to refer back to the agreed-upon roles and responsibilities outlined in the initial "integrity discussion."

The Integrity Agreement begins with a statement of mutual responsibility, such as:

"The purpose of hiring an attorney is to gain the support of a professional who has the ability and experience to guide you through the legal process toward the optimum outcome. The attorney's purpose is to pursue legal remedies; but cannot make key decisions without consultation with and information and direction from the client. Therefore, both the attorney and client must be committed to full participation in the matter. This document outlines the roles and responsibilities each party agrees to for the purpose of obtaining the optimum outcome."

The list of attorney roles and responsibilities inclues:

- *"...will provide diligence and support at all times"*
- *"...will respond within XX hours to phone calls and inquiries"*
- *"...will seek client direction and decision at all key points"*
- *"...will manage the client's matter with the goal of obtaining the desired outcome"*
- *"...will assure that attorney and staff are reasonably available during office hours to provide advice and consultation and will interact in an empathetic and responsive manner."*

One important item which should also be included is:

- *"...The attorney's responsibility is to apply his or her legal skills in an objective, practical and dispassionate manner at all times. When in the attorney's opinion the client is in a mental state which compromises his or her decision-making ability and threatens the client's long-term interests, the attorney has an ethical responsibility to refer the client to a qualified mental health professional."*

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(When a client has become overwrought, rather than scolding the client, the attorney can now point the client back to the agreement and say, *"Remember our discussion? We're at that point where, as part of my responsibility to you, I have to say..."*)

The client's roles & responsibilities include such items as:

- *"...will respond promptly to attorney meeting and information requests"*
- *"...will make decisions and provide direction to the attorney promptly as requested"*
- *"...will make all appointments and attend all meetings as requested by the attorney"*
- *"...will refrain from emotional outbursts and behavior that can compromise outcomes when meeting with the attorney, opposing counsel or other interested parties"*
- *"...will render payment for attorney services or costs promptly"*
- *"...will refrain from contacting the attorney outside of business hours unless such contact is the result of a specified emergency, which is defined as..."*

The Third Rule of Control: Draw the client a roadmap. Fear of the unknown, and surprise at events is one of the biggest reasons clients get crazy. Develop a simple step-by-step flow chart of the steps a typical divorce will go through. Print it out in a distinctive color. Then sit with the client, red pen in hand, and walk through it, making notes, adding and subtracting steps, jotting in approximate timelines. It doesn't have to be perfect, it just has to shine a light into that dark cave of the unknown and give the client the comfort of some understanding of what is ahead.

Be sure to discuss points when things may go slowly, to alleviate the client's fears when it does. It's not something you simply point to in their packet (which will likely never be read) but something they have seen and heard and are likely to remember. When you've finished the walk-through, put it in their folder. Later, when the client calls in worry and fear, you can easily refer back to it.

The Fourth Rule of Control: Educate your clients. There are two parts to this. The first is a relatively simple "how to and who to" list which sets down in writing:

- Who to call for what
- What information to leave when leaving a message
- How calls are handled and returned
- Office hours
- Hours the attorney is normally available and not available for meetings or calls
- Firm contact information such as address, phone number, e-mail address, fax number, etc.
- Emergency phone number, and how such calls are handled
- Definition of an emergency

The second is specific information on charges and billings. It should include such items as:

- Billing rates for various staff
- How specific tasks or steps may be billed
- What additional costs beyond time may appear on the bill
- When bills are issued and when payment is expected
- When payments are considered overdue and what steps the firm may take
- Permission to file a request to withdraw as attorney of record for specified non-payment (filing a request is unlikely to get you withdrawn, but a copy of the notice to the client might spur prompt payment)
- Information on how retainers are managed and accounted for
- The "evergreen" retainer process

This is one more client roadmap for how to work with you and your firm. It sets further parameters that support the attorney's personal and professional boundaries.

If all of this sounds like a lot of wasted time, not so. Fifteen extra minutes in the beginning spent educating a client and setting the mutual standards for working together can save uncounted hours of frustration and lots of uncollected invoices.

The Fifth Rule of Control: Follow your own rules. Once you've set the rules of the engagement, it's vital for you to "be your word," as they say. If you lay down the rules and then don't follow through on something, you'll teach clients that you weren't serious about that rule — and probably not about the rest. The most important rules are the ones about billings and payments. Let that one slip and clients will learn that you'll continue to work for them even when they're not paying.

There is much more that surrounds these points and makes them more effective. But these will provide a powerful start on building better client relationships, reducing stress and making sure you get paid. ▪

Dustin Cole, president of Attorneys Master Class, is a Master Practice Advisor who helps attorneys build more profitable, enjoyable practices and create financially successful retirement and transition plans. For more information, go to www.attorneysmasterclass.com or contact Cole at (407) 830-9810 or via e-mail at dustin@attorneysmasterclass.com.

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The Underwriter Speaks

What We've Learned From A Bad Economy

By Doug Davidson, VP of Underwriting

A bad economy impacts the inherent risks associated with a law firm's outside interests and potential conflicts of interests. While the MLM Lawyers Professional Liability policy form has been carefully written to provide reasonable coverage in these areas, it's a fine line we have to walk.

In certain instances coverage will need to be restricted and/or certain outside interests excluded when:

- Job duties are unreasonably intertwined;
- Dollar values involved are too large;
- Deals are simply too complicated; and/or
- Activities are vague and undefined.

In these situations, even with appropriate coverage limitations, rates cannot fully contemplate even minimal attorney involvement in these potentially huge exposures. This concern is more than hypothetical. A feature of many claims that MLM has received at the height of the bad economy is that, even with little, limited or no liability, transactions are so complicated that any attempt to sort things out results in defense costs going through the roof.

Knowing this, plaintiffs will put on a full court press for an exaggerated settlement, knowing that with defense costs out of control, it might actually save MLM money to pay a large settlement, but be able to walk away from the claim and stop the hemmoraging. MLM will defend and resist paying uncovered claims, but the clarity of that position can dim over time. The point is, nobody wins when involved in these kinds of messes.

For MLM, the only "solution" in some instances may be to exclude the exposure altogether, or to decline or non-renew an applicant firm. These actions would be taken as a last resort. However, we may be forced into taking such a position in some cases. As an admitted market, we cannot raise prices enough to adequately cover the exposure. ▪

MLM Roadmap
Planning for Success

MLM BLOGS A Collection of Conversations

RECOGNIZING CONFLICTS WITH CURRENT CLIENTS

What is it about a conflict of interest that is so bad? The answer is quite simple. Loyalty and independence of judgment are essential to the effective representation of a client. In fact, they are fundamental to the health of the lawyer/client relationship. A conflict of interest may make it impossible to exercise the essentials of loyalty and judgment.

Although evidence sufficient to establish a violation of the rules does not necessarily establish a cause of action for legal malpractice, courts look to the Rules of Professional Conduct with increasing frequency for guidance in considering issues of conflict of interest in disqualification and legal malpractice cases.

American Bar Association Model Rule 1.7 deals with conflicts in representing current clients. The conflicts may be connected to other clients, to the lawyer's own interests or duties, or to other sources. The conflicts are of two types: "directly adverse" and "materially limited" representations. **ABA Rule 1.7** also provides for conflict waivers and identifies some conflicts too serious to waive.

Every attorney owes duties of loyalty, confidentiality, communication and competency to every client. Under **Rule 1.7**, it is incumbent upon attorneys to identify situations that may threaten these duties and, after objective, reasoned analysis, choose the course of action that will best preserve them. Although not all are delineated under **Rule 1.7**, available courses of action include declining representation, withdrawal from ongoing representation or representation after full disclosure, consultation and client consent.

Rule 1.7 also specifically addresses conflicts of interest created through simultaneous, adverse representation of multiple clients, whether jointly in the same proceeding or separately in different proceedings. **Rule 1.7** conflicts of interest have been characterized by some courts as "open file" conflicts.

ADVERSE INTERESTS

Rule 1.7(a)(1) prohibits the simultaneous representation of clients whose interests are directly adverse. All simultaneous, directly adverse interest conflicts are not necessarily as obvious. Attorneys must analyze whether the clients' interests are, in fact, directly adverse; and if interests are directly adverse, is there nevertheless a reasonable belief that representation of one client will not adversely affect the attorney-client relationship with the other client.

Rule 1.7(a) Conflicts: EXAMPLE

- An attorney who represents both the plaintiff and defendant in a civil lawsuit. Advancement of the plaintiff-client's position necessarily precludes advancement of the defendant-client's position, thus compromising the duties of loyalty, competency, confidentiality and communication to each client, the very core of the attorney-client relationship.

OUTSIDE INTERESTS

Rule 1.7(a)(1) prohibits the idea that attorneys should exercise independent professional judgment on behalf of every client. The rule focuses on the quality of representation, rather than on the attorney-client relationship itself. Although representation under **Rule 1.7(a)(2)** can sometimes amount to a per se conflict, most cases require an analysis of whether outside interests, including the attorney's own interests or duties, will inhibit the attorney's ability to represent the client zealously and objectively.

Business involvement with clients, an alarmingly popular practice fraught with ethics and legal malpractice implications, is also subject to **Rule 1.7(a)(2)** scrutiny. These situations are also addressed under **Rule 1.8**.

Although "open file" conflicts may, in the discretion of the attorney, be handled by immediately disclosing the actual or potential conflict and obtaining client consent, be forewarned that anything less than full disclosure may result in a malpractice action. ▪

Adapted from MLM's Law Practice Management Booklet, "Avoiding Conflicts of Interest."

Angie Hoppe
Roadmap Editor

Angie Hoppe, MLM claim attorney, is actively involved in helping attorneys start a practice as the MLM Roadmap's editor, and by leading the ongoing development of MyLawyersModules.com, an online environment to assist attorneys start and run a safe and successful practice.

Submit your question on starting a practice and Angie will do her best to divulge practice pointers that are both useful and practical.

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Good Question
Better Discussion

MLM BLOGS A Collection of Conversations

THERE IS A CONFLICT... NOW WHAT?

What should attorneys do when they have identified either a potential or actual conflict of interest?

Although client consent is often seen as the path to salvation for attorneys facing conflicts of interest, it is important to realize that consent is only a defense if it is "informed" consent.

SEEK OBJECTIVE ANALYSIS

If an actual or potential conflict of interest is identified, the attorney(s) involved should contact a "disinterested" attorney, either within the firm or, if a solo practitioner, another member of the bar whose judgment is trusted. Objective analysis is critical, especially when the involved attorney is feeling pressure to accept representation. Many bar associations employ ethics counsel on staff to provide objective conflict analysis free of charge for the association's members.

Law firms should establish formal policies regarding conflict of interest review that incorporate objective analysis of, but not limited to, the following issues:

- Can "informed" consent be legitimately obtained?
- Are potential clients competent to make an "informed" consent?
- Can one lawyer adequately represent all client interests if consent is obtained?
- If a client is precluded from consenting, will the client be financially unable to retain other representation?
- Type and complexity (existing or foreseeable) of legal problem involved.

DISCLOSURE

If an attorney believes it is appropriate to seek consent to waive the conflict, the next step is adequate disclosure to all of the parties who are affected by the conflict.

- ***Attendees:*** While informing the client(s) of the actual or potential conflict of interest, the foreseeable ramifications and the effect of consent to the representation, invite another attorney, a paralegal or administrative assistant to be present during the discussion. And, of course, have all relevant potential and existing clients present during the disclosure.
- ***Pertinent Information:*** To receive informed consent, attorneys are required to provide a description of the service to be performed, the nature of the conflict and identify the parties affected by the conflict. In addition, attorneys must identify who they will represent and who they will not represent, the scope of their representation to them and communicate that the information received by each client cannot be held in confidence against the other.
- ***Informed Consent Memo:*** The attorney should write an "informed" consent memorandum to the file which outlines the details of the conference.

OBTAINING INFORMED CONSENT

If an attorney, after reasoned analysis and adequate discussion, determines that a conflict of interest is surmountable by disclosing the conflict and obtaining "informed" consent, the attorney should obtain written consent. The written consent should take the form of a clearly worded letter and should include the oral disclosure suggested above. This approach leaves little room for argument later about the ambit of disclosure.

At a minimum, an attorney should write a combined "informed" consent letter to all involved clients confirming the informed consent and obtain from all clients involved a simple consent form waiver. The letter and waiver should include:

Informed Consent Letter

- An acknowledgement that even though the representation may be potentially adverse, the clients are prepared to proceed with the representation.
- An outline of the process to be followed if the interests cannot be represented together in the future, whether the attorney's representation will continue for at least one of the parties and details regarding fee entitlements in the event that one of the clients has to seek alternative representation.
- A statement that the clients have been asked to obtain independent legal advice with respect to the waiver being signed.

Waiver

- That the parties understand the information explained in the letter.
- That the parties have no further questions.
- That the attorney is not guaranteeing the success of the venture.

The safest course of action regarding conflicts of interest situations is obviously to avoid them by either declining or promptly withdrawing from representation. This blanket avoidance plea is probably unrealistic and, in some instances, unnecessary, but the attorney who determines that the conflict is surmountable must disclose the conflict in writing and obtain "informed" consent in writing, in conformance with the suggested methods above. ▪

Adapted from MLM's Law Practice Management Booklet, "Avoiding Conflicts of Interest."

Alice Sherren
Good Question
Editor

Alice Sherren, MLM claim attorney, addresses common (and not so common) questions MLM receives from insureds through its Risk Management HelpLine and invites insureds to weigh in via the comments section.

Join the "Good Question, Better Discussion" Conversation at Blogs.mlmins.com/goodquestion/

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SERVICE SPOTLIGHT

PRACTICE MANAGEMENT TIPS

By Chad Saunders, Specialty Marketing Manager

We are frequently asked by law firms how they can minimize the likelihood of claims and for suggestions on resources to assist in establishing a safe practice. There are some distinct tips we can pass along to you that will certainly help.

First, have all the members of your law firm participate in MLM's monthly Risk Management Webcasts. Every month MLM offers online CLE programming broadcast live from a state-of-the-art television studio in downtown Minneapolis. The programs typically happen on the third Thursday of the month for one hour and they feature legal exerts in ethics, practice management and law office technology.

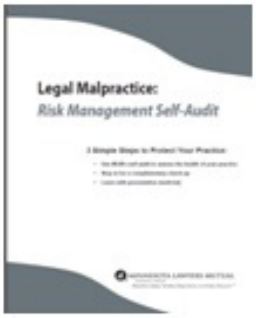
Next, utilize solid firm management procedures. Credit may be given for those characteristics representing good quality management skills such as, but not limited to, the following:

- Existence of a conflict of interest system to avoid potential conflicts;
- Minimal or no fee disputes or suits for the collection of fees;
- Proper use of engagement letters or retainer agreements on new matters, written fee arrangements and billing schedules, declination or non-engagement letters when representation is declined, closing letters when representation is completed;
- Guidelines for determining the types of cases the firm will accept;
- A docket control system with at least two independent date controls. Install and use a computer-based calendar system. Law firms utilizing computer calendars with all of its available features are less likely to miss a crucial deadline;
- Back-ups for solo practitioners — include the name of an attorney who could serve in a back-up capacity in case of an emergency;
- Submit your renewal application in a timely manner, not the day before or the day it's due.

For assistance with the various procedures, you may call MLM's Risk Management HelpLine at (855) 692-5146 and MLM staff will be glad to assist you.

Finally, MLM's self-audit to assess the health of your practice. Regard this risk management check-up (audit) as you would your annual doctor visit. Like any annual check-up, it's a diagnostic procedure with the aim of providing you with preventive medicine. It's not that you are looking for anything bad. In fact, you'd rather not find any problems. However, if there is a problem, the earlier you find out about it the better. MLM also offers supporting guides for lawyers. These include:

- Billing & Collection
- Calendaring & Docket System
- Client Engagement
- Client Communications
- Client Selection & Screening
- Conflicts
- File Management
- Hiring & Supervision
- Non-Engagement
- Office Sharing
- Terminating Representation
- Time Management



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Nov. 29	**Ethics: Retaining Your Clients Through Good Client Service**
Dec. 20	**Cloud Computing for Lawyers**

All programs are scheduled for one hour and start at 9:00 AM CST, 10:00 AM EST. Program times may be subject to change.

Webcast registration at **www.mylawyersmutual.com**

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