

Solo / Small ScoopSM



Kent Gernander

Editor's Note

With this issue, Scoop goes paperless. It is being sent by email to those on Minnesota CLE's list of solo and small firm lawyers. The email message contains a condensed version of Scoop, with links to complete stories. The full version is posted on the website of Minnesota CLE's Small Firm Resource Center, <http://www.smallfirmsuccess.org>, along with archives of past issues.

If you received the email message you are on the mailing list and will continue to receive future issues. If you found this issue on the website and did not receive the email message, please send a message to mcole@minncle.org to be placed on the mailing list.

Scoop will no longer be mailed in paper form. However, if you prefer to read or save a paper version, the PDF file can be downloaded and printed from the website.

Fittingly, this first paperless issue features articles on the paperless office. The authors are three experts whose own offices are paperless and who write and lecture frequently on the subject. Eric Cooperstein, whose solo practice focuses on advising and representing lawyers, offers his thoughts on thinking paperless. Sam Glover, a consumer rights lawyer and blogger, suggests paperless office processes. And Todd Scott, VP of Minnesota Lawyers Mutual, describes best practices for the paperless office from a risk management perspective.

Eric Cooperstein is known to many as the Ethics Maven and a frequent contributor to the solosmall listserv. The Spotlight shows something of his personal side. Finally, some of the fun of the last Strategic Solutions Conference is shared in photos, and dates are announced for next year's conference.

Practitioner News and Notes from Minnesota CLE

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Strategic Solutions Set for August 1-3, 2010

Mark Your Calendars!

The 2009 Strategic Solutions Conference was a big success – well attended, well received and well, just great education and fun all around!

Next year's conference is slated for August 1-3 and will be held again at the Duluth Entertainment Convention Center. Plans are already in the works for another program of useful, practical education, great networking opportunities, and fun social events, too. Block the dates on your calendar now – August really will be here before you know it!



The Scoop Survey Says...

The results were split to the recent survey on our small firm website, www.smallfirmsuccess.org. Here's what we heard:

Is Your Office Paperless or Are You Considering It?

- Yes, we've made the leap (37.3%)
- No, and we have no plans to (37.3%)
- No, but we are considering it (25.5%)



How to Think Paperless

Eric T. Cooperstein

Lots of guides and seminars explain how to make the conversion from a paper office to a paperless one. For example, Minnesota Lawyers Mutual (MLM) has a guide for policyholders on its website (www.practiceassets.org) and the Lawyerist blog (www.lawyerist.com) has a free downloadable guide to going paperless. Elsewhere in this issue, Sam Glover writes about developing a big-picture strategy for going paperless. But the paperless office is not just about creating an electronic replica of your existing file cabinet. A paperless office allows you to think differently about how you access and use documents, increasing your efficiency and productivity.

Super Search. Really, there is only one way to search a paper file for information you need: thumb through pages of documents and, if you are lucky, you will find what you are looking for the first time through. In a paperless office, you use key words to direct the computer to locate the document. Not only can you pull a particular document from a client's file, you can pull sample documents from the files of every client you have ever represented. Optical Character Recognition (OCR) software will identify the searchable text in any scanned document, allowing you to jump to a particular phrase in the middle of a 30-page document instead of reading or skimming from beginning to end.

Fewer Duplicates and Less Confusion. The typical client paper file may be stuffed with multiple drafts, working copies, and extra copies of documents. It's difficult to figure out in what order the drafts were created or whether there are any substantive differences among what look like final copies. In the paperless office, every document gets a name. Drafts can be dated, working copies labeled, and only one final copy need reside on the computer. If a letter is drafted but never sent, it can be identified that way. If there are multiple parties in a matter and each receives a different but overlapping set of attachments, each party's attachments can be duplicated and labeled electronically without cluttering a paper file. As a bonus, any colleague can review the file and see the differences among similar documents.

Bye, Bye Sticky Notes. Sticky notes and tape flags were a great invention for marking

significant pages in paper documents. But a few weeks or months after tabbing a document with them, it is difficult to read the scrawl on the notes or, worse, figure out what a blank flag was supposed to be flagging. Electronic documents can be marked using Adobe Acrobat or similar programs to bookmark pages, highlight text, insert comments, or draw boxes around significant passages. The marks are not permanent and they don't have to be pulled off before printing or copying.

No More Three-Ring Binders. Cautious by training, lawyers often feel compelled to tote large binders of documents to client meetings "just in case" they need to refer to particular items. Working from home presents a similar dilemma – how much of the file should you pack into your roller bag? Once the documents become electronic, however, they can all be accessible through a laptop, a secure connection to the office server, or a jump drive.

Easier Labeling. When a paper document needs numbering or labeling, the choices are either to use a Bates stamp machine or to create sheets of consecutively-numbered labels and apply them one-by-one to the pages of the document. Electronic documents can be consecutively numbered with a few keystrokes. The labeling facilitates discussing documents with parties by e-mail or telephone ("I'm looking at your document page COOP-075") and examining witnesses at depositions and trials.

Books Without Bindings. A bound legal text is really a dinosaur. The index is often miserable, omitting some of the most logical terms, and there is the constant chore of turning all those pages to get to the one you want. Recently, I purchased an ethics treatise on disk that had previously been available only in paper form. I downloaded the "book" to my computer (solely for my own use). Now I can jump to particular pages using hyperlinks and the entire book is searchable by keyword. Although not many legal texts are available on disk, scanning sometimes presents the same opportunity. For example, I grew tired of dragging the Bluebook to a writing class each week, so I pulled it out of its spiral binding, scanned the whole book with my Fujitsu Scansnap (which scans double-sided), and electronically bookmarked

the sections I refer to most frequently. It took a mere 20 minutes.

Flexible Research Files. Too often lawyers research an issue, create a paper file of relevant opinions, and then allow the research file to be sent to storage when the representation ends. The next time the issue arises, the lawyer locates and prints all the opinions again for the new client. In a paperless office, an opinion is downloaded once and stored in an accessible research folder; the next time the lawyer opens the opinion, all the highlighting and notations are still there from the last time the lawyer read the case.

We're All in This Together. The more lawyers who go paperless, the less scanning and OCR'ing of documents each of us will have to do. I always prefer to receive an electronic document from someone rather than create my own, because a PDF created from a Word document takes up less space and more accurately recognizes text than one I scan myself. Not to mention the time and effort saved in not having to scan documents and the ease with which the documents can be forwarded to the client.

Think about it.



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Assistant Director of the Office of Lawyers Professional Responsibility. You can contact Eric at etc@ethicsmaven.com.

After the Scanner: Fine-Tuning Your Paperless Office

Sam Glover

To create digital documents, all you have to do is buy a scanner and start feeding it pieces of paper. To create a paperless office is not quite so simple. Before you start scanning everything in sight, consider how you will manage all those digital documents.

Paper flow (how you will know what you have scanned)

You must know what has been scanned – and what has not – with certainty. My system is simple, but rigid: nothing leaves my inbox unless it has been scanned. Anything I want or need to keep, such as originals of pleadings, goes from there to the file. I never deviate from this. Any paper that is not in my inbox or a file folder is kept, if at all, for convenience only, and may be shredded with impunity.

If you are uncertain what you have scanned, you will create more work for yourself, because you will have to keep more paper, just in case, and then sort and scan selectively, hoping you did not miss anything when you go to close a file. The better practice is to create a paper flow that makes it difficult, if not impossible, for this to happen.

There are two basic approaches, each with its positive and negative aspects – designating a gatekeeper for all scanning or having a scanner on every desk.

A gatekeeper

A gatekeeper is the option I favor, but it only works if you have or are willing to hire someone who is responsible for doing the scanning. In a larger firm, it may make sense to integrate this function into the mail room. In a smaller firm, it may make sense to assign a secretary or receptionist to do the scanning.

The gatekeeper's job must be to scan the mail (and faxes, if you use a paper fax machine) as it comes in. He or she can then distribute the paper copies or e-mail summaries to the appropriate people. If you use Exchange or Remember the Milk to track to-dos, the gatekeeper could just send to-dos to read the specific documents, if you would prefer to shred paper after scanning.

The main downside, as with any bottleneck, is delay. If a lawyer is expecting an urgent fax, he or she may not be happy waiting for the

gatekeeper to get it, scan it, and drop it off or e-mail it.

The other downside is that the gatekeeper probably cannot track all the digital information that will eventually need to be a part of the file. When I close a file, for example, I save all the e-mails related to that file as one indexed PDF document. Even in a small firm, the secretary or receptionist is unlikely to have access to everyone's e-mail. And then there are photos, recordings, attorneys' notes, and more.

Even with a gatekeeper, each attorney must be responsible for getting some additional digital information into the file.

A scanner on every desk

You could buy a scanner for everyone in the firm. Putting a scanner on everyone's desk – or maybe just each lawyer's secretary or paralegal – eliminates the bottleneck and makes it much easier to capture all the digital information that accumulates in the course of representation. However, it also means you have to rely more on training and compliance with procedures.

If you opt for a scanner on every desk, you need to train everyone in your procedures. For example, you could require everyone to scan documents before pulling them out of the inbox, or to stamp everything once it has been scanned.

You should also put together a detailed file closing checklist that includes not just the paper, but e-mails, photos, recordings, notes, and any other parts of a file that may escape your digital file. In the end, your goal should be to have a closed, digital-only file. I return all paper and media to the client, with a copy of their digital file. The only thing I keep is the data on my hard drive.

Backup, backup, backup

If you have not already considered how you will back up your data, consider it before you go much further. I recommend maintaining at least two backups at all times. I use an external hard drive to make incremental backups every night, and Dropbox to back up my files to the cloud and sync them to my other computers and staff. Both are simple,

and I never have to think about them after I set them up.

Keep at least two backups – one local, one remote – for maximum security and maximum confidence. An external hard drive is probably the fastest way to recover a large amount of data. A remote backup may take longer, but is also more difficult to lose.

Good backup can also function as an extended "undo" function. If I accidentally overwrite a form, but do not discover my mistake for several weeks, I can always get it back using one of my backup solutions.

Plan ahead and profit

Going paperless rocks. But before you get too far into it, take some time and think through the paper flow in your office and how best to address it. It will save you money, time, and aggravation in the long run.



Sam Glover is a consumer rights lawyer in Minneapolis. He also teaches appellate writing and oral advocacy at the University of Minnesota Law School and

writes two blogs: Caveat Emptor (www.caveatemptorblog.com) and Lawyerist (www.lawyerist.com). Sam was an early converter to the paperless office, and he hasn't looked back.

Paper Cut: Best Practices for Avoiding the Sting of a Paperless Law Office

Todd C. Scott

Here's a question for an attorney with an established small firm practice: if you had to start over and develop a new law practice tomorrow, what would you do differently?

For many lawyers in Iowa, this hypothetical question became all too real in June 2008. Several storms pummeled the state, causing unprecedented flooding and tornado damage, and displacing over 240 lawyers when their offices became uninhabitable.

Nearly all these lawyers found that client files are the most vulnerable of the firm's assets. Papers exposed to flood waters quickly become an immediate and total loss. If the files are exposed to relatively clean water, mold growth will quickly break down and decay the documents. However, floodwaters are seldom clean.

In the case of one lawyer from Blackhawk County, Iowa, floodwaters forced sewage to back up into a basement file storage area, contaminating all the firm's closed files dating from 1991 to 2003. County authorities quickly ordered the contents of the basement, including the files, to be removed and buried in a nearby landfill. The lawyer never even had the chance to make a list of the files being carried down the road by a front-end loader for burial.

Only a few weeks earlier, a tornado with winds exceeding 260 miles-per-hour tore through nearby Parkersburg, Iowa, lifting buildings off foundations, turning cars into missiles, and tearing the bark off trees. Files stored in steel file cabinets were retrieved from the muck of a nearby field. But open, active client files are usually not stored in protective cabinets every night, and the location of many of those files is still unknown over a year later.

For Iowa lawyers affected by the spring storms of 2008, the answer to the question, "What would you do differently if you were forced to start a new law practice tomorrow?" usually includes a resolve to start scanning and storing client documents. New attorneys starting their law practices often remark that scanning file documents and storing them digitally seems like a natural thing to do. For lawyers affected by disaster – who never again want to inform clients that their files may have been permanently lost or destroyed – the decision to start scanning and storing electronic file documents seems like a no-brainer, too.

Many good reasons exist for lawyers to scan

and store electronic copies of documents, and preserving client information electronically in case of disaster is primary among them. However, lawyers who do so should be mindful of their duties regarding the safe preservation of electronic client information. Understanding how a good network system operates is important to help preserve confidential client information from accidental dissemination as well as to maintain the data safely, no matter what happens to the firm.

One of the advantages of preserving documents digitally is that the data can easily be stored in multiple locations. A single CD-RW disc can store over 20,000 letter-size documents, and it is a convenient way to start preserving electronic documents. But the key to all good backup/restore systems for computer networks is to put some distance between the storage media and the computer from which it came. Online backup services like Mozy (www.mozy.com) and Carbonite (www.carbonite.com) automatically back up a firm's data off-site and offer secure, encrypted, unlimited file backup for about \$5-\$50 a month.

Along with finding a secure method of backup, lawyers who store client documents digitally have an enhanced duty to protect the confidential nature of the information. Network firewalls are more important than ever for these firms to prevent unauthorized access to confidential client information. Scanning and saving client information increases greatly the amount of electronic data the firm retains regarding its clients. Every precaution should be taken to preserve the security of that data, including building and testing network firewalls and implementing strong password policies within the firm to keep out hackers.

A question for lawyers implementing electronic storage is, "How long should I keep the paper documents after I have scanned and saved them electronically?" The answer may vary from firm to firm, but it usually depends on the comfort level of the firm and the purpose for scanning firm documents.

For most firms, the purpose for scanning file documents is long-term file preservation and storage convenience. These firms are likely to adopt file retention policies that provide for the destruction of the paper file soon after the legal matter has concluded and it has been confirmed that all relevant documents have been

digitized and stored electronically. Firms that aggressively pursue scanning to create a near-paperless working environment will routinely scan incoming documents upon arrival, retain the paper document in a 30-day folder, and destroy the paper document at the end of 30 days.

In all cases, attorneys must consider the length of time the paper document is to be retained after it is scanned into the system, and set forth an established policy for document destruction within the firm. Firm employees must know the difference between original client papers, which are the property of the client and can never be destroyed without the client's prior written consent, and ordinary file documents. Additionally, the method of document destruction must be one that forever preserves the confidential nature of the file documents. Taking the scanned documents to the trash dumpster is not a reasonable method for getting rid of client documents.

Whether you wish to practice law in a near-paperless office set-up or simply want to scan documents as a top-level backup system for your files, it is important to establish safe policies for securing and storing your scanned data. Ensure that a backup of the data is being stored safely off-site, the network security parameters are intact and up-to-date, and any paper being destroyed is done so confidentially. The rewards of a paperless firm can be great, and among these is the peace of mind that your client information is safe – no matter what comes flowing or blowing through the firm.



Todd C. Scott is VP of Member Services at Minnesota Lawyers Mutual where he counsels lawyers on law practice management and avoiding malpractice. Follow Todd on [@RUatRISK](https://twitter.com/RUatRISK) or read his blog at www.attorneysatrisk.com.



Spotlight on a Solo Practitioner

Eric Cooperstein has a private practice devoted to representing and consulting with lawyers on ethics and law practice management issues. He is a former Senior Assistant Director of the Office of Lawyers Professional Responsibility. You can contact Eric at etc@ethicsmaven.com.

A maven is

An expert, according to the dictionary. The east-coast vernacular is "self-appointed expert."

My practice is

Representing lawyers and law firms in legal ethics and related matters. I primarily defend lawyers against ethics complaints, provide advice and expert opinions, and represent lawyers in fee disputes and law firm break-ups. 80% to 90% of my clients are lawyers.

How I developed my practice

I was fortunate to be able to begin practicing part-time while my previous salaried job was winding down. Because I focused my practice on a narrow niche and I had been in-house for many years, I knew marketing and developing a referral network would be critical to bringing in enough work. I increased the number of CLEs I presented, became more involved in HCBA and MSBA, started blogging, and tried to be a helpful resource to other attorneys through the MSBA's solosmall listserve and in one-on-one contacts. Many generous colleagues have encouraged me, given me their time and advice, bought me lunch, and referred cases to me.

My coolest software/ website/ gadget

My Mifi wireless card. It is like a cell/data card for a laptop, but it does not have to be plugged in and creates a wireless network 25 feet around you. I can use it with my laptop and Ipod Touch, and I can share the wireless connection with up to four other people at the same time.

A recent challenge

Managing a slowdown in my practice a little over a year ago, at the same time Lehman Brothers folded and the stock market tanked.

How I solved it

Deep breaths. Patience. I told myself what I would tell someone else whose practice had slowed down, which is that most things follow patterns and that the previous two years of getting clients was not likely a fluke. I was right (but we didn't eat out much for those two months). Now part of me longs for a slowdown!

What else I do

I drive my children hither and yon; I serve as chair of a small foundation; I run, bike, and walk; and my wife and I have season's tickets to the Jungle Theater, just so we remember to get out once in a while.

What I would be doing if not practicing law

Building houses for Habitat for Humanity.

The book(s) I am reading

The Book of Negroes, by Lawrence Hill; *Physics of the Impossible*, by Michio Kaku.

The CD currently in my car stereo

Green Day, *21st Century Breakdown*.

My favorite fictional character

Jean Valjean.

Five things few people know about me

1) I have attended the Minnesota State Fair for 22 consecutive years; 2) I once had a late-night radio show in England; 3) I love power tools; 4) I am always in search of good Buffalo-style chicken wings; and 5) I have been the target of some excellent practical jokes.

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More on the Paperless Office

Check out the Minnesota CLE small firm website, www.smallfirmsuccess.org, for more resources and information about setting up a paperless office. Just click on Paperless Office under the Law Office Tech tab. Or call Peter Berge, Web Education Director at Minnesota CLE, at 651-254-2131; pberge@minncle.org; www.twitter.com/smallfirm.

What Do You Think?

We hope you have enjoyed this issue of Solo/Small Scoop. We would love to hear your feedback, thoughts and ideas for future issues. Call us at 651-227-8266 or 800-759-8840 with your comments.