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PROBLEM PREVENTION IN THE LAW BUSINESS (MODEL HANDBOOK)

JOSHUA STEIN is founder of Joshua Stein PLLC, in New York City. For information on the author, visit www.joshuastein.com. Please send comments on this article to joshua@joshuastein.com. The author appreciates helpful comments from Mohammad Anwar; James Carolan of Zukerman Gore Brandeis & Crossman, LLP; George Kimball; Elliot Kalson; Alfredo R. Lagamon, Jr.; Edward M. Levy, Lieutenant Colonel, Military Police (Retired); Donald H. Oppenheim of Law Firm Profitability Group; Kevin L. Shepherd of Venable LLP; Susanna Stein; Deborah Goldman, Alexa Klein, James Patalano, and Lauren Silk, of the author's legal staff; and Robert G. Harvey of the author's editorial staff. Blame only the author for any errors, insensitive comments, or missed insights. Copyright © 2018 Joshua Stein. The author consents to adaptation of this policy handbook for use by any organization. An editable version is available from the author. It will reflect any improvements since publication.

Lawyers often do a very good job of identifying and minimizing risks in their clients' businesses. Sometimes, though, lawyers don't do as good a job of identifying and minimizing risks in their own business.

The law business suffers from many of the same risks as any other business, largely resulting from everyone's heavy reliance on networked computers. Corporate America has suffered dramatic data breaches, hacking attacks, and even network breakdowns because of carelessness about computers. Law firms in particular constitute juicy targets for computer-based wrongdoers, because law firms probably pay less attention to these issues than some other enterprises, such as those in the regulatory or class action crosshairs. Businesses large and small in many industries have pushed cybersecurity to the top of their list of priorities. Some clients have done the same, requiring their outside counsel to maintain, document, and enforce cybersecurity policies, with the possibility of third-party audits.

Many risks other than cybersecurity exposures are specific to the law business. Sometimes lawyers handle substantial sums of money for their clients. Lawyers must comply with the rules of legal ethics, not just understand the law governing their clients' affairs. When clients sign legal documents, they create long-term exposures for both the clients and the lawyers who prepared or approved them. Lawyers live to serve, but in their enthusiasm sometimes end up serving the wrong people. Lawyers communicate in writing, mostly email, all the time to do their work. Those communications live forever and may have consequences, good or bad.

Against that backdrop, any law firm should examine and understand the many risks of its business, considering how to minimize or eliminate the problems that can result. Malpractice insurance companies sometimes kickstart that process by requiring law firms to establish and implement policies that the insurance carriers think will reduce risks.

In response to all this, law firms may want to write a policy handbook for attorneys and staff to try to identify risks and prevent problems. Those policies will cover many areas, though computers and matters of legal ethics will take center stage.

Some problem prevention policies seek to prevent mistakes and chaos, because mistakes and chaos create a risk of legal exposure and loss of client confidence. In general, the more consistent attorneys and their support staff are about how they work together and manage the firm's documents and files, the less risk they face of mistakes and chaos.

This article presents a sample set of risk management (or problem prevention) policies suitable for a small transactional real estate law practice. I prepared it for my own small transactional real estate law practice in response to the forces and trends described above. Then I made it generic to share.

When establishing policies of this type, it is tempting and easy to issue zero-tolerance edicts that seek to eliminate every possible risk, without regard to convenience, comfort, flexibility, and exercise of judgment. Risk management committees in large organizations

of all types tend to do that. No one wants to question the concerns expressed by the most cautious and risk-averse member of the committee. So risk management committees issue rules that eliminate exercise of judgment, including by senior attorneys. Yet those are the same senior attorneys for whom the firms charge their clients hundreds of dollars an hour for, among other things, the exercise of their good judgment. As someone who generally hates policies and rules of all kinds, preferring to rely on good judgment and common sense, I tried to strike a reasonable balance.

Any policy handbook will inevitably be incomplete. One can always think of new policies to add. Eventually the handbook becomes unmanageable. That hasn't happened to this handbook yet. It covers high points (low points?) and common problem areas but does not and cannot cover everything. It is not intended to set a standard of professional practice, or to constitute a smoking gun to be used to torment the author or anyone else who somehow misses a beat and gets into trouble. This guide represents only an aspirational set of "best practices." Some of those recommendations will not always apply, make sense, or be practical for everyone.

Once a law firm goes to the trouble of establishing policies to prevent problems, it should roll those policies out, in a formal and serious way, to everyone in the office and make sure everyone reads them and complies. One should probably distribute any policy handbook on paper, with a paper cover note and a request for each recipient to read the handbook and then countersign the cover note to confirm they have done so and will comply. As new staff members arrive, they should do the same. The firm should periodically rethink and update its policies, recirculating them and reconfirming compliance.

RISK MANAGEMENT HANDBOOK FOR LAWYERS AND STAFF OF A SMALL TRANSACTIONAL REAL ESTATE LAW FIRM

1. INTRODUCTION; BIGGER PICTURE

This handbook gives you a thorough and practical guide to problem prevention in our business. It does not seek to summarize everything required by law or legal ethics. Knowing those things is the responsibility of each individual attorney—without reminders in a policy handbook. That's true even though some of our policies refer to legal or ethical requirements.

We also cannot possibly tell you how to have good judgment, common sense, and a sound moral compass, all of which are essential to prevent problems and outside the scope of this handbook.

Nothing in this policy handbook creates any contractual obligations on the part of the firm. Our failure to comply with this policy handbook in any way does not give you or anyone else any claim against us.

You should not only comply with these policies, but also help us assure the entire office does the same. Therefore, if you become aware of any violation of these policies, let a senior member of the legal staff know quickly.

2. FIRM ADMINISTRATION AND OFFICE PROCEDURES

Any law firm or other organization must keep itself organized and must comply with law. These policies help us achieve that.

2.1. Interpersonal Relations

Everyone at our firm should treat everyone they work with—inside and outside the firm—with respect and kindness. We expect everyone to be nice to everyone else, all the time. We don't make exceptions, for example if someone screws up, it's a bad day, or there's too much work, time pressure, or client pressure. Those are par for the course, an inevitable and constant part of the law business, not the basis for exceptions.

One might ask why this policy—as opposed to many other equally important "best practices" in operating a business, such as paying the electric bill on time—belongs in a problem prevention handbook. The answer: being nice to people is a bedrock principle. If you get this "best practice" right, then many other things fall into place. People who are treated well take the business personally. They care more, think more, try harder to prevent mistakes, communicate better, work better as a team, and are nicer to clients. A pleasant and congenial workplace makes everything else work better. If you get this "best practice" right, then problems of all types are less likely to arise.

2.2. Internal Forms

We have forms to fill out for particular activities and requests that arise repeatedly in our business. Forms are a nuisance. They sometimes require an extra step. But we established them for a good reason. If we

require everyone, including whoever runs the firm, to use these forms consistently, then we always get all the information we need in each circumstance, prevent mistakes, follow consistent procedures, save time, and generally make our lives easier. So whenever a circumstance arises that requires use of one of these forms, use it. We have separately given you the name and location of the folder that contains our internal forms. Don't change any document in that folder. Your changes will be overwritten within six hours.

The forms are all Word documents. You should, however, copy them into the text of email messages and then edit and submit them that way. Copy our forms from the master template, not from a previous time you used the same form. We improve these forms regularly and will appreciate your suggestions for more improvements.

Here are the filenames for the forms you should use when needed:

- Client Advance Request
- Closing Bill Request
- Distribution Request
- Expense Reimbursement
- Fixed Fee Closing Statement Request
- New Client and First New Matter Memo
- New Matter Memo for Second and Subsequent Matters
- Out of Office Memo

2.3. Mistakes

We all make mistakes. When it happens to you:

- Don't panic.
- Don't scramble to fix the mistake too quickly. This often leads to more mistakes.
- Don't try to hide it, bury it, or otherwise ignore it and hope it will go away.
- Do slow down.
- Do make sure you know what the mistake is. Are you sure it's a mistake?
- Do retrace your steps to understand how the mistake happened.
- Do contact your supervising attorney. Have no fear about doing this.

If you think that you—or any of us—may have made a mistake about something, let's discuss that orally and not by email or in any other written form. The attorney-client privilege may not always apply to those communications, depending on the circumstances, the jurisdiction, and the nature of any possible claim.

2.4. Shredding

Do not throw client-related or otherwise sensitive notes, drafts, and other papers into the wastebaskets or recycling bins. Instead, put these documents into the containers labeled "shredding."

2.5. Time Entries

Make your timesheet entries clear and complete, but also short and simple. Include enough detail to justify the time spent. Many people might read your time entries, including:

- The client;
- A third-party legal bill auditor who gets paid a percentage of the value of time entries they can find a way to reject;
- A counterparty who might reimburse the bills; and
- A judge who might read them if a matter goes into litigation.

Leave out the following:

- Confidential information;
- Details that someone might put together with other details to infer anything confidential;
- Jokes;
- Commentary, especially if negative; and
- Anything else that will raise eyebrows.

Other guidelines for time entries:

- Don't expect someone to edit and improve your time entries and delete anything inappropriate.
- Write in proper English with proper capitalization, especially in names of clients and their companies. Although you don't need to write in complete sentences, the entries should not appear sloppy.

- Submit each day's time records by noon the next day. Failure to do so, especially at the end of the billing period, can cause lost billings and lost revenue.

2.6. Wire Transfers

The managing partner (or equivalent) of the firm must confirm and specifically authorize all wire transfer instructions by telephone with our bank. As part of that confirmation, we go back to the incoming instructions we received for the transaction. We confirm each element of those instructions, number by number, word by word, with the bank processing the wire. We send wire transfers only to accounts in the name of the intended recipient.

2.7. Workplace Discrimination; Hostile Environment

We do not discriminate against anyone based on race, religion, sex, creed, national origin, sexual orientation, or political views. We instead evaluate people based only on their job performance, including functioning constructively, with integrity and mutual respect, as part of a professional team delivering top quality client service. A mere mention of someone's race, religion, etc., can cause offense for reasons that the speaker may be unable to imagine or foresee or may sometimes be unfathomable. So talk about anything else instead. That applies even to comments that may seem inoffensive or humorous. Humor has no constructive role to play here, at least in the workplace. For similar reasons, attempts at workplace romance are discouraged. Some organizations prohibit them. If you believe you have been bullied, cyberstalked, discriminated against, groped, improperly touched, harassed, mistreated, propositioned, stalked, or otherwise the victim of illegal employment practices or a hostile environment, you must immediately notify our third-party investigator, whose contact details you have received separately. The investigator will promptly and diligently investigate the complaint. We will promptly and diligently remedy any problems the investigator identifies and keep you posted on the investigation and conclusions. We will not retaliate against anyone who complains. If you witness anything that happens to anyone else but you think might merit reporting under this paragraph, you must immediately report it. We do not tolerate inappropriate behavior. We also do not tolerate delay in reporting it.

3. CONFIDENTIALITY

As the first rule of legal ethics, we all know attorneys are supposed to keep their clients' information confidential. But here are a few problem areas:

3.1. Client Names

Protect the names of our clients. Some transactional attorneys don't worry much about announcing who their clients are and what deals they have closed, or even sometimes the deals they are working on. We do worry. Unless a deal is closed and public, or closed and the client has confirmed by email it doesn't care about disclosure, we do not mention clients or deals we've closed. This rule applies in and out of the office. It applies even when a deal is exceedingly impressive. In the occasional circumstance where we can share information about work we have done, or any other information that the listener might think was confidential, mention that it is public information or we have permission to share it. Otherwise the listener may think we are being indiscreet. And they might also think we will be indiscreet with their confidential information. Whatever impressiveness we achieve because of the nature of our work is totally undercut by the unimpressiveness of our sharing information that might be confidential.

3.2. Details

If you share one or two identifying details about a transaction, anyone in real estate can often figure out the property in question. Therefore, don't even share one identifying detail.

3.3. Incoming Calls

When a call comes in during a meeting with someone from outside the office, office staff must write the name of the caller on a piece of paper and show it only to the intended recipient of the call, in a way that no one else can see. Others in the meeting, even other clients, should not know who is calling. If the call comes in for someone from another organization who is visiting our office, confirm you are giving the note to the right person before you give it to them.

3.4. Inquiries from Callers

If an attorney is out of the office or busy, and a call comes in for that person, then our administrative staff should simply say the attorney is out of the office or in a meeting. We provide no information on where the attorney

might be, what they might be doing, or even when they might return. We just take a message, ordinarily in the form of an email to the attorney, mentioning the phone number of the caller for convenience in calling back. The administrative staff should not give out any cellphone number. If a caller asks for that and is persistent, then the administrative staff should offer to contact the attorney and have the attorney call the person back.

3.5. Papers

Be careful with all client-related papers, confidential and otherwise. Confidential papers should not be visible when outsiders are in the office. At a minimum those papers should be turned upside down. Ideally they should go in a file drawer.

3.6. Sharing Information

Reporters and other busybodies have learned that attorneys are often overly willing to share their clients' information if asked—perhaps motivated by the attorney's desire to impress the inquirer or because the attorney approaches everyone with a "service" mindset or trying to develop new clients. This is very dangerous. Beware of third parties who try to take advantage of attorneys' willingness to share confidential information.

3.7. Watchers and Listeners

Stay alert outside the office. Sometimes when outside the office you may think you are alone, so it's safe to have a confidential discussion. But you are never really alone. Cameras and eavesdroppers are everywhere. If you must have a confidential discussion in a public area, don't mention names or other details. Explain to the other participant in the call why you are doing this. For particularly sensitive communications, don't use public wifi signals.

4. LEGAL ETHICS—OTHER COMMON PROBLEMS

Every attorney should know and follow the rules of legal ethics. In our commercial real estate practice, certain ethical issues arise again and again. Confidentiality is the first area of concern, addressed above. Here are some other particular issues, with guidance on how to handle them.

4.1. Custodial and Escrow Accounts

The managing partner (or equivalent) of the firm supervises all custodial and escrow accounts, and has sole signature authority over those accounts. Disbursements will be made only after confirmation of sufficient cleared funds. They must be made only by check with a suitable backup and explanatory memo, not by online transfers. Local ethics rules may require use of the trust account for retainer deposits received from clients.

4.2. Communications with Represented Parties

If another lawyer represents another party to a transaction, we are not supposed to communicate directly with that other party without consent by their counsel. That rule is not limited to litigation. And it applies even if the other party is a lawyer acting in a nonlegal capacity. We are also not supposed to direct or "cause" our own clients to communicate (e.g., make or discuss proposals, try to work out issues, or try to get information) directly with other parties represented by counsel. Once counsel is involved, all communications and negotiations we initiate are supposed to take place only through counsel. If the parties themselves initiate the communications, that's fine. But if we initiate them, we need to first obtain concurrence from the other counsel. We are not even supposed to copy parties represented by other counsel on email or other communications without consent by their counsel. That consent can be confirmed orally in an ordinary transaction, or by email if negotiations have become confrontational. If a client wants to communicate directly with the other client, using written materials prepared or edited by us, we should instruct our client to include the other client's counsel in the distribution.

4.3. Conflicting Interests

Attorneys must not represent parties that have potentially conflicting interests in the same transaction. That problem arises most often when we are asked to form a limited liability company with two or more members. Each should have its own counsel. The parties often don't want to incur that expense. They prefer instead to pay for litigation later, including perhaps litigation against us. This statement does not purport to summarize the principles of legal ethics on conflicts of interest. And there are sometimes ways to handle the problems that arise when forming a limited liability company with multiple members.

4.4. Engagement Letters

All new clients require engagement letters, based on the template we maintain in our document management system. As with other templates, work from the

template and not from the last transaction document. If a client relationship ends and any possible ambiguity or lingering responsibility exists, we should send the former client a disengagement letter to make clear that we no longer represent that party. That letter can accompany the set of final closing documents. It should make clear the relationship has ended.

4.5. Investments in Clients

Attorneys must disclose to the firm all investments in real estate clients. Attorneys must not work on a real estate transaction where the attorney: (a) has an investment in any party to the transaction or its affiliate or (b) may directly or indirectly receive a brokerage commission or any other form of compensation or benefit beyond legal fees.

4.6. Substance Abuse, Etc.

Many ethical lapses, bad judgment calls, and instances of malpractice arise when attorneys abuse drugs or alcohol. There is an extremely high correlation. A surprisingly high percentage of attorneys experience this sort of problem. The same concerns arise for non-attorney staff members. If you become aware that anyone at the firm may be involved with substance abuse, we encourage you to bring it to our attention or, at a minimum, guide that person toward appropriate help. Bar associations typically offer confidential substance abuse recovery and intervention programs (Lawyer Assistance Programs or "LAPs") targeted to attorneys and available without charge.

5. REAL ESTATE TRANSACTIONS

When we negotiate and close ordinary commercial real estate transactions, we need to recognize and prevent certain common problems that might occur. These policies seek to do that.

5.1. Attendance at Closings

An attorney should attend every in-person closing handled by our firm, if we ever have any.

5.2. Client Directions

Attorneys should preserve suitable records of directions received from clients and clients' approval of courses of action. Email will suffice. For minor matters, handwritten notes, with a record of date and time, will often do the job.

5.3. Closing Statements

Try very hard to avoid becoming responsible for preparing the closing statement (sources and uses of funds) for any transaction. Lawyers are not good at numbers. If the transaction has any complexity at all, the closing statement takes a lot of work to do right. Whoever prepares it will often need to circulate multiple drafts. Doing that will distract us from legal work. To avoid preparing the closing statement, you need to clearly assign that responsibility to someone else early in the transaction. Otherwise it will land on you, often at the last minute. Of course, when someone else prepares the closing statement you need to review it carefully. In some cases, it can represent the last clear opportunity to obtain timely payment of our bill. Plan for that opportunity.

5.4. Environmental Matters

If a transaction has potential environmental issues, we should unambiguously recommend that the client engage specialized environmental counsel. To the extent we receive any environmental information, we should save it in the appropriate subfolder in our electronic filing system and share it with our clients, with a record of doing so. To the extent we disclose any such information to counterparties, we should maintain proof we did so.

5.5. Escrow Agent

We are willing to hold escrows for our transactions, but only if:

- All parties jointly and severally indemnify us against any claims, including attorneys' fees whether we use internal or external counsel, unless we badly screwed up;
- We have the right to terminate all liability by depositing all documents and money in court at any time, and we otherwise have the protections of any standard escrow agreement; and
- We have internal controls that assure escrowed funds will not vanish.

If we use a third party as an escrow agent, it must be either: (i) a substantial law firm; or (ii) a national title insurance company, not an agency or abstract company. We should mention this requirement early in the transaction.

5.6. Excluded Work

Problems can arise for real estate lawyers when a non-real-estate issue (such as a tax, corporate, bankruptcy, zoning, or family law issue) arises in a transaction and the real estate lawyer does not in a fully documented way identify it, disclaim responsibility, and tell the client to engage other counsel for that issue. When you see such a situation, don't assume clients know they need to hire a second lawyer. Tell them.

5.7. Deal History

Complex transactions involve extensive negotiations, with give and take all along the way. If the transaction runs into trouble and the clients dig the documents out of the drawer or the e-files many years later, the documents might not match what the client remembers or assumes. The client may then blame the lawyers. We should try to maintain a record of what we did; why we did it; what we told the clients; and what the clients told us. This record largely takes the form of emails and scanned handwritten notes from meetings and client conversations. We should scan and save important drafts that have handwritten notes on them. As we create that history (formerly known as files), we should remember that it may play an explanatory or even defensive role years later. Make it clear, comprehensible, and organized. This should happen automatically if we consistently comply with proper filing procedures, as outlined in this handbook. Still, the attorneys should keep it in mind as they work. Based on similar dynamics, if a client calls and asks questions about a closed transaction, find the documents and read them before answering. Do not rely on memory, assumptions, expectations, logic, or what's standard for similar documents.

5.8. Identification of Parties at Closings

Attorneys must verify the identity of all parties involved in a transaction by making a copy of a driver's license or passport. You can make the copy using the camera on your cellphone. Email it to our staff to be saved in the client file in our electronic filing system. Let people know of this requirement before the closing.

5.9. Legal Descriptions

We do not retype legal descriptions. We let surveyors or title companies prepare them. Then we check them and copy them, without change, to the appropriate places in our documents.

5.10. Long-Term Responsibilities

Most legal documents include deadlines, obligations, and future opportunities. Does the client expect us to track those and help the client remember them? Unless we expect to have that responsibility, we should manage client expectations on how we will help administer their transaction, if at all. We may want to affirmatively offer to prepare a summary memo identifying important deadlines, obligations, and future opportunities. Any such memo must be 100 percent correct. In it, we can confirm the scope of our continuing role, if any. Often a client will decline to have us prepare such a memo, out of a misguided desire to save legal fees. We should then confirm our lack of responsibility for the matters such a memo would have covered. On a more mundane level, documents will often identify counsel as a party to receive copies of notices. When we form an entity, we may be tempted to use our address for contact purposes. In other contexts as well, we may appear to have some continuing long-term role. For a client with whom we have a good relationship and a high likelihood of future work, it is fine for us to have such a role. For a one-off client, though, or a client who we think has an unreasonable likelihood of receiving future default notices, not paying legal bills, or firing us, we should avoid the potential liability and burden of being identified as a long-term participant in the transaction.

5.11. Notarization

A notary public must not notarize a document unless:

- The notary public has physically seen the signer and the signed document at the same time;
- The signer has confirmed that he or she signed the document in the capacity the document states; and
- The notary knows the signer or has confirmed the signer's identity with a driver's license or passport.

Notaries have gone to prison for notarizing a document without complying with these requirements. A notary does not, however, need to witness the actual signing of the document. If a transaction goes bad, then imperfections in the notarization process sometimes become fodder for creative theories and for impeachment of witnesses. Don't let those technical defects happen. If a client asks us to notarize a document that we did not prepare or review, we will do that if we can comply with the requirements at the beginning of this

paragraph. We should keep a written record, even just an email to the client, confirming that we were not involved with the document, we did not review it, and we notarized it only as an accommodation.

5.12. Review of Closing Documents

Before a transaction closes, revisit and review the legal description, final major closing documents, and final title commitment for that transaction. Treat these as if you had never seen any of them before. If possible, have an attorney not involved in the transaction help in that process. Pay special attention to names, numbers, and dates, all of which can easily look right but be wrong. Confirm all blanks have been filled and all exhibits attached. For each recordable document, confirm it is in proper recordable form.

5.13. Signature Pages

If we close a transaction without a sit-down closing, it is easy to negotiate documents until the last minute, then attach previously signed original signature pages. This can create issues about what the signer authorized and intended to sign. To prevent those issues, we should send an email message to the signer (and their counsel, if not us) attaching copies of the final agreed documents and asking the signer (and their counsel, if not us) to forward that message back to us with the attachments and their own message confirming they approve the final documents and they authorize us to attach the original signature pages we hold. Also, as noted above, we should not be dealing directly with another attorney's client without that other attorney's consent.

5.14. Signing Authority; Powers of Attorney

We are willing to act as an attorney-in-fact, corporate officer, or authorized signer for our clients, but only in a very restricted way. First, it requires approval by a partner or equivalent attorney. Second, the client must specifically approve each document we sign, through the same email confirmation process we use when we attach previously signed signature pages to final documents. Third, the documents in question must in most cases be secondary or ministerial—not, for example, promissory notes, loan agreements, mortgages, deeds, leases, guaranties, or contracts of sale. If we act as a corporate officer or other authorized person, we should do this only temporarily for a closing. We should resign or fire ourselves when the urgency ends. At that point, if feasible, we should have the principal sign the same documents again, superseding and replacing our signatures. We do not want to have long-term responsibilities or potential conflicts as an officer or member of any client's entity. Some firms prohibit the activities mentioned in this paragraph, in part because the firm's malpractice insurance may not cover any mistakes. We have to not make mistakes or even have any ambiguity or uncertainty about what we were supposed to do.

5.15. Support for Legal Opinions

Whenever we issue a legal opinion, we should maintain a record of everything we looked at to support our conclusions in that opinion.

5.16. Title Work

We do not perform title abstracting work for clients or anyone else. We are not a title insurance agency and do not issue title insurance policies. Although this proposition may be obvious, at least in the case of our practice, malpractice insurance carriers often want commercial real estate law firms to establish and enforce an official policy against doing title work. In most cases, that is not a major challenge. Attorneys who do handle title work will need to tailor their malpractice coverage accordingly.

5.17. Title Insurance

Attorneys should obtain title insurance for all property transfers, including ground leases and mortgages (but not space leases), unless the client is informed of the risks by email and confirms by email its decision not to obtain coverage. When any attorney in our office can choose the title company, we will first ask if the client has a preference. We will follow the client's instructions or, if we object to them, we will try to persuade the client to change its instructions. If the client leaves the matter to us, we will use only our preferred title insurance representatives.

5.18. Warnings to Clients

Whenever you give a client a warning that could prevent future exposure for the client or us, confirm it in unambiguous terms in an email. A telephone conversation on its own won't do the job, although should probably precede the email. In today's world, if it isn't in the email history, it didn't happen. This principle applies, for example, whenever you warn a client of risks and the client decides to proceed, the client decides to skip a step in due diligence, you suggest

the client engage special counsel for an area outside our expertise, you recommend rejecting an unreasonable or dangerous request, or the client gives you instructions that might be inconsistent with full and proper legal representation and could come back to haunt all involved. When you document any of these warnings in email, don't sound defensive or as if you are pointing fingers. Just establish enough of a written record to confirm you gave a clear recommendation with enough of a warning so the client can understand the risks. But let the client make the ultimate decision. Don't box them in so they have no options. Sophisticated real estate clients know what they are doing and make their own decisions.

6. DOCUMENTS AND FILING

Much of the work we do involves creating, editing, finalizing, and signing documents of all sorts. The policies that follow seek to set standards for how we do that work.

6.1. Document Management

All documents we intend to edit must reside in our online document management system. When you work in that system, comply with these procedures:

- Each document should exist only once—with one document number, not multiple document numbers—though it will typically go through multiple versions.
- If you work from a template document, make that version 1 of your new document. Then immediately create version 2 to receive your changes for today's deal.
- Whenever you start to edit a document in our document management system and someone else might have edited the most current version of the document, create a new version for your editing. Include a version label to indicate YYMMDD and to identify yourself as the new document editor.
- If you edit any document, do so only through our online document management system. Do not "go around" the system.
- If the system warns you that someone else is editing a document you want to edit, don't try to edit it. Instead, ask the other person if he or she is finished and, if so, to check the document back in. Whenever you finish or suspend work on a document, check it back in. Create new versions freely.
- If a document exists within our document management system, and you need to share it only with someone else in the office, then don't send it as an attachment. Instead, send a link to the document in our document management system.
- At the end of a transaction, make sure our document management system has the final versions of all documents, because someone will undoubtedly have questions later, most likely at 5:45 p.m. on a Friday, with a need for a quick correct answer. We'd like our electronic records to be correct and reliable.

6.2. Filing for Transactions

When a transaction closes, send all filing to staff to be scanned, with clear instructions so the filing will be scanned correctly and can be found if/when needed. If it's not labelled correctly and scanned correctly, or if it is saved in the wrong place, or if the scanned filename has spelling or typographical errors, then we may as well throw it out. Keep nothing on paper. Do not accumulate piles of old filing in your office. Such piles merely create future emergencies, disasters, and lost documents.

6.3. Filing, Generally

Whenever we have any written communication with anyone, or produce any other written documentation, we never know whether we will need to refer to it again. We might. We cannot predict which communications or documentation we will need to refer to again. When the need to revisit a document arises it should be readily accessible, in the place where we would expect to find it. If it isn't disaster can ensue. Therefore:

- Keep electronic copies of all written communication and documentation that goes out of the office.
- Save each item in the best possible folder for it within our electronic filing system.
- If that folder seems not to exist, don't create it; instead, look again, look harder, and find the best possible folder for it.
- If you still think you need to create a new folder for the filing, check first with the attorney in charge of the matter.

- Any copy of correspondence should include copies of all enclosures, even if we save those enclosures separately in, e.g., the folder for fully executed documents. If you think we don't need to scan the enclosures, obtain the attorney's approval to skip that step. In general, we need to maintain complete records of everything that goes out of the office.
- Don't use your email software as a filing system in substitution for the firm's filing system. If you want to use your email software as a personal filing system, that's fine but it's still not a very reliable, appropriate, or sound filing system.

6.4. Mailings

We sometimes send formal notices by certified mail. When that happens, we should obtain a return receipt card, the little green card showing that the recipient signed for the delivery. Scan the white mailing receipt and the little green card into the correct client/matter folder (correspondence subfolder) and keep the original physical mailing receipt and green card in a place where we will be able to find them if we ever need them.

6.5. Original Documents

Send original documents to clients soon after closings, with a written record (e.g., detailed cover letter) to show where the original documents went. Three years from now, no one will remember what happened. We will be blamed for the lost original documents unless we can establish we were innocent. Pay particular attention to the delivery of original letters of credit and promissory notes. Our clients should countersign to confirm receipt of those original documents and any others that are fundamentally important.

6.6. Preserving Notes

If an attorney takes notes on conversations or other work, the top right of the first page should state client/matter number, date, time, and persons present. In due course, those notes should be scanned into the client/matter folder (notes subfolder).

6.7. Sensitive Information

Attorneys should maintain an electronic record of all confidential information and investigations of parties related to a transaction. These records should be maintained in the correct subfolders in our electronic filing system.

6.8. Updated Dates

Our standard template for letters, memos, and documents includes date fields that automatically update to the current date. When a letter, memo, or document is final, consider replacing the date field with the actual date. At a minimum, make sure that we have a PDF image of the final letter, memo, or document with its actual, correct, and final date.

7. DANGEROUS EMAILS

Our single most dramatic risk exposure consists of incoming emails that seek to install viruses on our computers and potentially take over or incapacitate our entire computer system and archives. These emails often look ordinary or innocuous, but if you click on a link or an attachment this will launch malevolent code. If it's a link, then the link will launch software from the web that will infect your computer and potentially take down our entire network. If the email has an attachment, then that attachment—whether Word, PDF, PowerPoint, a graphics file such as JPG, or something else—is typically set up so that as soon as it opens it executes harmful commands. To protect ourselves from these dangerous emails, follow these guidelines:

7.1. Generic Message Text

If an email has generic message text—words that could be sent to anyone and have nothing to do specifically with our law practice or with anything you are working on—that often means the email is illegitimate. Subject lines can give you a tip-off. For example, these phrases might appear in the subject line or in message text:

- Please open this document
- Hi [your name]
- Here are the closing documents
- You'll enjoy this
- Thought you would like to see this
- In response to your inquiry
- Take a look at this
- You've won!
- See attached, let me know if you need anything else
- Here is the invoice
- Your account has been compromised

Evil emails sometimes display a long list of recipients, perhaps with similar email addresses, few or none known to you. In other cases, they sometimes show no recipients at all and you receive only a blind copy of the email. If you receive an unexpected or suspicious email and have no reason to think it's germane to anything you are working on, don't open it and, if you do open it, don't click on any links or attachments. Even if the sender did somehow weave your name and email address into the text of the email—which they are perfectly capable of doing—that doesn't mean it's safe. Keep your guard up.

7.2. Known Persons

Just because you know the sender or because the email refers to someone you know, that still doesn't mean the email is safe. Often the bad guys take over other people's computers and use them to send fake emails to everyone in the victim's contact list, perhaps with a generic message text as described above ("spoofing"). Also, the bad guys sometimes make their emails look as if they came from Amazon, ebay, Google, Microsoft, or some other trusted sender. So if you weren't expecting an email from a known sender, or if this particular email isn't one you would typically expect to receive from that known sender, don't click on a link or open an attachment in that email without calling the sender (at a telephone number you obtain from sources other than the incoming email) to confirm it is genuine. If a particular known contact rarely uses email to send you documents or links out of the blue, that's a further sign of trouble.

7.3. Strategic Development

The people who send malevolent emails are constantly perfecting their skills and developing new strategies to get recipients to fall for their tricks. The suggestions above will probably become obsolete quickly. Stay alert for any email with a link or an attachment. Assume any such email is dangerous, unless you have affirmatively satisfied yourself it is safe. Good hygiene for incoming email now requires much more than ignoring entreaties from corrupt Nigerian government officials.

7.4. Unknown Senders

Sometimes an unknown sender will send an email that sounds like it comes from a new client or relates to a new transaction, e.g., the email says the attachment is a contract, term sheet, or title report. In these circumstances, again, you need to have the email cleared before you open any attachment or click on any link.

7.5. What to Do

When you receive an email that might fall within the above warnings, don't open it. Don't even open it just for a second to take a quick peek. A fraction of a second is all it takes to infect your computer. Instead, if you have any doubts at all about whether an email is legitimate and safe, either delete and ignore it (on the assumption that if it was real, the sender will let you know soon enough) or let our computer manager or offsite computer consultants make a determination. If you choose the second option, forward the email message to them. They will typically respond very quickly to these inquiries. Do not try to test or evaluate the email yourself. If you don't know the sender, don't call or email them until we have tested the email. If you do know the sender, you can call them, using the phone number you already have for them in your records. Don't email them, because they may have lost control of their email.

8. FRAUD AND MONEYLAUNDERING

Small law firms are a common target for fraudsters and money-launderers. How we approach this risk depends on the circumstances and what the client wants us to do. Here are some common techniques and warning signs (red flags) for fraudulent transactions and money-laundering, and some other thoughts on how to mitigate exposure. As an overarching principle, it's usually a good idea for lawyers to avoid handling client funds of any significant amount. In the world of real estate, let the title companies and other third parties handle the money. They do a better job. No one achieves any particular benefit by having the attorneys handle the money.

8.1. Bank Account Numbers

Fraudulent actors will often try to obtain bank account numbers, so they can vacuum all the money out of the account. Beware of any attempt to obtain any bank account number. Do not share any information about our bank accounts, or otherwise get involved in anything related to our bank accounts, without checking with the firm's accounting staff.

8.2. Escrow Account

Law firm escrow accounts are often a target for scams. In many cases, the fraudster convinces a law firm to

deposit a large check in its escrow account. Then, for one valid-sounding reason or another, the law firm needs to—and dutifully does—refund or disburse some of the escrowed funds quickly. But the deposited check was designed so that it will bounce, but only very slowly. By the time it bounces, the money is gone and the law firm is stuck with the loss.

8.3. Funding Mechanisms

Transactions and retainers should be funded only by wire transfers, ACH transfers, and checks, in each case funded from a domestic American bank or, for international transactions, a domestic American branch of a major international bank. Anything else should cause concern.

8.4. "Know Your Client"

Law firms are not (yet) subject to the client vetting requirements that apply to financial institutions. But we should still pay attention. We should get basic information on the identity of any prospective client and its principals. Ordinarily this does not require us to obtain identification of individuals (driver's license, passport, etc.), but circumstances could arise where that might make sense. Those circumstances would, however, often correlate with an immediate decision to decline the work outright. We can easily check names or clients and principals through the Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons list. To find it, search online for: OFAC. The OFAC list often produces false positives or incomprehensible results, which must then be resolved. A true positive, on the other hand, means we must not do business with the prospective client and should at a minimum decline the work. For any new client, a quick online search will almost always make sense. One can sometimes zero in on useful information by searching a name followed by the word "fraud" or "bankruptcy" or "complaint" or "Otisville" or "Allenwood" (two federal prisons occupied by many white collar criminals). Keep PDF copies of search results and save them in the client file.

8.5. Other Incoming Funds

Watch for unknown or weird incoming payments. Some scams involve sending money to a bank account through fraudulent checks or wire transfers. The scammer will then ask for the money back. The recipient, being very upstanding, complies with the request quickly. But then, after the recipient has returned the funds, the original incoming wire transfer gets reversed so the funds exit the recipient's account a second time. Net result: the upstanding recipient has been scammed for an amount equal to the incoming wire transfer. Thus, if an unexpected wire transfer arrives, resist the urge to be "super honest" by returning the erroneous incoming funds quickly. Don't return the funds without confirming the incoming transfer is final and irreversible.

8.6. Seeking Counsel

Often we receive short emails, typically from Asia, asking if we can handle some type of transaction, often not involving real estate, such as a generic "purchase and sale" or "drilling rig lease." The sender provides no details, incomplete contact information, and no website. Usually these inquiries are step one of an elaborate plan to do something involving our escrow account (see above).

8.7. Social Engineering

In a growth industry called "social engineering," various malefactors try to trick you to give them confidential information, such as passwords, bank account numbers, and login details. Assume that any request for that sort of information is fraudulent until proven otherwise. As a general presumption, you should provide that sort of information only when dealing with websites that you reached through your own actions, not as the result of an incoming email.

8.8. Service Mindset

Lawyers often have a "service" mindset. This is great for dealing with clients, but not so great when dealing with fraudsters. Unless you are 100 percent sure of who you are dealing with, resist your natural instinct to help out, develop relationships, and attract new clients. Those instincts are part of what attracts fraudsters to lawyers.

8.9. Updates

If an engagement extends for over a year, new players come into the picture, or an existing client seeks to change the scope of work to include "red flag" transactions, it may make sense to revisit the "know your client" comments above.

8.10. Wire Transfer Instructions

Many frauds involve changes in wire transfer instructions or providing fake wire transfer instructions for a closing. If you receive by email any new or changed wire transfer instructions, communicate directly with whoever sent them, to confirm the instructions. Do not rely on any telephone number that accompanied the (changed) instructions. Instead, track down from another source a known and verified telephone number for the party in question. Then call that party on that number. Confirm the wire transfer instructions, line by line, character by character.

8.11. General/Other

Beyond noting the suggestions above (and later in this memo on other red flags), if you see or hear any circumstance that might suggest fraud or money-laundering, or just seems odd or wrong, say something to a senior person in the firm. Keep your antennae up.

9. RED FLAGS – THE CLIENT FROM HELL

Some clients cause more than their share of grief. If you had not taken them on, you would have not only avoided that grief but also had more time available for better clients. When a new client comes in the door, watch for some warning signals that can foreshadow risk of nonpayment, malpractice claims, fraud, money-laundering, or just a bad relationship. Sometimes an apparent concern will just be a false alarm, of course, and the client will present no problem at all. If any of these signals does appear, it should justify skepticism and some extra due diligence and care, at least initially.

9.1. Communications Problems

If you find it difficult to communicate with someone by ordinary means, that is often a bad sign. Some examples: use of anonymous telephone number; no website; minimal website with almost no information or only generic descriptive language without names of people; minimal or no visibility online; no email address; generic email address (aol, gmail, etc.) rather than based on an affiliation you can readily confirm online (e.g., joshuastein.com); unwillingness to share full contact details; no message recording system; failure to leave a callback number; failure to return calls; use of a mail drop street address; multiple street addresses; no street address; terrible telephone connections.

9.2. Extremely Cost-Sensitive

If a prospective new client is obsessed with such things as getting a free initial consultation, staffing a matter with the least expensive possible attorneys, receiving daily or weekly updates on the bill, staying below a cap, or the like, there is a good chance of future billing problems, other disputes and problems, and an overall lack of appreciation of the value of our work.

9.3. Inexplicable Urgency

If a new client has an unusual need for speed, with or without a credible explanation, that should often raise a red flag. If the situation involves a new client, it will often make sense to request a substantial retainer—funded quickly before any significant work begins—as a test of the client's genuine need for speed and overall bona fides. In general, a prompt request for a substantial retainer is a good way to test for many types of troublesome clients.

9.4. International Transactions

Although international transactions are not always troublesome per se, they do create a higher likelihood of trouble. International engagements will typically at a minimum trigger the "know your client" analysis suggested earlier. Additional requirements along these lines are in flux but are generally becoming tighter. They lie outside the scope of this policy handbook.

9.5. Local Representative

Sometimes an overseas investor or other client has a trusted third party act for them in the United States, with power to hire counsel, approve deals, and sign contracts. That third party often turns out not to merit (or not to have) all the trust and authority they claim they have from their principal. At a minimum, these arrangements require suitable language in the engagement letter and comfort that the real client—the principal—has actually signed the engagement letter.

9.6. Overcompensation

If a new client offers to pay or prepay unusually large sums for legal fees, that can be a bad sign.

9.7. Previous Counsel

If someone fired his or her previous counsel, this is more likely to have happened because the client is a jerk or wants to do bad things, than because previous counsel

deserved to be fired. Their new counsel will probably face similar issues. And then it will be your problem.

9.8. Secrecy

A new client might display unusual concern about secrecy and anonymity, often with a request for a confidentiality agreement. The attorney's general obligation of confidentiality doesn't suffice.

9.9. Series of Fast Transactions

When someone wants to use real estate as a money laundry, they often try to close a series of transactions as quickly as possible, often for no apparent business, legal, or tax reason. The transaction structure may also include elements designed to make it difficult for anyone to track the flow of funds.

9.10. Too Chummy

Watch out if someone acts in an overly friendly way, such as using your nickname on first contact; discussing social activities prematurely; offering to make beneficial introductions prematurely; or in general trying to become friends more quickly or aggressively than would be reasonable, typical, or expected.

9.11. Unreasonable Expectations

Some clients bring with them unreasonable expectations, especially if they feel they have been wronged by someone else in previous transactions and relationships. Those clients will never be satisfied with what their attorneys do, and the bills will always be too high.

9.12. Vague Referrals

If a prospective client can't give any detail about who sent them our way, or if they found us through the Internet, that will often merit extra scrutiny.

9.13. Validation

Many fraudsters like to align themselves with credible third parties, and perhaps eventually you. They start with name dropping, references to affiliations with institutional players, past activities with credible parties, or other forms of attempted validation, typically without full details. If you ask for full details, this will often end the conversation.

10. EMAIL COMMUNICATIONS

Most of our communications, especially outside the office, now occur by email. People who use email often don't take it as seriously as they should. That leads to mistakes, silly disputes, misunderstandings, embarrassment, and other problems. More specifically:

10.1. Angry Emails

If you are angry about something, don't express it in an email. Use any other medium. Ask yourself whether you really need to say anything to anyone in any medium. Anger usually doesn't make things better. Conversely, if an incoming email seems to express anger or cause offense, don't assume it was intended that way. Tone is often very hard to communicate correctly in an email, another reason to reserve email only for the most anodyne discussions. And if an email seems curt or abrupt maybe that's just because the sender didn't want to waste your time. Don't get offended so quickly.

10.2. Blindingly Troublesome

Don't send a "blind copy" of any email to anyone. Instead, send out your email to all the visible recipients. Then if someone should receive a "blind copy," forward that person a copy of the "sent" email. This prevents mistakes and embarrassment if the recipient decides to "reply all" to continue the discussion.

10.3. Email Archives

We delete no business-related emails, whether incoming or outgoing; whether external or internal; and even if an email duplicates a whole thread of previous emails. Some people disagree with this policy. They think it makes sense only to save "important" or "exculpatory" emails. We think it makes more sense to save everything and thereby save time. We're not smart enough to consistently identify and annihilate only "bad" emails. Any effort to do that is hopeless anyway. So don't send "bad" emails at all. If your email storage becomes full and unwieldy, consult our computer manager to have your old emails archived and removed from your regular email storage. We store all archives in an organized fashion so they remain readily accessible. You do not need to establish separate email folders for each client or matter.

10.4. Personal Information

Some organizations have special rules about communicating account numbers, social security numbers, and other particularly sensitive information. For example, a rule might require sharing this information only through any communications medium except email. This is a good practice, probably. But if we think email is not private and secure, then we should probably not be using it for a lot of other things, or we should use only encrypted email, which would drive our clients crazy.

10.5. Privacy

Assume any email you write will be forwarded to the one person who, when they see it, will cause the most possible embarrassment and trouble for you. Assume that some future person will, for whatever reason, decide you need to be investigated and will then look to find anything they can. Write your emails accordingly. Don't expect anything will stay private. For sensitive matters, oral communications often make a lot of sense.

10.6. Recipients

Consider whether to reduce the number of recipients of your email. Some clients don't appreciate receiving a copy of every email and the chain of email responses and discussion it engenders. In those cases, just forward to the clients copies of any "sent" emails they need to see. That's increasingly part of client service in 2018. The client also might not want the other side to know the names of everyone involved on the client's side. Before you "reply all" to any email, think twice or three times. Do you really need to respond to the whole gang? Is there anyone in the list of addressees who shouldn't see your reply? When you add recipients to any email, watch out if your email software tries to help you by filling in the complete names and addresses of recipients after you type a couple of letters. You can easily send to the wrong person this way. Check every recipient. Perhaps turn off the auto-fill feature. If you add any recipients, will they see anything deep down in the previous email trail that they shouldn't see? That's another reason to delete the accumulated conversation to date, when appropriate.

10.7. Tracked Changes

If you attach a document to your email, confirm that the document doesn't have "track changes" turned on, unless that's what you affirmatively intended. Sometimes a document has "track changes" turned on, but the actual changes are temporarily made invisible. In that case, accept all the changes and turn off tracking before you send out the document.

10.8. Typos and Mistakes

Some rules for email:

- Before you send any email message, re-read it!
- Look for typos and dropped words. Weirdly, people often seem to drop the word "not."
- Do not rely on spellcheckers or grammar checkers to catch errors. The problem with spellcheck is it can't tell when you've correctly spelled the wrong word, for example you correctly typed "comprise" when you meant "compromise." Proofread your email yourself.
- Don't press "send" until you have re-read the entire message, beginning to end, including any previous messages in the thread. Consider deleting those previous messages. Consider updating the subject matter line of your email message
- Don't just "compose and click." Think about writing a draft first. You may find you can write a better email message if you do it in word processing software rather than email software. This also reduces the risk of premature transmission.
- Don't send long emails. If you have exceeded 100 words, consider attaching a Word document instead. If your email message (or attachment to it) is getting extremely complicated and nuanced, it will often make more sense to have a conversation, either in person or by telephone.

11. COMPUTERS AND CYBERSECURITY (OTHER CONCERNS)

Beyond the plethora of possible risks created by email and document management, our computers also create other possible problems and risks. These policies seek to mitigate those problems and risks:

11.1. Data Breach Procedures

If we become aware that a data breach occurred, then we will promptly notify affected clients by email and promptly remediate whatever condition permitted the breach and any similar weaknesses disclosed in our systems. The managing partner, or equivalent, must

be kept fully informed of the breach, the notifications, and the remediation measures.

11.2. Employee Departures

When an employee leaves, we terminate that person's access to our computer systems and resources, while maintaining appropriate archives. That means our onsite computer manager will take these steps:

11.2.1. Disconnect

Disconnect that person's computer from the Internet to prevent unauthorized changes in data. Keep a backup copy of any documents and other data from the hard drive on that computer. Recover recently deleted emails.

11.2.2. Document Management Account

Eliminate document management account. Do this before creating a new account for any replacement user.

11.2.3. Email

Archive all unarchived email messages in the same location as all other email archives for the firm. Archive file should be named YYMMDD [Name of Employee]. Only after the archive has been established and tested, delete the user from our email system.

11.2.4. Network Account

Eliminate network account and delete this user's personal drive on the network server, after saving a backup copy in case anyone needs anything from that drive.

11.2.5. Third Parties

Does the departed employee have any third-party accounts that should be closed, such as Westlaw or Lexis? Consider changing passwords for any other online services to which the departed employee has access.

11.3. Guest Usage

Visitors to the office should use only our guest wifi account and visitor login credentials. They should not use the general office wifi account, because it allows access to our electronic filing system. Computer usage directions for guests should appear on information cards in the conference room and at other visible locations. Guests should not use any office computers, unless they login using the visitor account available on some machines.

11.4. Information Storage and Access

Try not to keep any business-related documents or files on any local hard drive. It is not backed up. You could lose all hard drive data at any time. If you need to temporarily violate this policy (e.g., because the network isn't working), correct the violation as soon as you can, by moving the data from the local hard drive to the network and confirming it no longer exists on the local hard drive.

11.5. Laptop Census

Whenever you take a loaner laptop computer out of the office, and when you return it, notify our computer manager. If you use a loaner laptop at home, bring it into the office at least once every 60 days. Our computer manager keeps a record of the location and status of all computers. We periodically need to update and check them.

11.6. Personal Usage

You may use our office computer system for personal matters, but not to conduct some other business or to practice law independently of the firm, even just for friends and family. All the rules and policies in this handbook apply to your personal work.

11.7. Privacy

You have no expectation of privacy when using any firm computer system, including loaner laptops you take out of the office. All activity on our computer systems may be archived, logged, and monitored without notice.

11.8. Screen Lock

Computers must be configured with a screen lock—requiring re-entry of password—after 30 minutes of non-usage. Do not try to override the screen lock.

11.9. Software

Don't install any software on any computer. If you think you need any software installed, check with our computer manager. It will probably be acceptable but we need to decide. We respect intellectual property rights and pay for licenses for all software we use.

11.10. User IDs and Passwords, Generally

Each user must have a separate login for our network, online document management, Dropbox, and email. All can use the same password. We create

initial passwords for new users and require a password change every 90 days. Store passwords in a safe way. We keep a record of all passwords, so whenever you change a password notify our computer manager.

11.11. Password Standards

Every password must have eight or more characters, including at least one number, one capital letter, one lower-case letter, and one special symbol. Do not include your name, "password," or other obvious character strings.

11.12. Validation

Our computer manager will check all computers periodically to confirm they comply with this handbook and our more general computer specifications, including any changes we make over time.

11.13. Voicemail and Text Messages

When you communicate by voicemail or text message, these media raise all the same issues as email messages, including permanence.

11.14. Websites

When you surf the web, visit only known legitimate websites. Prohibited websites are not limited to pornography. All kinds of junk websites exist out there. Don't visit them. Sometimes when you enter an invalid address on the web, you will find yourself at some new and unknown place on the web. In those cases, close your browser and start over. Don't just click around and see where you go. You may end up with malevolent code on your computer. And if some website gives you an urgent warning that your computer is infected, don't believe it and don't click on anything except as necessary to exit your browser or reboot your computer. If you do anything else, then your computer probably will become infected.

* * *

The problem prevention policies suggested above relate only to the actions lawyers and staff should take, or not take, particularly in their use of computers. As a separate, additional, and also very important matter, any law practice should take less visible measures to design and manage its computer systems to mitigate cybersecurity risks. Those measures start with network structure, redundancy, backups (including periodic validation and testing of backups), disaster recovery, intrusion detection, access logging, restriction of administrative rights, forced changes of passwords, virus detection, automatic email archiving, and attention to urgent concerns about privacy, especially in Europe. They are beyond the scope of the policies offered here, but at least as important.

Any law practice also needs policies to prevent financial fraud, but those also lie outside this document. Financial controls include, for example, assuring that:

- Bank and other statements go directly to someone other than the person who pays bills, ideally at a mailing address outside the office.
- The recipient carefully reviews those statements when they arrive.
- Anyone who pays bills online cannot create new vendors.
- Payroll is funded through a separate account with a cushion no higher than the regular periodic payroll disbursement.
- Someone who does not prepare payroll is responsible for reviewing each payroll journal when funded.
- Checks payable above a certain amount require a senior attorney's signature or perhaps two signatures.
- Company credit cards have low limits.
- Any ACH withdrawals or transfers require affirmative approval.
- Any incoming communications from purported vendors or suppliers are validated.

Risk mitigation and problem prevention also go far beyond computer system design and financial controls. They affect the entire business. But that's all beyond the scope of this article.

SKIP THE STEPS

1 Research client matter

2 Make a list of key legal concepts required

3 Find draft language or draft language for each provision (or open an old version of a similar document)

4 Prepare first draft

1 Open an editable ALI CLE form

Starting with an ALI CLE form can save you time and effort, and ensures that you won't miss a key provision, or begin from a document that is not up to date.

ALI CLE Forms Library includes thousands of forms across many practices. All are fully editable and can be tailored to fit your clients' needs.

To learn more visit

www.ali-cle.org/Forms-Library

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