

# CHAPTER 11

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## THE FUNDAMENTALS OF PRACTICE MANAGEMENT

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*Professional Liability Fund*

*Practice Management Advisors*

# Chapter 11

## THE FUNDAMENTALS OF PRACTICE MANAGEMENT

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PowerPoint Slides .....	11-1

To view these chapter materials and the additional resources below on or before November 14, go to [www.osbplf.org](http://www.osbplf.org) , select Upcoming CLE, select Learning The Ropes, and click on program materials, under Quick Links. After November 14, select Past CLE, Learning The Ropes, and click on program materials, under Quick Links.

#### Additional Resources

PLF Practice Aids available at [www.osbplf.org](http://www.osbplf.org) > Practice Management > Forms

Frequently Asked Trust Account Questions

<https://www.osbplf.org/assets/forms/pdfs/Frequently%20Asked%20Trust%20Account%20Questions.pdf>

Docketing and Calendaring Checklist

<https://www.osbplf.org/assets/forms/pdfs/Docketing%20and%20Calendaring%20Checklist.pdf>

Reminder and Tickler Systems

<https://www.osbplf.org/assets/forms/pdfs/Reminder%20and%20Tickler%20Systems.pdf>

Docket Sheet

<https://www.osbplf.org/assets/forms/pdfs/Docket%20Sheet.pdf>

Follow-up

<https://www.osbplf.org/assets/forms/pdfs/Follow-Up.pdf>

Conflict of Interest Systems and Procedures

<https://www.osbplf.org/assets/forms/pdfs/Conflict%20of%20Interest%20Systems%20-%20Procedures.pdf>

Setting Up an Effective Filing System

<https://www.osbplf.org/assets/forms/pdfs/Setting%20Up%20an%20Effective%20Filing%20System.pdf>

New Client Information Sheet

<https://www.osbplf.org/assets/forms/pdfs/New%20Client%20Information%20Sheet%20with%20Disclaimer.pdf>

Engagement Letters and Fee Agreements

<https://www.osbplf.org/assets/forms/pdfs/Engagement%20Letters%20and%20Fee%20Agreements.pdf>

Client Status Report

<https://www.osbplf.org/assets/forms/pdfs/Client%20Status%20Report.pdf>

Checklist for Scanning Client Files

<https://www.osbplf.org/assets/forms/pdfs/Checklist%20for%20Scanning%20Client%20Files.pdf>

File Retention and Destruction Guidelines

<https://www.osbplf.org/assets/forms/pdfs/File%20Retention%20and%20Destruction.pdf>

Removing Metadata <https://www.osbplf.org/assets/forms/pdfs/Removing%20Metadata.pdf>

Unwanted Data: How to Properly Destroy Data in Hardware

[https://www.osbplf.org/assets/in\\_briefs\\_issues/Unwanted%20Data%20How%20to%20Properly%20Destroy%20Data%20in%20Hardware.pdf](https://www.osbplf.org/assets/in_briefs_issues/Unwanted%20Data%20How%20to%20Properly%20Destroy%20Data%20in%20Hardware.pdf)

# The Fundamentals of Practice Management

**Practice Management Advisors:**  
Sheila Blackford  
Hong Dao  
Rachel Edwards  
Lee Wachocki

OSB Professional Liability Fund

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## Topics

1. Trust Accounting
2. Calendaring
3. Conflicts
4. File Management
5. Safe Use of Technology

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# Trust Accounting

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## The proper mindset

A lawyer should hold property of others with the care required of a professional fiduciary.

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## Not your property

Client's  
or third  
party's  
property

Lawyer's  
property



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Money must be kept in one or more trust account

IOLTA: Interest On Lawyer Trust Account

Only for money that cannot earn net interest

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## Other trust accounts:



Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

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## Lawyer Trust Account:



Where unearned money belongs

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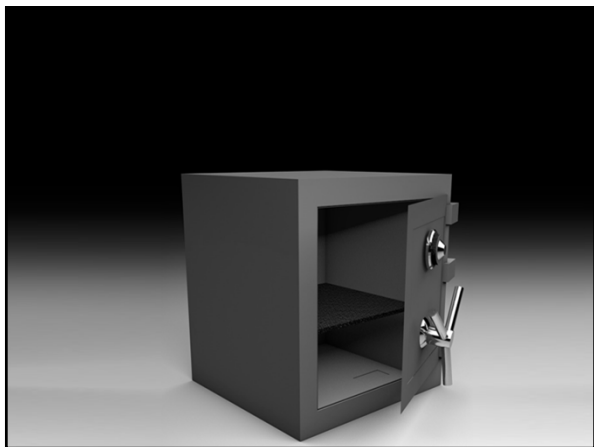
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No commingling funds



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Don't spend what you don't have

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Provide clear accounting to your client



- Explain billing procedures
- Send regular period billing statements
- Explain handling of trust account in written fee agreement

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## Watch out for Earned-on-Receipt

- Does NOT go into trust account
- Must have written signed agreement



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## Trust account recordkeeping

- Keep client ledger cards and trust account journal
- Maintain subaccount records for each client
- Keep a “paper” trail
- Do three-way reconciliation
- Keep for 5 years



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Clients able to earn net interest

Don't put in IOLTA trust account

Open separate interest bearing trust account

Evaluate using 6 factors in ORPC 1.15-2(d)

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Formula to calculate net interest:

**Principal x Interest Rate/12 x Number of Months = Interest**

Example:      Principal = \$10,000      Cost = \$25  
                 Interest rate = 5%      Monthly fee = \$7.50  
                 Number of months = 1

**$\$10,000 \times .05/12 \times 1 = \$41.67$**

Net positive interest return:

**$\$41.67 - \$25 \text{ cost} - \$7.50 \text{ fee} = \$9.17$**

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Review your  
IOLTA account  
at reasonable  
intervals

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Don't  
lose  
track  
of  
your  
clients

- Promptly return trust balances to respective clients
- Unclaimed trust funds have special procedures
- Funds abandoned after 2 years
- Report to Department of State Lands
- Remit funds to Oregon State Bar

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# Calendaring

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## Calendaring System

*Efficient and reliable system to docket dates and tickle files*



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### Docketing

- Deadlines and all important dates
- Reminders of upcoming deadlines
- Final reminders
- Follow-up reminders
- Final reviews



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**Tickling:** Recurring reminders to retrieve and review files in anticipation of work needing to be done

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An attorney has a new client with a statute of limitations that runs out in 6 months. How should the lawyer docket this deadline?

- a. Write it on the flap of the file and put it away in the filing cabinet in the back room.
- b. Put the intake sheet with the deadline in the attorney's "to-do" stack on the desk.
- c. Give the intake sheet to the paralegal with no further instruction.
- d. Docket the hearing on the calendar immediately after opening the file.

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**Good calendaring system:**

- ✓ Immediate and automatic entry of dates
- ✓ Double-checking of all entries
- ✓ Sufficient lead time to complete tasks
- ✓ Follow-up
- ✓ Back-up, duplicate, or synchronize main calendar

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## What to Calendar?

- Deadlines
- Client-imposed deadlines
- Self-imposed deadlines
- Court appearances
- Appointments
- Administrative tasks
- Time to complete work
- Out of the office (attorneys & staff)

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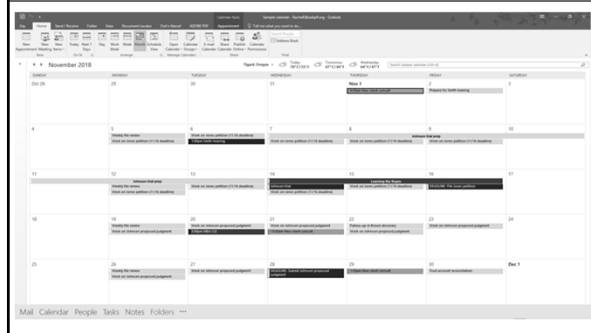
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## Sample Calendar



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## Deadline Management

- Miscalculation of deadlines is a leading cause of malpractice
- Consider using deadline calculating software
- Promptly enter deadlines and reminders into your calendar



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## Considerations

1. Computerized or paper
2. Long-range and short-range
3. Self-imposed deadlines
4. Syncing
5. Color-coding

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## Practice *tip!*

- Use intake sheets
- Process incoming documents
- Capture deadlines in email
- Synchronize calendars
- Make the calendar accessible



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## Conflicts

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**Rule #1:  
Establish a Reliable System**

Manual System	Software System
	

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**Premise-Based Software**

PC/Windows	MacOS
<ul style="list-style-type: none"><li>• Amicus Attorney</li><li>• HoudiniESQ</li><li>• PracticeMaster</li><li>• ProLaw</li></ul>	<ul style="list-style-type: none"><li>• Daylite (business management)</li><li>• TimeNet Law</li><li>• LawStream</li><li>• Legal Suite</li></ul>

<http://www.americanbar.org>

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## Cloud-Based Software



And more...

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## Rule #2: Capture All Parties

- Clients
- Adverse Parties
- Related Parties
- Declined Clients
- Prospects
- Pro Bono Clients
- Firm Members



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## Rule #3: Know How to Use Your System

- William, Bill, or Willy?
- Elizabeth or Liz?
- Former Names
- SSN or TIN
- DOB
- 123 ABC Street



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## Rule #4: Know When to Run a Conflict Check



- At first contact
- When the file is opened
- Whenever a new party enters the case

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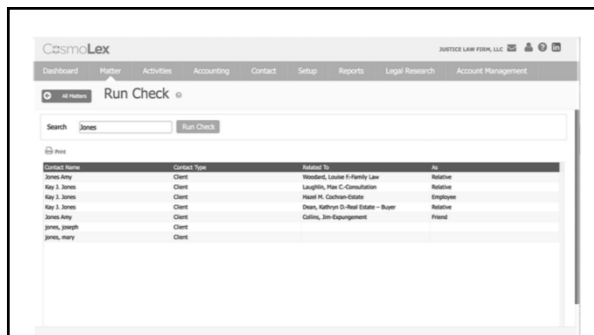
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Search Results

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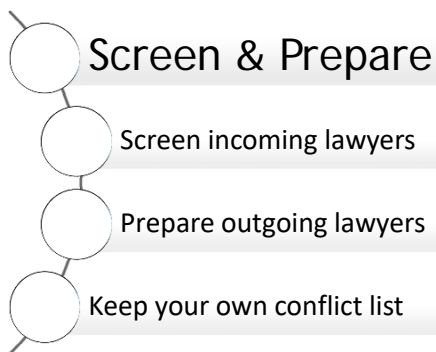
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## Practice *tip!*

- Circulate 'New Matter' List weekly
- Update your system at closing
- Be aware of consent requirements
- Avoid business deals with clients

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## True or False?

An associate sat in on a meeting with a client and the managing partner and gained knowledge of confidential information. The associate was neither the attorney on the case nor did she do any work on it while employed at the firm. That associate should include this client in her conflict list.

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## File Management

Documentation | Retention | Resources

OSB Professional  
Liability Fund

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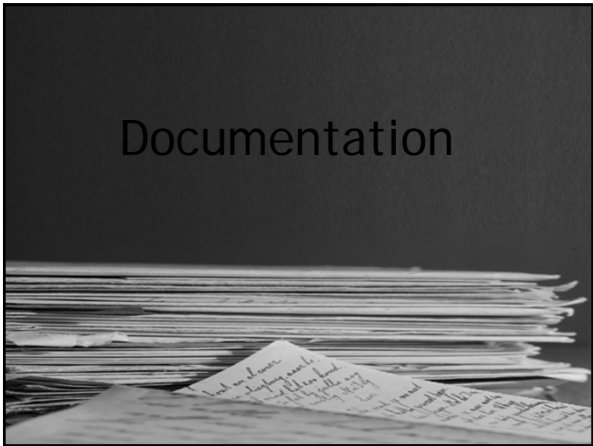
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### BASIC DOCUMENTS

- ✓ Intake Form
- ✓ Engagement Letter
- ✓ Non-Engagement Letter
- ✓ Fee Agreement
- ✓ Pleadings, Memos, Case Law
- ✓ Correspondence
- ✓ Closing Letter
- ✓ ATTORNEY NOTES!

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### ATTORNEY NOTES

#### What to Document?

- Investigation of facts
- Identification of applicable law and legal issues
- Strategic decisions
- Communicating with client
- Advice to client

**CAUTION: Clients may be entitled to your notes** as part of the "client file" – OSB Formal Ethics Opinion 2017-192

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**CLIENT FILE**  
What it is



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**Formal Opinion No 2017-192**

Therefore, as a general proposition, and absent viable attorney liens,<sup>2</sup> a lawyer is obligated to deliver the entire client file to the former client or forward it to the client's new counsel upon receiving client consent. *In re Arbuckle*, 308 Or 135, 775 P2d 832 (1989); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988). In most instances, the entire client file will include documents and property that the client provided to the lawyer; litigation materials, including pleadings, memoranda, and discovery materials; all correspondence; all items that the lawyer has obtained from others, including expert opinions, medical or business records, and witness statements. The client file also includes all electronic documents, records, and information that the lawyer maintained for use in the specific client matter, such as e-mail, word-processing documents on a server, audio files, digital photographs and even text messages.<sup>3</sup> Subject to the exceptions discussed below, the entire file includes the lawyer's notes or internal memoranda that may constitute "attorney work-product."

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## DETAILS

- **Record Conflict Checks + Results**
  - No Conflict? Conflict + Waiver?
- **Non-Engagement Letter**
  - SoL Runs Tomorrow?
- **Disengagement Letter**
  - Client doesn't pay bill?
- **Modifications to Fee Agreement**
  - Change in hourly rate?

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## Retention




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## Multiple Choice

Most client files should be kept a minimum of:

- 2 years
- 5 years
- 10 years
- Indefinitely

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## Guidelines

- Most files = retain at least 10 years
- Some files = retain > 10 years  
Original wills | Contracts | Cases involving minors
- See our *File Retention and Destruction Guidelines*

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## Resources

- ✓ Request for Conflict Search
- ✓ Sample Engagement & Disengagement Letters
- ✓ Sample Fee Agreements
- ✓ Client Status Report
- ✓ Checklist for Scanning Client Files
- ✓ See also *BarBooks*



OSB Formal Ethics Opinions: <https://www.osbar.org/ethics/ethicsops.html>  
 PLF PMA Forms: [www.osbplf.org/practice-management/forms.html](http://www.osbplf.org/practice-management/forms.html)

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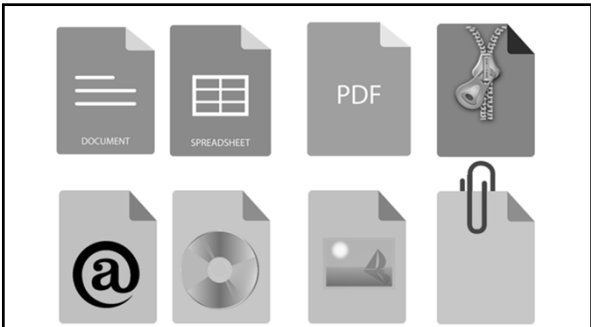
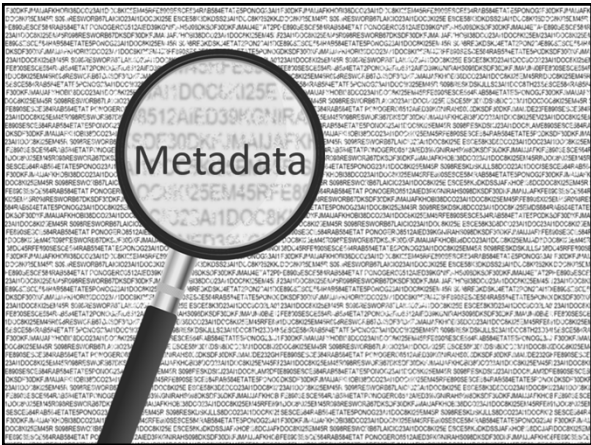
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# Safe Use of Technology

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Every electronic file

**Properties**

Size 21.8KB  
Pages 3  
Words 940  
Total Editing Time 576 Minutes  
Title Add a title  
Tags Add a tag  
Comments Add comments

**Related Dates**

Last Modified 6/30/2017 2:00 PM  
Created 6/13/2017 10:34 AM  
Last Printed 6/30/2017 11:36 AM

**Related People**

Author Hong Dao  
Add an author

Last Modified By Hong Dao

**Related Documents**

[Open File Location](#)  
[Show All Properties](#)

- Comments, track changes, versions and ink annotations
- Document properties and personal information
- Header, footer and watermarks
- Hidden texts
- Document server properties

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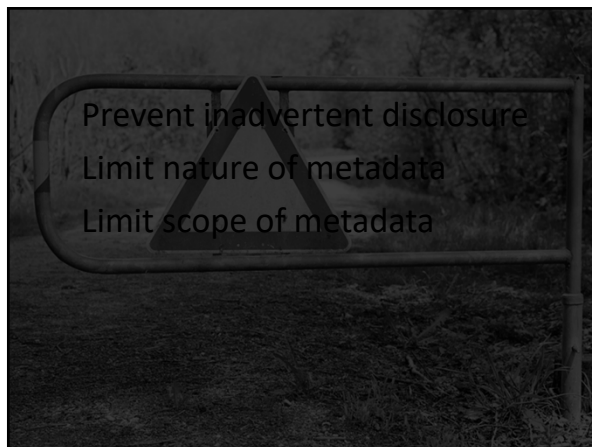
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Find  
and  
Remove

**! Comments, Revisions, Versions, and Annotations**

The following items were found:

- \* Revision marks
- \* Comments

[Remove All](#)

**! Document Properties and Personal Information**

The following document information was found:

- \* Document properties
- \* Author
- \* Related dates

[Remove All](#)

**Task Pane Add-ins**

We did not find any Task Pane add-ins.

**Embedded Documents**

No embedded documents were found.

**Macros, Forms, and ActiveX Controls**

No macros, forms, or ActiveX controls were found.

**Collapsed Headings**

No collapsed headings were found.

Note: Some changes cannot be undone.

[Reinspect](#) [Close](#)

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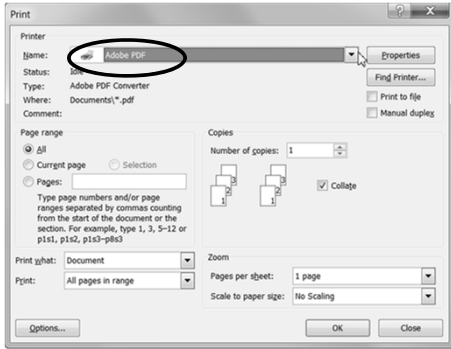
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Print  
to  
PDF



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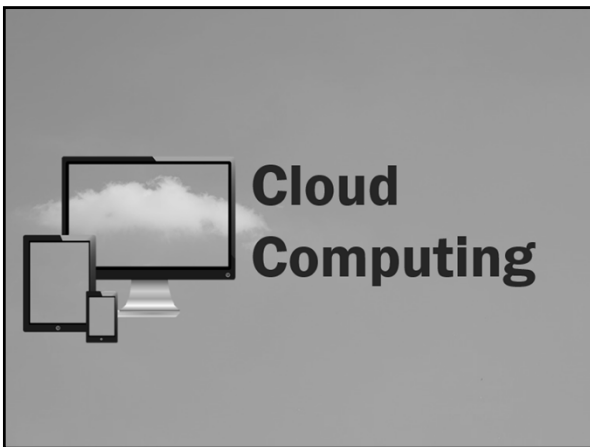
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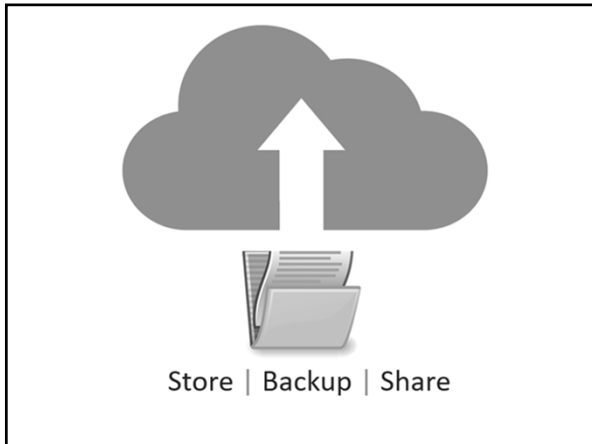
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### Security Concerns

Is data encrypted?  
Who has access?  
Where are servers located?

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### Take reasonable steps.

- Ensure storage company will reliably secure client data
- Keep information confidential

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1. Vet the vendors;  
and
2. Review terms of  
service and user  
agreements

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## Hardware and Data Destruction



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## True or False?

Deleting a file on your computer and then emptying the recycle bin will permanently erase that file.

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## Options to completely destroy data:



1. Use specialized software to overwrite data
2. Physically destroy the hard drive

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## Software

### Data Destruction

- DBAN (Darik's Boot and Nuke)
- CBL Data Shredder
- HDDEraser
- KillDisk
- MHDD

Use if you want to recycle, refurbish or donate computer

### File Shredder

- zDelete
- Eraser
- Freeraser
- File Shredder
- Secure Eraser

Use if you want to keep computer but permanently delete unwanted files

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Do it yourself

Physically Destroy Hard Disk



Bring it to a professional

Electronic Recycling Facility

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## Resources



### Oregon State Bar

<http://www.osbar.org/ethics/bulletinbarcounsel.html>  
General Counsel ■ Bar Counsel Articles ■ Ethics Opinions  
BarBooks – *Fee Agreement Compendium*



### Oregon Law Institute

<http://bit.ly/cWEmzS>  
Oregon Rules of Professional Conduct Annotated



Professional  
Liability Fund

### Professional Liability Fund

[www.osbplf.org](http://www.osbplf.org)  
Forms, Books, *In Practice* blog, *In Brief* articles,  
CLEs, Confidential Advice

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## eCourt Resources



Oregon Judicial Department  
eFiling Website

<https://oregon.tylerhost.net/ofswb>

- Web training sessions
- Training videos
- User guides



Oregon Judicial Department  
Official Website

<https://www.courts.oregon.gov/services/online/pages/efile.aspx>

- UTCR – Chapter 21
- Quick Reference for Attorneys and other eFilers



Professional  
Liability Fund

[www.osbplf.org](http://www.osbplf.org)

- eCourt Checklist for First Time eFiler

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## Contact Us

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Lee Wachocki [leew@osbplf.org](mailto:leew@osbplf.org)

*free and confidential*

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