

CHAPTER 17

AT THE CROSSROADS OF ETHICS AND PRACTICE MANAGEMENT

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Professional Liability Fund

Practice Management Attorneys

At the Crossroads of Ethics and Practice Management

1. PowerPoint Slides
2. Resources from the PLF Risk Management Services provides a great variety of free CLEs, practice aids forms and checklists, publications, newsletter articles, and blog posts.
 - a. PLF handbooks available at www.osbplf.org > Practice Management > Books from the PLF
 - b. PLF CLEs available at www.osbplf.org > CLEs > Past and > Upcoming
 - c. PLF Practice Aids available at www.osbplf.org > Practice Management > Forms > View Forms by Category.
 - d. PLF bi-monthly blog, *InPractice*, at www.osbplf.org > inPractice Blog
 - e. PLF quarterly newsletter, *InBrief* available at www.osbplf.org > Practice Management > In Brief: (search box to help you to locate articles on topics you are interested in.)
 - f. PLF Publication Handbooks are available here www.osbplf.org > Practice Management > Books from the PLF
 - g. American Bar Association resources and discounts on publications available at www.osbplf.org > Practice Management > ABA Resources
 - h. Discounts from various software and services available at www.osbplf.org > Practice Management > Discounts
3. **Resources for Topics Covered Today:**
 - a. **Trust Accounting**
 - i. PLF Practice Aids *see Trust Accounting*
 - a) Accepting Credit Cards
 - b) Client ledger card and trust journal
 - c) Closing Your IOLTA Account
 - d) Embezzlement Happens: Protect Your Firm
 - e) Frequently Asked Trust Account Questions
 - f) How to Set Up Your Trust Account in QuickBooks
 - g) Notice to Financial Institutions- Opening an IOLTA Account in Oregon
 - h) Trust Account Reconciliation
 - i) Trust Accounting Rules for Washington Practitioners
 - ii. InPractice Blog Posts *see Topics of Interest*) Trust Accounting
 - b. **Attorney Fees**
 - i. Practice Aids *see Engagement Letters and Fee Agreements*
 - a) Engagement Letters and Fee Agreements
 - b) Fee Agreement – Authorization to Charge Credit Card
 - c) OSB Model Explanation of Contingent Fee Agreement
 - ii. InPractice Blog Posts *see Topics of Interest*
 - a) Fee Agreements
 - c. **Calendaring**
 - i. PLF Practice Aids *see Docketing and Calendaring*
 - a) Docketing & Calendaring
 - b) Docket Control Follow-Up

- c) Docket Sheet
- d) Docketing and Calendaring Checklist
- e) Reminder and Tickler Systems
- f) State Court Rules
- d. **Conflicts**
 - i. Practice Aids *see Conflicts of Interest*
 - a) Checklist for Avoiding Phantom Clients
 - b) Conflict Disclosure and Consent Letters
 - c) Conflict Informed Consent Checklists
 - d) Conflict of Interest Self Audit
 - e) Conflict of Interest Systems and Procedures
 - f) Declined Prospective Client Information Sheet
 - g) Protect Clients from Identity Theft
 - h) Protecting Lawyer Engages in Business Transaction with Client- Disclosure Letter
 - i) Request for Conflict Search and System Entry
- e. **File Management**
 - i. Practice Aids *see File Management*
 - a) File Closing Checklist
 - b) File Retention and Destruction Guidelines
 - c) New Client Information Sheet with Disclaimer
 - d) Production of Client File
 - e) Checklist for Scanning Client Files
 - f) Documenting Email as Part of the Client File
 - g) Paperless in One Hour
 - h) Retention of Electronic Records
 - i) Saving Text Messages as Part of the Client File
 - ii. InPractice Blog Posts *see Topics of Interest*
 - a) File Management
 - b) File Retention
 - iii. InBrief Articles
 - a) January 2019- Malpractice Risk Factors and How to Avoid Them Part II
 - b) October 2018- Malpractice Risk Factors and How to Avoid Them
- f. **Safe Use of Technology**
 - i. Practice Aids *see Cyber Security and Data Breach*
 - a) Information Security Checklist for Small Businesses
 - b) Notice to Clients re Theft of Computer Equipment
 - c) Protect Clients from Identity Theft
 - d) Protecting Yourself and Your Clients from Data Breach
 - e) Removing Metadata
 - f) The Case for Excess
 - g) What to Do After a Data Breach
 - ii. InBrief Articles

- a) January 2019- File Retention and Destruction Procedures: Additional Safeguards to Protect Your Firm from Lost or Exposed Client Data
- b) April 2017- Unwanted Data: How to Properly Destroy Data in Hardware
- c) December 2016- What's Backing Up Your Data?
- iii. InPractice Blog Posts *see Topics of Interest*
 - a) Cybersecurity and Data Breach
 - b) Risk Management
- iv. Practice Aids *see Hardware and Software*
 - a) ABA Technology Resources
 - b) Digital Signatures
 - c) Disclaimers
 - d) How to Backup Your Computer
 - e) Technology Resources for Mac Users
- v. InPractice Blog Posts *see Topics of Interest*
 - a) Technology
- vi. Practice Aids *see Paperless Office and Cloud Computing*
 - a) Floating in the Cloud (The Ethics of Electronic Client Files)
 - a) Online Data Storage Providers
- ii. InPractice Blog Posts *see Topics of Interest*
 - a) Cloud Computing

At the Crossroads of Ethics and Practice Management

OSB Professional Liability Fund

Practice Management Attorneys:
Sheila Blackford
Hong Dao

- Trust Accounting
- Attorney Fees
- Calendaring
- Conflicts
- File Management
- Safe Use of Technology

OSB Professional Liability Fund

Trust Accounting

Types of trust accounts
Key responsibilities

The proper mindset

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

Lawyer Trust Account:

Where unearned money belongs

Types of Trust Accounts

Cannot earn net interest → IOLTA

Can earn net interest → Separate interest-bearing trust account

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 =
Number of months = 1 \$7.50

$$\mathbf{\$10,000 \times .05/12 \times 1 = \$41.67}$$

Net positive interest return:

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



Key Responsibilities




1.

Keep funds separate

- No commingling your money and client funds in same account

2.
Know each
client's balance


Keep and review
individual client ledgers



3.
Maintain
records

- Client ledger
- Trust journal
- More...

Keep for 3 years



4.
Wait for funds
to be available

- Use 3-5-10 day rule
- Avoid overdrafts



5.
Do 3-way reconciliation

Law Office LLC Three-Way Reconciliation RECONCILED	
Bank Name:	
Bank Account Name:	
Bank Account #:	
Statement Period: 7/1/2018 - 7/31/2018	
1. Book Balance	
Beginning balance on 7/31/2018	\$5,210.00
Plus cleared deposits	\$7,724.00
Less cleared payments	(\$2,903.00)
Ending balance on 7/31/2018	\$10,031.00
2. Bank Balance	
Ending balance on 7/31/2018	\$10,206.00
Plus deposits in transit	0.00
Less outstanding payments	(\$175.00)
Reconciled bank balance	\$10,031.00
3. Client Ledger Balance	
Client Name	Balance as of 7/31/2018
Alta Smith	\$5,470.00
Bob Lee	\$3,600.00
Cate Black	\$961.00
Total Client Ledger Balances	\$10,031.00

6.
Account to Clients

- Explain billing procedures
- Send billing statements
- Use written fee agreements

7.
Use accounting software

Practice management software:	General accounting software:

Beware of unclaimed property

- Take steps to find person
- Return to whomever is "entitled" to it
- Abandoned after 2 years
- Report to DSL
- Remit funds to OSB





Attorney Fees

- Ethical obligations
- Third party payments
- Accepting credit cards

Fees cannot be excessive

- Cannot charge or collect illegal or clearly excessive fees
- OSB Formal Ethics Opinion 2005-151 (fixed fees)
- See ORPC 1.5(b) to determine reasonableness



Put it in writing

- Contingent fee**
 - Cannot be used in domestic relations or criminal matters
 - Comply with ORS 20.340
 - ORPC 1.5(c)(1)-(2)
- Earned upon receipt flat fee**
 - Will not be deposited into lawyer trust account
 - Entitled to refund
 - ORPC 1.5(c)(3) and 1.15-1(c)

Third party payments

ORPC 1.8(f)

- Informed consent
- No interference
- Maintain confidentiality

Specify in writing who receives refund




Accepting credit cards

- If single merchant account, it must be a trust account
- Consider transaction fees as cost of doing business
- Set-up fees, monthly fees, or annual fees are the lawyer's responsibility

OSB Formal Ethics Opinion 2005-172





OSB Professional Liability Fund

Calendaring

Common issues
Tips to avoid missing deadlines

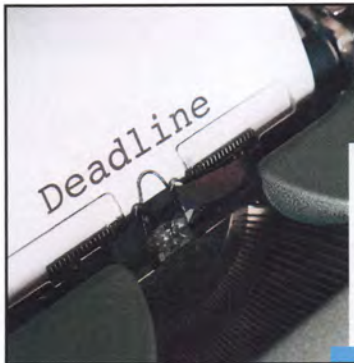
Missed deadline common issues:

- Not entering deadlines
- Not knowing SOLs
- Miscalculating deadlines and SOLs
- Filing at the last minute
- Clerical errors
- Not verifying dates
- General neglect

Tips to avoid missing deadlines




ORPC 1.1 Competence
ORPC 1.3 Diligence
ORPC 1.4 Communication




1. Use calendar to:

- Docket all deadlines and reminders
- Set recurring reminders to retrieve and review files




What to calendar?

- SOLS and case-related deadlines
- Client-imposed deadlines
- Self-imposed deadlines
- Court appearances
- Appointments
- Tasks to be completed



Good calendaring habits


- Enter dates immediately
- Have one entry point
- Capture dates from email, intake sheets, incoming documents
- Synchronize calendars



Oregon Statutory Time Limitations
August 2018

Published by
Oregon Professional Liability Fund


2. Know statutes of limitation



3. Know how to calculate deadlines

- Calculate manually
- Use rules-based calendaring software

Rules-based calendaring software		
Stand-alone rules-based calendaring software	Practice management software integrates w/ stand-alone tools	Practice management software w/ built-in rules-based calendaring
	 	
	   	 




4. Don't Wait to File

- Create a 'cushion'
- Consider eFiling issues

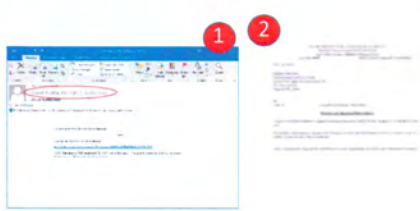
5. Double check entries

Check for:


- Plain errors
- Typographical errors
- Omissions



6. eCourt Notices & Calendaring




1. Notification via email
2. Link to court notice
3. Calculate deadline if necessary and calendar immediately



Conflicts

Types of Conflicts
The Golden Rules




Types of conflicts

ORPCs 1.7, 1.8,
1.9, 1.10, 1.11,
1.12


- Former clients
- Current/prospective clients
- Personal interests
- Imputation of conflicts
- Former Government employee
- Former Judge/Neutral

The Golden Rules

- Establish a reliable system
- Know what to capture
- Know how to use the system
- Know when to run a conflict check
- Document search and result



Rule 1:
Establish a
Reliable
System



Use software program


Stand-alone:  RTG Conflict

All-in-one:  Clio  CosmoLex  PractiseNow  Rocket Matter



Rule 2:
Know What to Capture

- Clients
- Adverse Parties
- Related Parties
- Declined Clients
- Prospects
- Pro Bono Clients
- Addresses
- Firm Members
- Personal conflicts




Rule 3:
Know How to Use
Your System

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



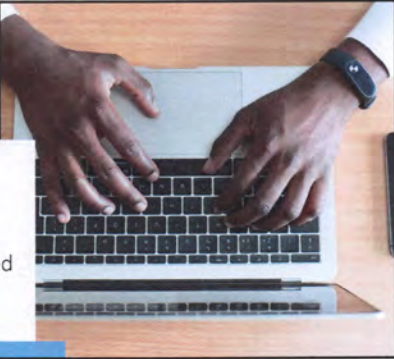
Rule 4:
Know When to Run
a Conflict Check

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



Rule 5:
Document
Conflict Search
& Result

- Who performed search
- When and where search was performed
- Result and conflict analysis



Screen & Prepare

Screen incoming lawyers

Prepare outgoing lawyers

Keep your own conflict list

Practice Tips

- Circulate 'New Matter' List weekly
- Update your system at closing
- Be aware of consent requirements

File Management

Client File
Documentation
Retention
Storage

OSB Professional Liability Fund



Formal Opinion No. 2017-192

Throughout, as a general proposition, and unless specifically stated, a lawyer is obligated to deliver the entire client file to the former client or third party to whom the client consents to release the client file. An exception to this rule is set forth in the Formal Opinion No. 2017-192 (2017).

will include documents and property that the lawyer maintains, including electronic documents. The client file also includes documents that the lawyer maintains for the client, such as a client file, digital photographs, the attorney's business cards, and the attorney's business cards that are not used.

There are a number of other items that the lawyer maintains for the client, such as a client file, digital photographs, the attorney's business cards, and the attorney's business cards that are not used.

There are a number of other items that the lawyer maintains for the client, such as a client file, digital photographs, the attorney's business cards, and the attorney's business cards that are not used.

What is the client file?

... 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.**

Formal Opinion No. 2017-192

Typical Documents to Keep in Client File

- Client Intake Form
- Conflicts Disclosure and Consent
- Engagement Letter
- Nonengagement Letter
- Disengagement Letter
- Correspondence
- Fee Agreement
- Timekeeping Records
- Billing Statements
- Documents
- Records
- Attorney Notes

Documentation

- Conveys information in writing
- Prevents misunderstanding
- Helps the lawyer articulate thought process
- Wards off malpractice claim
- Provides evidence to defend against malpractice claim



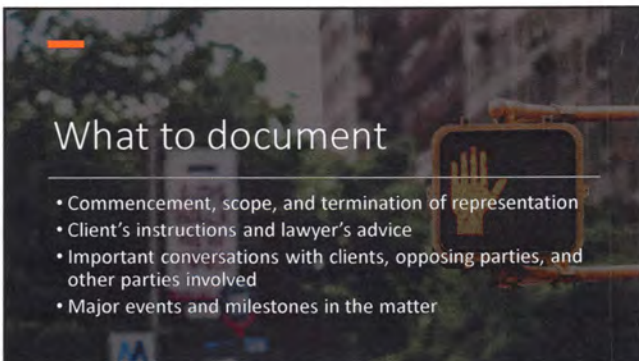
Ways to document

- Promptly follow up by email or letter
- Promptly write memo to the file
- Take notes during the conversation



What to document

- Commencement, scope, and termination of representation
- Client's instructions and lawyer's advice
- Important conversations with clients, opposing parties, and other parties involved
- Major events and milestones in the matter





A slide titled "File Retention Guidelines" with a background image of a desk with a smartphone, a pen, and a sticky note. The title "File Retention Guidelines" is on the left, and a bulleted list is on the right.

File Retention Guidelines

- Retain copy of file for 10 years.
- Research and evaluate additional factors particular to practice area, cases, and clients.
- Treat digital and paper files the same!
- See our *File Retention and Destruction Guidelines*.

A slide titled "Storage" with two images: a stack of papers on the left and a laptop on a desk on the right. The title "Storage" is on the left, and a bulleted list is on the right.

Storage

- Physical files v. electronic files
- Physical location v. cloud or hard drive
- Think 10 years ahead

It is never a good time to lose your data. Back it up.

DEVICES	SOFTWARE	DEVICES W/SOFTWARE
<ul style="list-style-type: none"> External hard drive External solid state drive Network attached storage Backup server 	<ul style="list-style-type: none"> Windows Backup MAC TimeMachine Acronis True Image AOMEI Backupper EaseUS Todo Backup Cloud backup service (Backblaze, Carbonite, iDrive, SpiderOak) 	<ul style="list-style-type: none"> Seagate Backup Plus drive Western Digital My Passport portable drive Samsung TS SSD



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Safe Use of Technology

- Metadata
- Cloud computing
- Hardware and data destruction
- Social media



Metadata

Pages: 1

Words: 142

Total Editing Time: 178 Minutes

Title: Auto 2 (16)

Tags: Auto 2 (16)

Comments: 0

Related Dates

Last Modified: 8/16/2017 10:58 AM

Created: 8/16/2017 10:58 AM

Last Printed: 8/16/2017 11:36 AM

Related People

Author: Hong Dico

Editor: Hong Dico

Last Modified By: Hong Dico

Related Documents

View All Properties

Metadata lurking in your document

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

Competency: Disclosure of Metadata

“Oregon RPC 1.6(c) requires that a lawyer **must use reasonable care to avoid the disclosure of confidential client information**, particularly when the information could be detrimental to a client. With respect to metadata in documents, reasonable care **includes taking steps to prevent the inadvertent disclosure of metadata**, to limit the nature and scope of the metadata revealed, and to control to whom the document is sent. What constitutes reasonable care will change as technology evolves.”

OSB Formal Ethics Opinion No. 2011-187 (Revised 2015)

Remove from PDF:

- Click on Edit
- Click on Preferences
- Select Documents
- Select when you want hidden info removed
- Click OK

Remove from MS Word:

- Click on File
- Click on Info
- Check for Issues
- Inspect Document
- Click on Remove All

Print to PDF:

- Click on File
- Click on Print
- Select Adobe PDF from printer menu list
- Click on Print
- Rename and save the PDF file

OSB Formal Ethics Opinion No. 2005-150 [Revised 2015] (Competence and Diligence: Inadvertent Disclosure of Privileged Information)



Cloud Computing



Security Concerns

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




Take reasonable steps:

- Ensure vendor will reliably secure client data
- Keep information confidential

OSB Formal Ethics
Opinion 2011-188


(Third-Party
Electronic Storage
of Client
Materials)



- Vet the vendors; and
- Review terms of service and user agreements


Hardware and Data Destruction

ORPC 1.6 Confidentiality




Options to destroy data completely:

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



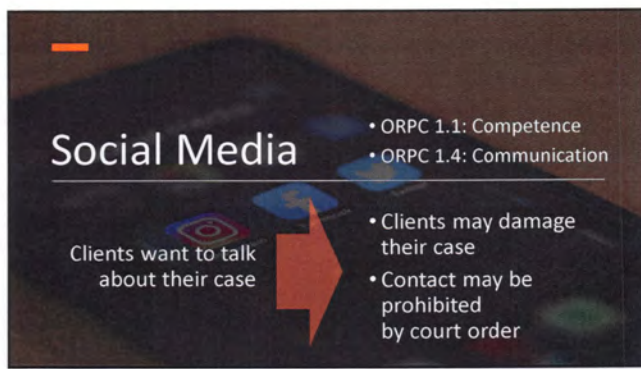
Software

Data Destruction	File Destruction
<ul style="list-style-type: none"> DBAN (Darik's Boot & Nuke) CBL Data Shredder HDDErase KillDisk 	<ul style="list-style-type: none"> zDelete Eraser Freeraser File Shredder Secure Eraser
<div style="border: 1px solid #ccc; padding: 2px;">Use if you want to recycle, refurbish or donate computer</div>	<div style="border: 1px solid #ccc; padding: 2px;">Use if you want to keep computer but permanently delete unwanted files</div>



Physically Destroy Hard Disk

- Do it yourself
- Bring it to a professional




Social Media

- ORPC 1.1: Competence
- ORPC 1.4: Communication
- Clients may damage their case
- Contact may be prohibited by court order

Clients want to talk about their case

Social Media

- You want to boast about a big win
- You want to defend against a bad review



- ORPC 1.6: Confidentiality
- Professionalism

RESOURCES

OSB Professional Liability Fund

- www.osbpilf.org > Practice Management > Forms
- Books ■ *In Practice* blog ■ *In Brief* Newsletter ■ CLEs
- Oregon Attorney Assistance Program (OAAP)

Oregon State Bar

- <http://www.osbar.org>
- Bar Counsel Articles ■ Ethics Opinions ■ Bar Books
- Legal Ethics Helpline: 503-431-6475

eCourt Resources

Oregon Judicial Department

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

- Web training sessions • Training videos • User guides

Official Website: <https://www.courts.oregon.gov>

- FAQs • UTCRs – Chapter 21 • Policies & Standards for eFiling

Professional Liability Fund

- Practice Management > Forms > Category > eCourt > Oregon eFiling Checklist for First Time eFiler

Contact Us

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Free and confidential

