

LEGAL MANAGEMENT

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MERGER MESH

6 integration areas to prioritize during a law firm merger





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OLIVER YANDLE, JD, CAE
Executive Director, Association of
Legal Administrators

“

We know that it is challenging to have attorneys and staff learn new technologies. Additionally, people have limited time to take on new processes.”

Proud to be a Hack(er)

I'm a hack. Or is it "hacker"? I'm still getting used to the terminology and recovering from an intense weekend of creative problem-solving.

On February 23–25, ALA hosted Chicago participants in the first Global Legal Hackathon, an event bringing together legal professionals, technologists, entrepreneurs and business experts focused on finding solutions to challenges facing the legal industry. Joining us for the weekend and making up Team ALA were 2018–2019 ALA President-Elect James L. Cornell, III; Region 3 Director Debra L. Elsbury, CLM; Past President Teresa Walker; Chicago-based attorney Adam Scavone; ALA's User Interface Web Developer Bert Saper; and myself. Serving as mentors were David Berger, Chief Technology Officer of Integra Ledger, and Matt Heck, President of Hard Problems Group, LLC.

Friday night, we got to work and zeroed in on the billable hour. Over the years, law firms have become pretty adept at capturing data from timekeepers whose work is billable. However, they are less successful at capturing data from attorneys and staff related to all the processes and tasks that go into delivering legal services and that impact client costs and firm profitability. This weekend, we wanted to find a way to collect this important data in the easiest and least intrusive manner we could.

#TEAMALA

We know that it is challenging to have attorneys and staff learn new technologies. Additionally, people have limited time to take on new processes. So, Team ALA went to work developing a solution using our Uniform Process Based Management System (UPBMS) code set, in which a bot automatically captured data, recorded it on the Integra Ledger and distributed it to various platforms such as Office 365 and Clio.

Using the collaboration tool Slack, we simulated conversations among law firm team members who were bringing on a new client, HackCo, and creating a new LLC. Using natural language processing and context clues from the conversation, the bot was able to determine the specific task (for example, conducting a conflicts check), identify the appropriate code

within the UPBMS, open a time entry for the task in the time entry system, record a time stamp in Integra Ledger, and export the captured data to an Excel spreadsheet — automatically. We're excited to report that our entry will be moving onto the next round, where eight semifinalists will be chosen to compete in the finals! Four overall Hackathon winners will be selected.

Around the world, similar teams were working on a variety of other solutions, ranging from apps to improve access to justice to machine-learning systems to help people read and understand legislation. The event gave us an opportunity to demonstrate a practical and innovative application of the UPBMS and provided ALA with global exposure as a thought leader. We've made new connections with leaders in artificial intelligence, blockchain technologies and other cutting-edge applications for the legal industry.

The Global Legal Hackathon is just the latest initiative advancing ALA's Strategic Plan goal to enhance our industry thought leadership. We are also partnering with Experience

Matters and the University of South Australia on a research project analyzing the impact of law firm information management practices on productivity. Additionally, we're collaborating with consultant Elizabeth Mell on sexual harassment in the legal industry.

Speaking of the strategic plan ... we are making great progress on all five goal areas and have our 2018 first quarter update available. (See the web version of this article for the link.) Be sure to check out future issues of *Legal Management* for more updates on our progress — and to find out how we fare in round two of the Global Legal Hackathon! Maybe being a hack(er) isn't so bad after all! ■



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ALA headquarters was proud to be a host for the Global Legal Hackathon. The team's idea has made it to the next round of judging on March 11.



VALERIE A. DANNER
Managing Editor, Legal Management

Global Legal Hackathon Comes to ALA Headquarters

Three days, long hours, fair amounts of coffee and lots of brainstorming and legal camaraderie set the stage for the Global Legal Hackathon's stop in Chicago, February 23–25. Hackers converged on ALA headquarters to use their collective skills to home in on one problem facing the industry.

ALA hosted the event. Comprising Team ALA were 2018–2019 President-Elect James L. Cornell, III; Region 3 Director Debra L. Elsbury, CLM; Past President Teresa Walker; ALA Executive Director Oliver Yandle, JD, CAE; Chicago-based Attorney Adam Scavone; and ALA's User Interface Web Developer Bert Saper. Serving as mentors were David Berger, Chief Technology Officer of Integra Ledger, and Matt Heck, President of Hard Problems Group, LLC.

"There is nothing better than a deadline to force action," says Yandle. "The dedicated time during Hackathon weekend was a great chance to focus on an issue that has proved challenging for our industry."

The goal was to have a viable solution for the challenge by the end of the weekend. The challenge of choice: It's an incredibly competitive legal market, and clients demand more efficiency and price predictability. While firms are adept at tracking many staffers' and lawyers' time for billing, a lot of the necessary behind-the-scenes work isn't as easily categorized and tracked. So many processes and tasks that support the delivery of legal services are not being captured — mostly because they aren't billed to the client. But they still have costs associated with them that need to be accounted for.

SPECIAL COVERAGE

The solution: Team ALA focused on how the Uniform Process Based Management System (UPBMS) can play an integral role in capturing this back-end data.

“Working on a solution to integrate the UPBMS codes into a technology solution that applied the codes to the processes our firms engage in when delivering client services really gave me a perspective of them I did not previously have,” says Cornell, who’s Executive Director at Graves Dougherty Hearon & Moody, PC, in Austin, Texas. “I now see how powerful and valuable the UPBMS codes can be to help our legal organizations analyze our processes so we can become more efficient in delivering them. I believe there is broad applicability of the codes sets in all our organizations, regardless of size or practice focus.”

One complication the team needed to address was how difficult it can be to get some lawyers and staff to adopt new technology.

“The law firm/lawyer’s perspective is typically ‘I’m not using anything that slows me down, I have to learn, I don’t already feel comfortable with [it], even if I know it will help me,’” says Walker, Chief Operating Officer at Waller Lansden Dortch & Davis, LLP, in Nashville, Tennessee. “Technologists just assume people are waiting on pins and needles for the next product out of the box.”

MEET LEXI

To help bridge that divide, the team came up with an option that would work with technology that a growing number of lawyers are used to working with — Slack.

Lawyers and staff working on a particular matter would communicate electronically per usual via Slack (or other communication platform). What the team devised is a bot named Lexi to work in collaboration with these platforms. So while the usual work goes on, Lexi monitors the conversations taking place in Slack. It picks up on key words and phrases, and, using natural language processing and contextual clues, automatically takes various actions or asks confirming questions.

Lexi then assigns the UPBMS codes to those actions. The team believes that this recordkeeping — and subsequent analysis — could have practical applications that range from business development to human resources management.

“The chatbot in Slack allowed us to develop a pretty simple solution to a complex problem,” adds Walker. “Bingo! That’s

very important in this industry. To get user acceptance, the solution has to be as simple as possible.”

“We were able to demonstrate the application in real time and it worked!” says Yandle. “We got great feedback from the judges on the presentation and will advance to the next round of the Hackathon competition. Although we were the only team, the Integra mentors believe that our solution is one that will compare very favorably in later stages of the competition.”

One of ALA’s strategic goals is to deliver thought leadership and innovation to the legal management industry. The weekend was a way to reach new audiences and exhibit the collective knowledge and skills of ALA membership.

“I couldn’t be more proud to have been a part of Team ALA,” says Scavone, Founder and Managing Attorney of Scavone Law Firm. “We got lucky with a group that brought a diverse set of legal skills, viewpoints, and experiences, and great mentors from Integra Ledger. We identified a real problem with capturing all the costs of service delivery that affect every firm — from solos to BigLaw — and our prototype brought the industry one step closer to a solution.”

Winners from each of the Global Legal Hackathon sites will submit updated entries by March 11, and eight semifinalists will be chosen to compete in the final round, April 21 in New York City, where four winners will be selected.

“I made a decision to participate in the Global Legal Hackathon without knowing how I would contribute to creating an innovative solution for a challenge our industry is facing,” says Cornell. “What I learned over the weekend was that our experiences and perspectives as legal management professionals matter, and when we are given a chance to create solutions to challenges there is no limit to the possibilities of what we can accomplish.” ■

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Critical Security for Multifunction Devices and Beyond

I cringe every time there is a broadcast news story on yet another security or data breach that affects the legal industry, hurting legal entities and their clients.

“

Firms must understand that it's the value of their clients' data — not the attorney count — that drives the need for higher levels of security and attestation.”

Lately, there have been many, including ransomware like WannaCry and NotPetya, the Equifax breach, and vulnerabilities like Meltdown and Spectre. Even a global phishing scam used a *fake* multifunctional copier/printer to email message as bait — so recipients believed that the email was coming from a trusted colleague.

Earlier in the decade, two compelling broadcast news stories regarding copier/printer data security really brought this issue to light. One reported on a large health care insurance provider that was fined \$1.3 million. It failed to secure patient data that was on its multifunction device (MFD) hard drives after the lease expired and the machine left the premises. This heightened the public's fear that confidential and private data could be stolen by hackers from the hard drive of an MFD — but, according to the report, the average American does not want to pay for such added protection.

That's a grave mistake. Your MFD holds a lot of data, both hard-copy and electronic. Your legal department would be wise to make a financial investment to protect itself from costly security threats to your connected devices. It'll not only save a significant amount of money, but, more importantly, will increase the integrity and protection of your data.

WHERE WOULD YOU PUT THAT INVESTMENT?

Let's begin with hard drives, which are found in many devices, including copiers, printers and, of course, computers. Since many are on a network, they all become susceptible to breaches because of the valuable data they may house — whether they are in your firm or when they leave your building. So, you should consider investing in hard drive and network security by acquiring

MFDs that offer secure complex administrator passwords and other hard drive-specific security measures, such as:

- Hard drive encryption
- Hard drive lock password
- Automatic deletion of temporary image data
- Data overwrite of electronic documents on a timed basis

Also, some manufacturers offer the above capabilities, but with an added focus on network security protection and user access and authentication. These added network settings should meet stringent industry requirements, such as in the finance arena, where they should support the Payment Card Industry Data Security Standard (PCI DSS), or in the education field where compliance with the Family Educational Rights and Privacy Act (FERPA) is crucial. Most important, though, is that each of your devices meets Common Criteria ISO 15408 EAL security certification. With this in hand, you'll be assured of having the best possible protection available today.

Hard-copy data can expose sensitive information when it sits idle on the output tray of your MFD where unauthorized personnel can see it and steal it. To address this, consider MFDs equipped with secure print release capabilities. This feature will allow the hard-copy printout only when the authorized recipient first enters an ID and password at the MFD control panel. With this, only that individual will have access to the document.

Law firms and accounting firms have been labeled as “treasure troves” of data by many sources. In response, businesses have been placing increased demands on law firms to prove that their data is and will be secure. Firms can no longer just claim that it is — they must prove it. And this applies to firms of all sizes. Firms must understand that it's the value of their clients' data — not the attorney count — that drives the need for higher levels of security and attestation.

The only way to prevent future breaches is for your firm to make a smaller investment in data security now before you're forced to pay a huge price later. Now more than ever, your clients are depending on you to ensure that their data is safeguarded. ■

ABOUT THE AUTHOR

Chris Bilello is Director, Business Solutions & Market Development, for Konica Minolta. He facilitates product and solution sales to key government and major accounts and develops the company's vertical market solutions and security strategy. Bilello manages Konica Minolta's strategic partner alliances and market development.



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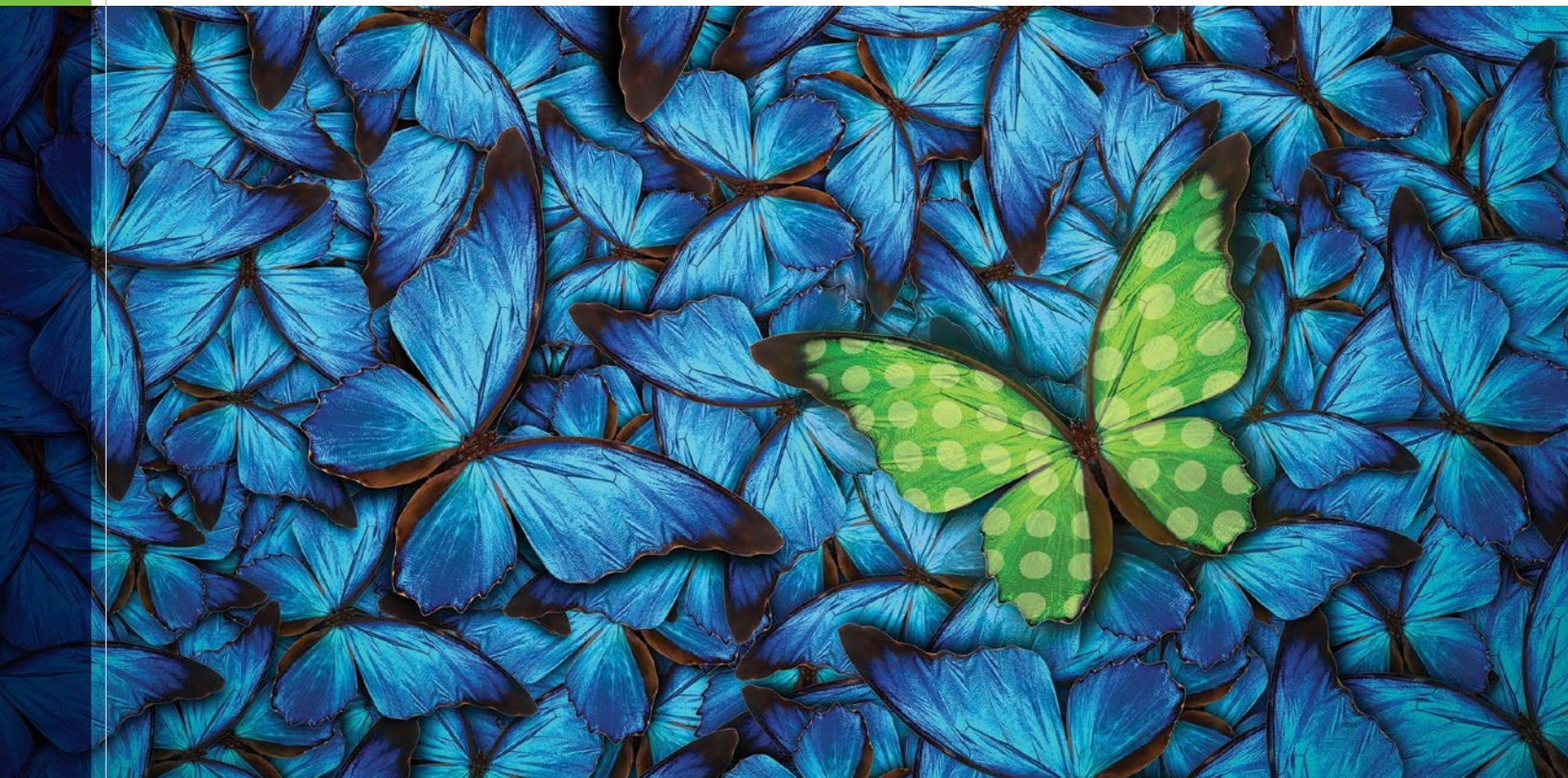
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Vice President of Product,
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It is estimated that existing technology handling low-value tasks can result in a 2.5 percent increase in lawyer productivity, assuming a realistic adoption.”

Legal Market Demands Sustainable, Practical Technology

Working to create high-value products is what drives success and differentiates people and organizations. Many industry segments and verticals constantly evaluate processes to improve the quality, speed and efficiency of delivering these products.

Often companies embrace practices, such as “Lean,” to identify work that may be wasting valuable time. Businesses must find ways to allow high-value resources to focus on important tasks required to produce differentiating products. Industries, companies and people are transformed after they apply Lean practices with a focus on reducing waste.

Seyfarth Shaw studied and successfully implemented many aspects of Lean, which led to cost savings for clients and the firm, as well as shortened the time taken to deliver services. A report published by Seyfarth Shaw showed one client in particular was able to save an average of 30 percent in costs for single-plaintiff employment litigation. Another client was able to decrease average costs per lawsuit from \$50,000 to \$10,000.

There are many ways to benefit from Lean, including changing processes or implementing technology. The legal industry is confronted with many technologies that embrace Lean to solve problems related to efficiency, risk reduction and reputation protection — all to drive value toward providing services to clients. Topics such as artificial intelligence, machine learning, cognitive computing, and big data analysis are discussed with a hope of transforming the industry. How can these technologies and concepts be applied in order to appreciate the benefits today?

SOLUTIONS ARE WITHIN REACH, BUT NEED TO BE ACCEPTED

Advanced technology solves complex legal problems by processing large amounts of data to make decisions and recommendations. One example is predictive coding for document



discovery in the litigation process found in many e-discovery platforms. They tackle hugely labor-intensive and error-prone tasks that high-value resources typically have to do.

Adopting these technologies to go through low-value work and gather data allows the law firm's resources (lawyers), to focus on high-value work to interpret and determine how to use the data. This ultimately drives value back to clients and the firm.

The trend of using these technologies is not new; e-discovery products have been on the market for years. It's the algorithms performing some tasks that is still an area of contention for many law firms. It helps to take a step back and think about them in terms of finding and eliminating the effort wasted on low-value tasks, rather than thinking in terms of artificial intelligence taking over an individual's job.

APPROACHING THE PROBLEMS FROM ANOTHER ANGLE

By disassociating artificial intelligence, machine learning, cognitive computing or other key phrases from the conversation of eliminating waste and driving value, and simply focusing on automating low-value tasks to achieve this, the concept becomes less opaque and the benefits appear attainable.

In the case of the drafting lifecycle, documents need to be navigable, accurate and aesthetically presentable. The product should reduce risk and protect reputation, but how this is arrived at becomes less important as long as each part is delivered. Automated solutions abstract the how, while helping achieve those valuable aspects, and allow nearly anyone to interface with the technology with the goal of providing an impeccable product.

DIFFERENT WAYS TO SURFACE BENEFITS

Some law firms believe embracing this low-value work develops analytical, thoughtful minds; however, individuals still

need to work and think critically to analyze data, issues and items surfaced by automation tools. These solutions allow for more time to perform analysis.

There is no one-size-fits-all solution. Results should aim to provide considerably more time for attorneys and legal professionals to focus on the work they are meant and educated to do, while still having the confidence that commoditized tasks are being completed in a high-quality manner. In the white paper by Dana Remus and Frank S. Levy, summarized by *The New York Times*, it is estimated that existing technology handling low-value tasks can result in a 2.5 percent increase in lawyer productivity, assuming a realistic adoption.

Rather than replacing individuals, these solutions provide more time to focus on the work that drives value. We need to learn to examine problems from different perspectives and keep in mind the specific goals that will increase time spent on high-value work. ■

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How to Ethically Oversee Trust Accounts

This CE Course will provide an overview of what your firm needs to know about the trust accounting process.



RICHARD DIPPEL, JD, MBA, CPA
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Business and Technology*

COURSE DESCRIPTION

This course is intended to acquaint legal management professionals and staff with the proper use of trust accounts.

COURSE OBJECTIVES

- Identify governing authorities for law firm trust accounts.
- Examine the type and function of trust accounts.
- Outline the trust account processes.
- Explain trust account records and retention.
- Summarize monthly trial balances and quarterly reconciliations.
- Discuss internal controls and separation of duties.
- Identify warning signs of improper trust account activities.
- Review procedure for handling disputed funds.
- Review procedures upon sale or dissolution of firm.

Guided by the *American Bar Association (ABA) Model Rules*, this overview outlines proper processes, recordkeeping and internal controls that involve law office personnel and trust accounts. Since lawyers are licensed by the individual states, they are required to follow the rules of the state in which they are licensed, including those rules that apply to the use of trust accounts.

When looking for guidance on how to handle a particular situation, review the applicable state law, but since many states use the *ABA Model Rules* as guidance in creating their state rules, in many cases, the rules will be the same. Where state law is unclear, the *ABA Model Rules* may help in choosing a course of action. However, it is state law and the courts in the particular state that will make the ultimate determination in the handling of trust account issues.

THE FUNCTIONING OF TRUST ACCOUNTS

Lawyers have a fiduciary responsibility to safeguard the property of their clients, and trust accounts are a means to accomplish this. Law firm managers and staff are important elements to ensure that this responsibility is not breached.

Trust accounts must be kept separate from the operating accounts of the firm to ensure against the accidental use or intentional misuse of client funds. To use a single account for client funds and the general operation of the law firm requires tracking each individual client's funds — revenue, and expenses of the firm, loans, payroll and equity distributions. To attempt to account for those numerous activities with a single account adds several layers of complexity, and invites the misuse of client funds. At the very least, this creates the appearance of impropriety and subjects the lawyer to disciplinary proceedings and possible disbarment. The lawyer, the legal management professional and/or staff member may also be subject to civil and/or criminal liability. Client funds are never to be treated as if they are the funds of the law firm.

There are ordinary trust accounts and what are known as Interest on Lawyers Trust Accounts (IOLTA) trust accounts. An ordinary trust account is a separate bank account with its own separate set of accounting records and identified as a client trust account. An IOLTA account is like an ordinary trust account except that — at no cost to lawyers or their clients — interest from trust accounts is pooled to provide civil legal aid and to support improvements to the justice system. If there is a large amount of interest, then such interest is paid to the client. What is considered “large” is a matter of professional judgment.

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All 50 states, the District of Columbia and the U.S. Virgin Islands have an IOLTA program. Forty-four jurisdictions have mandatory IOLTA programs (requiring attorneys to participate), while six jurisdictions maintain opt out IOLTA programs; participation is voluntary in two other jurisdictions. If an IOLTA account is overdrawn, in some jurisdictions, the bank must report this situation to the appropriate state lawyer licensing authority. It is critical to maintain adequate account oversight to ensure proper recordkeeping and to avoid against overdrawing the account in an ordinary trust account. But with an IOLTA account, the consequences are relatively immediate and unforgiving.

TRUST ACCOUNT PROCESSES

Upon the creation of a trust account, the lawyer or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account. The best situation is to have only the lawyer as the signatory because it is ultimately the lawyer's responsibility, but depending on the size of the firm, there may be a non-lawyer signatory. Law firm managers and staff who take on the role of a signatory face significant responsibility and potential liability, which should not be taken lightly.

The use of and accounting for a trust account requires that certain procedures be rigidly followed. There should be no split deposits where one portion of the check goes into the trust account and the remainder into the law office operating account or another account. The reason for this prohibition is that split deposits cloud the accounting for funds and makes it difficult to trace such funds. The complete check must be deposited in the trust account and then distributed. With credit card payments, ABA-approved software solutions that manage split payments are available.

Looking for more information to help you master trust accounts? We've got it covered in the *Study Guide for the CLM Exam* recently published by ALA. It's available in a PDF format, so prospective CLMs can view it digitally or print sections as needed. Visit the Legal Management e-store to purchase: <http://bit.ly/2lavHSG>.

Advanced fees paid by the client or flat fees paid in advanced are deposited in the trust account since — until they are earned — they are the client's property and not the lawyer/firm property. Such funds are withdrawn from the account when they are earned by the lawyer. If such services are never rendered by the lawyer, then the funds must be paid back to the client. There should be no excess funds in the trust account except that which is necessary to pay any bank service expense. The trust account is for the purpose of holding the client's funds only and not as an account for the lawyer to hold excess operating or client funds.

Checks deposited in the client's trust account must clear before the funds are distributed to that client. Otherwise, the funding of such distributions is from another client's funds, and there is no right to use a client's funds except on activities of that particular client. Funds held in the trust account and then earned by the lawyer, payments to a client such as settlement proceeds, or refund of expenses incurred on behalf of the client can be paid out of the trust account. General firm operating expenses are paid out of the operating account and not paid out of the trust account.

It is critical to maintain distance between the trust account funds and all other funds. It is important to keep in mind that the purpose of the trust account is to safeguard client funds and not for use of the firm and/or personal expenses of the lawyers of the firm. For convenience, it may make sense to pay firm expenses using the trust account when a lawyer has earned some of the funds, but do not do it!

Keeping clients advised of all the activities is always prudent. Plus, it's required to report to clients the deposits of their funds into the account; the payment or transfer of funds is required. The failure to keep the client informed of such activities can be an ethical violation and also invites client suspicion of your other activities in the case.

TRUST ACCOUNT RECORDS AND RETENTION

It is critical to strictly account for the inflow and outflow of funds in the trust account. In your accounting system, you must create cash as an asset account and payables as liability

account. A liability account is assigned to each client. There should be journal entries where each individual transaction is recorded regarding the receipt of funds and withdrawal of funds from the trust account and any other activities that pertain to the client accounts.

For example, the receipt of cash in connection with the settlement of a lawsuit involves the recording of an increase in cash with a corresponding increase in a liability for the particular client. Using the language of accountants: you debit cash and credit a payable — double-entry accounting. The journal entries record the individual transactions that impact the trust account. Also, for every receipt into and payment from the trust account the following should be recorded where applicable:

- A. Identity of the client
- B. Identity of the payer of the funds
- C. Reason for the payment
- D. Reason for holding funds
- E. Date of the transaction
- F. Deposit receipt
- G. Copy of the check or electronic record of the transfer
- H. Settlement sheet
- I. Relevant correspondence

The payee must be identified and checks for "cash" or payable to "bearer" are never acceptable because it makes it difficult to trace.

Journal entries are recorded in the ledger identifying each separate trust client or beneficiary. They should show the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions of deposits or withdrawals, and the name of all persons or entities to which such funds were disbursed. The fund balance is also maintained here.

It is critical to maintain a paper trail so a proper accounting can be made to the client or beneficiary. Though the use of the terms journal and ledger may sound like an old manual accounting system, most law firms, if not all, would use

software to record such transactions; however, the concept is the same. When starting a new law firm, it is advisable to consult with an external accounting professional when setting up your trust account system.

Whether electronic or paper, the trust account records must be retained for a period of time. The ABA recommends a period of five years after the termination of representation of the client. However, the state where the office is located determines the period of time for retaining the records.

MONTHLY TRIAL BALANCES AND QUARTERLY RECONCILIATIONS

For a proper accounting of all the funds, a monthly trial balance should be constructed and at least quarterly three-way reconciliations of the trust account should be performed, with the recommendation that the three-way reconciliation is also monthly. A trial balance requires that the total of all assets recorded in the ledger equal the total of all the liabilities recorded in the ledger. In a three-way reconciliation of the trust account, all the individual client ledger accounts — plus any excess funds in the account that are earmarked for bank service charges — are totaled and compare this total with the total cash balance on your books. You then compare the book cash balance total with the bank cash statement. All three totals should equal. If they do not, you should examine the following:

- A. Bank statement balance with ledger balances
- B. Relevant checks and deposit documentation
- C. Transactions in the journals
- D. Transactions in ledgers
- E. Explanations of transactions noted in such documents as correspondence and settlement sheets

This three-way reconciliation ensures that the law firm or the bank did not make any mistakes with respect to the transactions recorded in the trust account.

INTERNAL CONTROLS

In order to protect against improper entries, improper deposits, or distributions and possible misappropriation of the funds in the trust account, a set of internal controls is required. The nature and extent of the internal controls is based on the size of the law firm and the nature of the use of the trust account. Consulting with an external accounting professional for setting up appropriate internal controls is advisable. For example, some effective internal controls include the following elements:

- A. Segregation of duties
- B. Mandatory vacations
- C. Bonding of employees
- D. Written policies
- E. Staff training

As further explanation of internal controls, segregation of duties requires that the various processes involved in the receipt and the distribution of funds in the trust account are handled and recorded by different individuals. For example, the person who receives the check should not be the one who records it in the account or the one who disburses the funds — it is harder to misappropriate funds when several people are involved in the process.

Many conspiracies tend to break down over time due to greed, over-confidence and jealousy. In smaller firms, the segregation of duties may be difficult or perhaps impossible to achieve. In such firms, the lawyer must more closely supervise the activities in order to compensate for the inability to separate the duties.

There are some other internal controls you can take. For example, mandatory vacations for an extended period is another element of such controls. A staff member on vacation will be unable to conceal any misdeeds.

Another internal control is to require the staff to be bonded. Bonding can protect the firm against losses incurred due to the improper activities of the staff.

Written policies to guide the operations and training of staff concerning such policies serve to enforce the controls. The greatest set of controls are ineffective if they are disregarded by the law firm staff.

WARNING SIGNS OF IMPROPER TRUST ACCOUNTING

Despite the controls in place and an ethical law firm staff, no system is perfect. Therefore, here are warning signs that may indicate problems with the trust account:

- Checks and deposit slips that are incomplete
- Incomplete accounting records
- Missing checks or checks that are out of sequence
- Numerous voided checks
- Checks returned due to insufficient funds
- Employees who are defensive about disclosure of the financial records

- Failure to perform the basic accounting functions, such as creating trial balances and doing reconciliations of the trust account
- Lawyers or employees with personal or financial problems, or who seem to be living outside their means

There may be a legitimate reason for some of these discrepancies, but they certainly merit investigation. At the very least, they warn of lax accounting procedures, which signals a cause for concern. Whether any indications of problems or not, an annual review of the trust accounting procedures and practices is advisable.

PROCEDURES FOR HANDLING DISPUTED FUNDS

In cases where there is a dispute about the ownership and disposition of certain funds in the trust account, the funds must remain separate until the dispute is resolved. If the law firm is involved in the dispute, such funds may be transferred to a disinterested third party. The resolution of the dispute may involve the agreement of all parties or it may require a judicial determination.

PROCEDURES UPON THE SALE OR DISSOLUTION OF THE FIRM

Upon the dissolution of the firm or sale of law practice, reasonable arrangements must be made for the maintenance

of client trust account records in accordance with the trust account rules in the appropriate jurisdiction. Client permission is necessary and a responsible lawyer must be secured to take control of the funds.

In all cases, it is the lawyer's duty to ensure fiduciary responsibilities are carried out. ■

ABOUT THE AUTHOR

Richard Dippel, JD, MBA, CPA, is Associate Professor of Accounting in the Business Department at the George Herbert Walker School of Business and Technology at Webster University in St. Louis, Missouri, and a member of the faculty at Webster since 1998 teaching courses in accounting and forensic accounting. He has represented clients in a variety of business civil litigation matters, including disputes involving corporate, commercial and bankruptcy issues.



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Merger Mesh

6 integration areas to prioritize during a law firm merger



MARY KATE SHERIDAN
Writer, Editor and Attorney

As law firms contemplate their future in today's modern practice, many are turning to mergers to bolster their success.

Per Altman Weil MergerLine, 2017 saw 102 law firm merger announcements, the highest number in MergerLine's 11-year history. Further, since 2000, almost 70 percent of Am Law firms have engaged in some kind of merger according to ALM Intelligence's 2017 report, *A New Approach to Law Firm Mergers: Lessons Learned From 15 Years of Consolidation* by Nicholas Bruch.

While law firm mergers have recently become more prevalent, they are not successful by default. In fact, 73 percent of merged firms "underperformed peers in revenue growth" in the five years post-merger, according to ALM Intelligence's 2017 report.

"With a lot of mergers, when you scratch a bit below the surface, there's not a lot of thought there," says J. Mark Santiago, Partner, SB2 Consultants. "The acquirer and target have to have a clear idea of what their strategy is or why they're even pursuing a merger. And a subpart of that would be what their expectations are."

Post-merger, part of that strategy must focus on seamless integration of the two firms, including fostering the new firm's culture, developing effective communication strategies, and meshing administrative functions. Below are six areas firms should focus on as they integrate to achieve a more successful merger.

"With a lot of mergers, when you scratch a bit below the surface, there's not a lot of thought there. The acquirer and target have to have a clear idea of what their strategy is or why they're even pursuing a merger."

1. FOSTER THE NEW CULTURE

Combining two firms with distinct cultures is a daunting task. Firms should be thoughtful and purposeful in designing strategies to foster relationships and mesh their cultures together.

Santiago advises that firms start at the top by encouraging shareholders to discuss their practices and how they interact with clients. "It's at the partnership level that you have to get this buy-in," he says.

Partners also must keep an eye out for potential personality clashes and areas that may ignite dissension from their premerger ranks, says Erin Meszaros, Chief Business Development and Client Service Officer at Eversheds Sutherland (US) LLP. "Upper management should identify any areas where there might be conflict immediately," she says. "It won't just resolve itself."

"Upper management should identify any areas where there might be conflict immediately. It won't just resolve itself."

Being proactive about potential issues and working to ease tension will aid in smoothing the cultural transition. But firms also need to provide attorneys and staff with tools and opportunities to unify.

In the merger of Eversheds and Sutherland Asbill & Brennan in 2017, Sutherland adopted the mantra of "always assume best intentions" in interacting with new colleagues from Eversheds, says Meszaros. This technique allowed attorneys and staff to view interactions positively and with an open mind as the firms melded together. Meszaros credits this technique with yielding a positive morale and easier transition toward a "one firm" mentality.

The most important strategy that firms can implement in trying to cultivate the new firm's culture is communication,

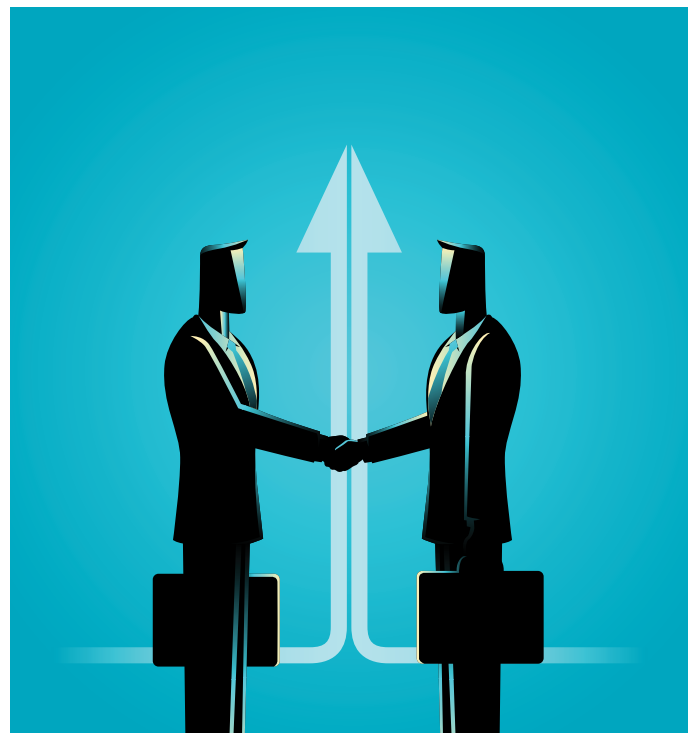
though. "I don't think you can let either side feel they're out of the loop," says Meszaros. "Over-communication is the key."

2. BE STRATEGIC WITH COMMUNICATIONS

When it comes to integration, "the important thing is communicate, communicate, communicate," says P. Douglas Benson, Partner, SB2 Consultants. Merging firms must strive for polished, transparent internal and external communications.

Internally, firms should be candid with attorneys and staff and offer them appropriate venues to hash out concerns. Host "sufficient staff meetings for people to raise and seek help solving obstacles and wrinkles in the integration," says Peter Zeughauser, Legal Strategist and Founder of Zeughauser Group. This kind of forum allows people not only to gain an understanding of the new firm dynamics but also to bring up any issues they are experiencing.

Transparency is also useful in retention decisions. "You want to be up front with people, and you want to give



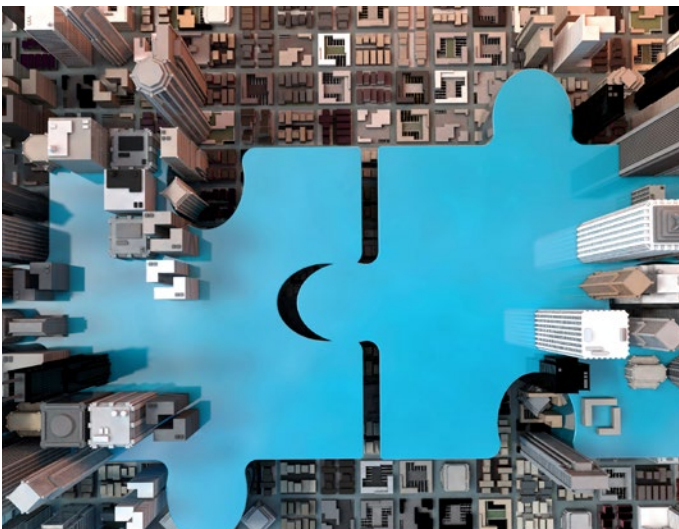
"Change is burdensome in a high-stress environment in a firm ... Being able to have the credibility of an outside, independent person can help ease the way."

them appropriate severance packages and retention packages if they stay," says Benson.

Regarding external communications, combining firms should create a communications plan that delineates a time line for when information should be released. The firms also must ensure that they coordinate their messaging, which may require outside assistance.

"Many firms enlist a consultant on a discrete project basis to help them develop and manage the communications strategy throughout the talks and the announcement," says Zeughauser.

Also critical in planning an external communications strategy is planning for surprise information leaks. "There is clearly a period during merger discussion where it is likely not going to do one firm or either firm [good] if the news were to break in an unplanned way, so you want to be ready for that," says Zeughauser.



3. PRIORITIZE APPEARANCE

Presenting the appearance of "one firm" is an important step toward integrating. When the merger is official, those within the firm will be eager for the website, telephones and systems to be fused and operating.

Having the systems and website running by the merger launch "is going to increase confidence of the integration of lawyers and staff," says Zeughauser.

If firms are unable to operate without a hitch on day one, they should prepare their attorneys and staff. "Make sure everyone's expectations are set," says Zeughauser.

4. FOCUS ON TECHNOLOGY

In modern practice, ensuring that a merged firm's technology is integrated effectively is critical. "Change is burdensome in a high-stress environment in a firm," says Zeughauser. Thus, firms must strive to make any technological transitions as seamless as possible.

Firms may consult an independent IT consultant to gauge the most useful approach. "Being able to have the credibility of an outside, independent person can help ease the way," says Zeughauser.

Some merging firms may opt to form a team composed of partners and technology professionals to plan the optimal IT approach, says Benson. This tactic allows an integrated team from both firms to brainstorm and design a technology plan to best fit the firm's needs.

If firms have the same technology, they may choose to move forward without large-scale changes. Such firms should be prepared for the potential for lurking issues, however.

Firms may experience a greater number of unexpected IT issues when merging because "IT people make a lot of changes to programs, many of which are not documented or partially documented so even if systems seem the same, they may not actually be the same," says Santiago. "A lot more little things go wrong that won't show up immediately."

Finally, according to ALM Intelligence's 2017 report, firms should be prepared for the increased costs of more robust technological operations for a larger combined firm.

"I don't think you can let either side feel they're out of the loop. Over-communication is the key."

5. CONCENTRATE ON BILLING

Shareholders will want to jump right in to their matters without hindrances. Thus, firms should prioritize melding their billing practices.

"If the firms are lucky, both firms will have the same accounting system, and if you're really, really lucky, you'll be in the same versions, which makes combinations easy but not as easy as you think," says Santiago. "If they're unlucky, they'll have different accounting systems at which point you choose which one is better."

In deciding which system is the best, firms will likely be focused on one thing: time. "There is generally common ground in BigLaw that you want to shorten the time from time worked to cash in the door," says Zeughauser. Thus, firms may look for the system that ensures a speedier transition.

6. BOLSTER HUMAN RESOURCES

Mergers can breed uncertainty among attorneys and staff, which makes it more important than ever to ensure that the human resources department is solidly integrated and available to respond to employee needs.

Zeughauser recommends that legacy firms come to a meeting of the minds on the expectations and parameters of the human resources department. Firms should discuss the best practices they'd like to follow and which staff and policies they need to achieve such a goal.

As law firms merge, they should prioritize the integration process to foster communication, transparency and functionality. A merger is a significant change and firms should take whatever steps they can to make it seamless and promote a "one firm" mentality. ■

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Mary Kate Sheridan is a Writer and Attorney with a JD from Columbia Law School and a bachelor's in English from Mary Washington College. She is currently pursuing her MFA in creative writing at The New School.



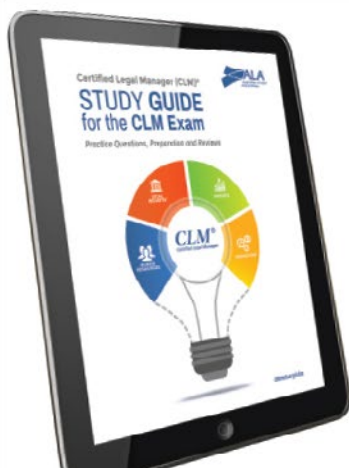
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Tough Talk

Having difficult conversations with problematic employees is never easy — but these conversations need to happen. Here are tips to get you through them.



KYLIE ORA LOBELL
Freelance Writer

Your law firm staff is excellent, save for one or two bad apples in the bunch. Maybe they come into the office with a bad attitude, bully their colleagues, spread lies and start trouble at every opportunity.

This kind of behavior can create a toxic environment and lead to a plethora of problems. The great employees might quit, your law firm can gain a bad reputation and productivity may suffer.

This is why you must deal with these problems instead of ignoring them. You need to do as much as you can to avoid issues in the first place, and then swiftly take care of them before they get out of control. Partners and law firm managers have various ways of dealing with harsh employee situations.

“As an office managing partner, I first assess whether the employee is being ‘tough’ because the leadership of the firm hasn’t set the person up for success,” says Joseph S. Leventhal, Office Managing Partner at Dinsmore and a board member at the Federal Bar Association. “Assuming the firm has done all that it reasonably should to make the person successful, you have to deal with tough employees head-on. And depending on the situation, tough employees may need to be asked to leave the firm because they can be like a cancer on the organization.”

"Assuming the firm has done all that it reasonably should to make the person successful, you have to deal with tough employees head-on. And depending on the situation, tough employees may need to be asked to leave the firm because they can be like a cancer on the organization."

It may be tempting to let a problem go "just this time," but it can only grow bigger and bigger and eventually explode, according to Dina Lynch Eisenberg, JD, who is Legal Operations Strategist at Outsource Easier. "More employees will feel vulnerable and unsafe at work. Management must help both parties, the actor and receiver, to interact in more productive ways by providing coaching and training as well as reinforce their notion of good work behavior."

When dealing with tough employees, you may find yourself in a difficult and uncomfortable position. You might have to make tough calls. But it is your job to protect yourself and others and ensure that your firm is performing as best as possible.

The following are ways you can safeguard your firm and guarantee that all of your workers have a pleasant environment in which they can professionally thrive.

BE PATIENT WITH THE HIRING PROCESS

You can avoid having problem employees on your team in the first place by taking a little more time to find the right hire. "All too often, a hiring manager will hire quickly based on a desperate or urgent need," says Candice Pinares-Baez, a Partner at Fisher Phillips and a presenter at this year's ALA Annual Conference & Expo. "My advice is to take your time regardless of the extenuating circumstances."

Seth Price, Founder and Managing Partner at Price Benowitz LLP, says that at his firm, he asks a variety of people with different backgrounds and personalities to interview potential employees. He also tries to do a shadow day "to see how someone interacts during the workday, what types of questions they ask and how they behave on an interpersonal level beyond the short confines of an interview."

REQUIRE EXTENSIVE TRAINING UP TOP

Once you've found your new employee, you should have a 90-day probationary period to ensure that you made the right decision. During this time, Pinares-Baez says you should ensure that supervisors are working closely with the new hire to determine whether they can perform to expectations and

are able to work well with the team of colleagues. "Spotting a problem employee early, addressing any issues, and making the determination to part ways early in the relationship can prevent a great deal of headache later," she says.

HOLD EVALUATIONS

Employees need feedback on an ongoing basis. By holding reviews, you can let them know their strengths and weaknesses and give them the chance to offer you feedback as well. Having open conversations helps you avoid built-up resentments from employees.

"Employee performance not only includes meeting goals or metrics, but also includes good citizenship and the ability to work well with others," says Pinares-Baez. "Failure to do so should be addressed in the same manner as other performance deficiencies. It should be part of the employee evaluation and subject to disciplinary measures if expectations are not met in this regard."

"All too often, a hiring manager will hire quickly based on a desperate or urgent need. My advice is to take your time regardless of the extenuating circumstances."

GIVE A WARNING TO PROBLEM EMPLOYEES

Your tough employee is acting up. Depending on the severity of the issue, you should decide whether it is worth firing the employee or simply giving him or her a warning. "We usually have a 'one bite' rule, but for serious violations, there'd be termination," says Price.

If an employee was lying, for example, that might lead to a firing. "The warning depends on the level of severity of the lie. A white lie might just be a verbal warning, while in the case of something to deal with substance — like a client's confidences or something that is more consequential — there could be immediate termination."

"We try to get people outside the office to bond and get to know each other outside of the workplace in order to improve communication."

Maybe your tough employee made a mistake, but you aren't seeing his or her perfectly acceptable reason for doing so. Before you give a warning or termination, sit your employee down to figure out what really happened.

"Don't just assume bad intentions because there could be workplace factors at play you aren't aware of yet," says Einsenberg. "After gaining understanding, restate the community policy around honesty and the consequences for breaking the policy a second time. Decide how the employee needs to behave to restore lost trust. Of course, the first instance of lying may be a terminable offense."

PROMOTE POSITIVITY AND TEAMBUILDING

You may decide to fire a troubled employee, keep the warning on record or let them off because it did not turn out to be a big deal. No matter what the outcome, going forward, you need to utilize positive training and hold teambuilding activities to assure that everyone is happy, healthy and on the same page.

Price says that his firm will engage in teambuilding activities. "We try to get people outside the office to bond and get

to know each other outside of the workplace in order to improve communication."

There are other things to do aside from teambuilding, too. "There are big things that you can do to create a positive atmosphere for all your employees," says Leventhal. "But most important is treating everyone as valuable and part of a team, thanking people for their effort and taking the time to ask how you can help them be successful in their jobs." ■

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Kylie Ora Lobell is a freelance writer living in Los Angeles. She covers legal issues, blogs about content marketing, and reports on Jewish topics. She's been published in *Tablet Magazine*, *NewsCred*, *The Jewish Journal of Los Angeles* and *CMO.com*.



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CONTINUE THE CONVERSATION IN NATIONAL HARBOR

Candice C. Pinares-Baez will offer further guidance on this issue in her session, "Difficult Conversations with Your Difficult Employees," at our Annual Conference & Expo in National Harbor, May 3–6. Don't miss out on this and other invaluable education opportunities. Learn more: alanet.org/conf18.





JOBST ELSTER
Head of Content & Legal Market
Strategy, InsideLegal

Going to the Cloud ... Are We There Yet?

We have spent a fair amount of time over the past two years of this column analyzing law firms' attitudes and buying behaviors related to cloud computing. Why are firms moving to the cloud? Why not? How fast? And how deep? And so on.

“

For as long as we've been talking about the cloud in legal, by far the biggest concern for firms moving to the cloud was centered on security.”

Everything in our economy points to the cloud as *the* platform of the present and foreseeable future — just look at recent earnings for the likes of Amazon (Amazon Web Services), Microsoft (Azure cloud), Google's Cloud Platform and Salesforce (an early SaaS/cloud-first innovator).

While the legal market is not exempt from this go-cloud thrust, the pace of adoption and acceptance is still a talking point in 2018. In this column, we'll take a look recent cloud computing-related survey results published as part of the 2017 ILTA Technology Survey. The International Legal Technology Association (ILTA) survey includes insights from more than 570-member law firms representing more than 123,000 attorneys and 250,000 total users.

SECURITY MATTERS

For as long as we've been talking about the cloud in legal, by far the biggest concern for firms moving to the cloud was centered on security. However, within the last two to three years, legal IT leaders are increasingly recognizing the security value reputable native cloud providers can bring to the table. Based on how they operate and secure their own systems, cloud providers are in the best position to provide firms with heightened cloud security measures largely unmatched by firms' internal processes and protocols.

This trend is reflected in the ILTA's 2017 Technology Survey results with 39 percent of respondents citing cost as the top barrier to moving their firm's technology to the cloud. Meanwhile, 38 percent cited security, down 6 percent from 2017 and 2016. Cloud reliability concerns (32 percent) round out the top three. Also worth noting — firms are now less concerned with integration and expandability issues when it comes to the transition to a cloud platform.



But getting back to security ...

As part of the 2017 survey, firms were also asked to rank the top three — not specific to the cloud — law firm security challenges. “Cloud apps/data security” ranked 27th (2 percent). By far, modern law firms are a lot more concerned with “balancing security with usability” (32 percent), “user acceptance and behavior” (27 percent), and “user education and awareness” (23 percent).

When predicting future adoption of cloud-based solutions, 63 percent of survey respondents indicated cloud adoption would increase, up only one percent from 2016, but still 12 percent higher than in 2015.

However, I find that more intriguing than the broader percentages for the results cited above is how firm size affects certain answers. The survey charts that typically accompany each set of graphs can be valuable in seeing how firms of varying sizes compare in technology and processes.

For example, 57 percent of “under 50 attorneys” firms predicted increased cloud adoption, while 77 percent of

“700 or more attorneys” firms indicated increased cloud technology adoption in 2018. In terms of barriers to cloud adoption, smaller firms (“under 50 attorneys”) are a lot more concerned about cost and cloud reliability and management acceptance of cloud technology compared to their BigLaw counterparts. On the other hand, regulation compliance and client restrictions are of minor concern to small firms.

LET’S TALK BRASS TACKS

So where are the biggest shifts to the cloud coming from? Some technologies are well on their way to being fully in the cloud. Again, according to the ILTA’s 2017 Technology Survey, 40 percent of firms use cloud-based solutions for email with another 12 percent using a hybrid on-site/cloud solution. Additionally, 14 percent of firms are using cloud-based solutions for document management — 11 percent have moved to Office 365 within the past year.

These trends reflect not only the sign of the times, but also IT common sense. As firms move more technology to the cloud, legal IT can (re)focus on supporting the practice of law and less on keeping things running.

Cloud technology adoption, especially in legal, will never be an all or nothing proposition, but rather will be a need-by-need, cases-by-use-case decision with the prevalence of cloud/on-premise hybrid models staying strong. And let’s face it — the ultimate decision to go cloud is becoming less and less a pure internal IT decision, but more so being determined by external forces. These include client expectations and requirements, workforce mobility, and the push to build business applications that mirror the consumer technologies we use at home every day. ■

ABOUT THE AUTHOR

Jobst Elster is InsideLegal’s Head of Content and Legal Market Strategy. He has served as a legal market strategist for the last 17 years, advising companies entering the legal market, involved in mergers and acquisitions, and expanding strategic operations overseas. Elster regularly writes and speaks on legal technology, market research and leveraging market data, technology innovations and futures, legal marketing and big data.



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Test Driving the Fitbit Ionic Smartwatch

We have been wearing activity tracking devices for some time now. Many of us been involved in those one-on-one competitions with coworkers or family members to see who can log more steps on their tracking device for a day, week or month. (Currently Phil has the Bill and Phil record with more than 21,000 steps in one day at the Consumer Electronics Show exhibit hall in Vegas.)

“

Unlike the Apple Watch, the Ionic will work both with iPhone and Android phones. But the Ionic does not have built-in LTE connectivity like the new Apple Watch 3.”

We have heard of law firms issuing fitness tracking devices to all employees and initiating firm-wide activity competitions — in exchange perhaps for some discounts on health insurance. Whatever the motivation, however, tracking your daily activity with the devices and maintaining a historical record of your progress via a web-enabled dashboard is popular with techies and non-techies alike.

Fitbit has been a leader in the tracking device market, and they have created an array of products from simple step-counting devices to more full-featured devices that increasingly blur the lines between activity trackers and smartwatches. The Fitbit Ionic is their latest release, and it definitely can be classified as a “smartwatch,” comparable to the Apple Watch, Samsung Gear and other popular models. We have purchased a number of Fitbit products through the years, so when the Ionic was announced, we decided we had to give it a try — especially since it was the most advanced device yet from the folks at Fitbit.

We definitely felt that Fitbit had moved into the smartwatch category with the Ionic when we saw the price. The Ionic set us back \$299, so we were expecting something that would do much more than say “have a nice day” and tell us how many steps we had walked. The price point puts the Ionic on the same level as the Apple Watch, and so we expected similar features. We were very pleased.

WHAT WE LIKE

First of all, the watch face is large enough to be readable, but still not too heavy on your wrist. You can change out the wristband, but the band it came with is perfect for both casual wear and workouts. The second observation of the Ionic — once we turned it on — was the bright, colorful screen that showed up quite nicely even in the sunlight.



Setup was a breeze as we downloaded the Fitbit app on our phone and followed the step-by-step instructions. Unlike the Apple Watch, the Ionic will work both with iPhone and Android phones. But the Ionic does not have built-in LTE connectivity like the new Apple Watch 3. As a result, you must have the phone in close proximity to the watch in order to be able to get notifications and answer calls.

However, one of Ionic's key features that was a selling point for us, was the ability to store music on the watch so you could stream music directly without having your phone nearby. The Ionic will let you download up to two Pandora stations for offline play and will also allow you to upload songs that you may have on your PC or phone directly to the watch. This feature allowed us to take a run along the Nashville greenway and play music from the Ionic without having to tote our phone along with us.

Of course, to hear the music streaming from the watch, you must have some sort of wireless headset to pair with the Ionic. Fitbit has introduced its own wireless earbuds, called Fitbit Flyer, selling for an extra \$129. We were really holding out to purchase Google's upcoming wireless earbuds, called Pixel Buds, but sadly, they were not out yet at the time we picked up the Ionic. So, of course, we bought the Fitbit Flyer earbuds, too. (We are sure we will buy the Pixel Buds later as well.) And those wireless earbuds worked great with our Ionic. We were able to listen to our favorite Pandora station on the wireless earbuds as we ran around the city with just our smartwatch on our wrist (and without our phone).

Fitbit is developing a number of apps you can download to use on the Ionic. One that was preloaded for us was Fitbit Pay. We tried it out, and it worked great. Via the app you simply add one of the supported credit or debit cards to the Fitbit wallet. You can then pay for a purchase at any payment station that accepts contactless payments by simply holding your watch face close to the payment device. We love this feature. We can go for a walk or run without taking our phone and listen to music, track our activity, and pay for a latte all by just using our new Ionic watch.

The Ionic still does everything one would expect from a regular activity tracker, including GPS tracking, step counting, sleep tracking, multi-exercise tracking, and heart rate monitoring. All the stats are synced to Fitbit's personal dashboard on the web where you can monitor your own progress or share your info to compete/compare with friends.

We think \$300 is a pretty hefty price to pay for a smartwatch, but we like the Ionic as a credible alternative to the Apple Watch 3 — especially for those who want Apple Watch-like functionality, but use an Android as their primary phone. ■

ABOUT THE AUTHOR

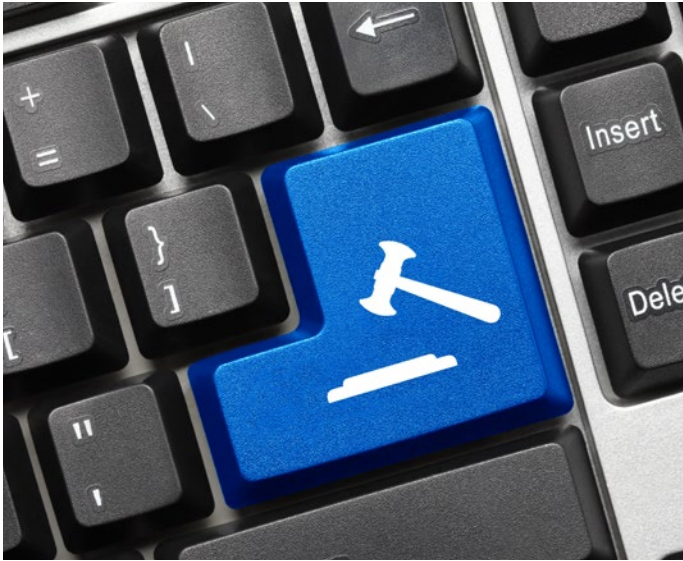
William Ramsey, Partner at Neal & Harwell, and **Phil Hampton**, Consulting President of LogicForce, are best known for *The Bill and Phil Show*.



www.twitter.com/BillandPhil

Tips for Using Tech to Better Manage Legal Holds

By John Tredennick



When litigation is anticipated or imminent, companies are required to take reasonable steps to preserve potentially discoverable evidence. Companies that fail to meet this requirement can suffer severe sanctions up to dismissal of their claims and defenses.

One good way to meet this obligation is to issue a legal hold, alerting custodians and IT staff that documents, email and other data relating to anticipated litigation should be held or preserved until further notice. Emails need to be sent, litigation needs to be tracked and the hold must be managed until the suit is resolved or the threat abates. Managing one hold involving many employees can be difficult, and often a company will have several to manage — sometimes dozens or hundreds.

Even so, many legal professionals still manage legal holds using email, spreadsheets or other jury-rigged systems. The better approach is to use a software platform specifically designed to manage the process of creating, sending, tracking and releasing legal holds. By automating and standardizing the legal hold process, these software applications can reduce the risk of sanctions for spoliation.

There are several legal hold platforms on the market that allow you to more easily manage legal holds, data collection and data preservation; some also help perform early case and data assessment. Most will also let you promote collected data to an e-discovery review platform.

LEGAL HOLD MANAGEMENT

The core function of a legal hold platform is to create, send and track legal hold notifications and set automated reminders for follow-up. A typical platform will include a dashboard where you can monitor your existing holds and create new ones.

This process should require just a few steps. The platform will prompt you for some basic information about the case and ask you to choose which of the custodians to notify, and you can choose custodians from your company's directory system. That means that, when choosing a platform, you should be sure that it integrates with your company's directories, such as Active Directory, Office 365 or Veritas Enterprise Vault. This will allow you to choose custodians by title, department, location or even workgroup.

DRAFTING NOTICES AND QUESTIONNAIRES

The next step will be to draft the hold notice. You should be able to do this within the platform. You will tailor the text of the notice to your needs and situation. Legal holds may cross borders, so some systems also support various foreign alphabets.

In some cases, you will want to include a survey with your hold notice. Some platforms allow you to choose from a list of standard questions or create your own. The survey is used to elicit information about the locations and types of data held by each custodian or to ask about a custodian's knowledge of events pertaining to the claim.

A final step will be to set up automated reminders. These can be used both for asking custodians to acknowledge that they understand their hold obligations and for periodically reminding them that the hold remains in effect.

A significant advantage of legal hold technology over manual methods is tracking of every step taken from the initial notice through to closing the legal hold.

PROFILING CUSTODIAN DATA

In addition to sending notices and reminders, some legal hold systems can also report on the types and volumes of data on a custodian's computer. Typically, the system will run in the background to collect this data while the custodian is filling out the initial survey. When the process is finished, the system will report on the nature and volume of the data held by individual custodians.

COLLECTING DATA

Another function of a legal hold platform is to streamline or automate the collection of data and move it into a secure workspace. If you are using a cloud-based platform, it can collect securely via the internet from custodians anywhere in the world.

As the data is collected, it is processed and indexed for search and promotion. Data can then be sent for review in an e-discovery platform or to a preservation archive to hold in case it is needed later.

REPORTS AND AUDITING

A significant advantage of legal hold technology over manual methods is tracking of every step taken from the initial notice through to closing the legal hold. Through the legal hold platform, you can monitor responses and reminders and download survey results, collection reports or promotion information.

The system should also provide audit trails to help ensure the defensibility of the process and allow you to resurrect hold efforts — even years later when memories fade or key employees have departed.

SUITABLE FOR A RANGE OF MATTERS

Generally, legal hold software is suitable for cases of any size, from just a few custodians to tens of thousands, and for a wide range of matters, including civil actions, regulatory requests and internal investigations. Legal hold software can be particularly useful in employment matters, where documentation can be voluminous and widely dispersed.



In any of these matters, the platform can save you time and money by automating the many interrelated tasks required to perform and manage legal holds, track responses, send reminders, profile data, and preserve and review data.

SAY NO TO SPREADSHEETS AND EMAIL

A legal hold is serious business. Failure to properly implement and execute a legal hold can result in severe consequences for your company. Given this, you can understand why spreadsheets, emails and other jury-rigged methods are risky. One simple mistake could lead to lost evidence and charges of spoliation. ■

ABOUT THE AUTHOR



John Tredennick is a former trial attorney and Founder and Chief Executive Officer of Catalyst Repository Systems. He served as Editor in Chief of the book *Winning with Computers: Trial Practice in the Twenty-First Century*.



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Legal Real Estate Reaches a Tipping Point

By Elizabeth Cooper



Law firms have faced a relatively unforgiving real estate market since 2010: rents climbed 37.5 percent and finding prime space in the central business district of major cities was expensive.

Now, the tide is shifting as new construction provides highly anticipated breathing room, according to JLL's 2017 Law Firm Perspective report. High-growth firms will start to shift into shiny new developments, providing a window of opportunity for other firms to negotiate deals for their old spaces. The fresh supply of office space will put new pressures on landlords, making the next 12 to 18 months a critical time for firms to re-evaluate their options.

HOW THE TIDE WILL TURN

The top six legal markets — Boston, Chicago, Los Angeles, New York, San Francisco and Washington, D.C. — house more than half of the 65 million square feet of new office space in development. The influx of new space is hitting each market in

different ways, giving law firms greater leverage in select spots. One of the first markets to see more tenant-friendly conditions is **Washington, D.C.**, where construction has reached its highest level in more than a decade. Rents are expected to shift downward over the next 12 months and concessions will continue to increase for new developments.

Boston sits on the opposite end of the spectrum. Law firms are often directly competing for space with the high-growth tech and life science firms saturating the region. In some cases, landlords are waiting to fill new developments with the right tech or life science occupants before opening the door to law firms. Competition will remain fierce in the Financial and Seaport Districts as law firms face a large wave of lease expirations.

Los Angeles will be another market slower to turn, with few options available in the highly popular Century City submarket where there is intense competition from tech and entertainment firms. Landlords will likely dictate terms for at least the next 12 months. However, in downtown Los Angeles there are numerous full-floor options available for law firms.

Chicago and New York's real estate markets fall somewhere in the middle of the scale. In **Chicago**, the migration of law firms from the suburbs to the city's core shows no signs of slowing down, but two new trophy towers are providing some relief. As firms relocate into the new developments, it will loosen up vacancies in their old buildings. Rents are expected to flatten out over the next year, and landlords will likely increase concessions. **New York** is set to see millions of square feet of new office space hit the market through 2020, largely in the Hudson Yards and World Trade Center areas of the city. However, the new higher-priced spaces aren't doing much to bring down rent. Both vacancy and rents will likely remain near current levels through the end of 2018 and beyond.

KEY FORCES SHAPING LOCATION DECISIONS

Specific market dynamics aside, several larger forces are influencing the decisions behind where law firms set up shop:

- **Battle for the best:** Law firms face fierce competition for fresh talent, not only among themselves but among other industries. Millennials are now the largest generational group of lawyers at large and midsize U.S. firms. With law school enrollment dropping 24.8 percent since 2010, firms are staring down a shortage of talent to replace retiring partners. Major cities remain a beacon for talented young professionals eager to grow their careers, and firms will need to compete for these professionals with the technology realm, financial services and other professional services.
- **Desperately seeking efficiencies:** Revenue growth is under pressure, from alternative legal services, weakening demand and staffing challenges. In the latest 2017 Altman Weil Law Firms in Transition survey of U.S. law firms, 94 percent said improved practice efficiency will be a permanent trend going forward. On the real estate end, firms have been actively downsizing office square footage as they try to save costs and provide more flexible space.
- **Think differently:** One thing that is very clear in the rapidly evolving legal market is the need to think differently — from alternative pricing structures to new technologies that save time and money for clients. The same old approach has grown stale, and both employees and clients are shifting away from firms that aren't willing to rethink their approach. Offices must reflect the new way of thinking, with flexible spaces that can accommodate a variety of uses, encourage collaboration among different

generations and help employees work more efficiently and productively.

THE RIGHT TIME TO STRIKE?

As the real estate market nears its peak in many cities, the scale will finally start to tip in the favor of law firms. Landlords in nearly one-third of markets across the United States are providing 12 or more free months for tenants signing 10-year leases for new developments. Concessions for tenants in the central business district of cities are up more than 15 percent nationally and 33 percent in the top legal markets. Even if an immediate move isn't in the cards, it's an excellent time to evaluate new options and possibly invite landlords to the bargaining table. ■

ABOUT THE AUTHOR



Elizabeth Cooper is an International Director of JLL and Co-Chair of the firm's Global Law Firm Group and has negotiated more than 50 million square feet in law firm real estate transactions.



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Get Your Yellow Belt in Legal Lean Sigma®

Attending the **2018 ALA Annual Conference & Expo** in National Harbor, Maryland? In the market for legal project management (LPM) certification or continuing education credits? ALA is hosting a two-day **Legal Lean Sigma** workshop before Annual Conference kicks off — so you can attend both or just the one — that will help you achieve those goals and more.



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Anniversaries, Awards and Appointments

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SHRM-SCP



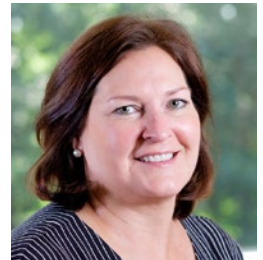
Carlotta E. Duhé



Loralyn Hutchens, CLM



Nicole Nowak



Janet T. Petrillo



Angela M. Sanford



Rosemarie Sturtevant



Marcia Zigrang,
CLM, SPHR, SHRM-SCP



Cindi Ceres, SHRM-SCP, member of the Golden Gate Chapter, is now Manager, HRBP, at Morgan, Lewis & Bockius LLP in San Francisco, California.

Carlotta E. Duhé, member of the New Orleans Chapter, is now Administrator at Kingsmill Riess, LLC, in New Orleans, Louisiana.

Althea Hunt, CLM, SPHR, SHRM-SCP (not pictured), member of the Maryland Chapter, is now Director of Administration at Lewis Baach Kaufmann Middlemiss PLLC in Washington, D.C.

Loralyn Hutchens, CLM, member of the Suncoast Chapter, is now Legal Administrator at HD Law Partners in Tampa, Florida.

Nicole Nowak, an independent member from Region 3, is now Director of Office Administration for the Minneapolis, Minnesota, and Sioux Falls, South Dakota, offices of Ballard Spahr LLP.

Janet T. Petrillo, member of the New Jersey Chapter, is now Business Development Manager at Kennedys CMK in Basking Ridge, New Jersey.

Angela M. Sanford, member of the Austin Chapter, is now Human Resources Manager at Pillsbury Winthrop Shaw Pittman LLP in Austin, Texas.

Rosemarie Sturtevant, member of the New York City Chapter, is now Chief Administrative Officer at Haug Partners LLP in New York, New York.

Marcia Zigrang, CLM, SPHR, SHRM-SCP, member of the Idaho Chapter, is now Office Administrator at Perkins Coie LLP in Boise, Idaho.

The Spirit of the Volunteer

Legal managers can play a vital role in helping meet the legal needs of underserved communities.

By Stephanie A. Hood



The Association of Legal Administrators has a rich tradition of volunteerism. Without the many members who spend endless hours giving their time to local and international ALA programs, the Association would not be as strong and vibrant as it is today.

In keeping with this tradition of volunteerism, the Foundation of the Association of Legal Administrations has been developing a program aimed at leveraging the skills and resources of our members and business partners. The objective of the program is to match the depth of expertise in areas such as HR, IT, finance and general management with the needs of our peers at legal services organizations (LSO).

These organizations provide free or reduced-fee legal services for low-income individuals and families; many focus on particular groups such as veterans, the working poor, immigrants or the

disabled. LSOs provide a range of services. The Legal Services Corporation, which the Foundation has worked with in the past, is a funding and educational source for many LSOs. Their description also provides an important definition:

LSC-funded programs help people who live in households with annual incomes at or below 125% of the federal poverty guidelines — in 2015, that is \$14,713 for an individual, \$30,313 for a family of four. Clients come from every ethnic and age group and live in rural, suburban, and urban areas. They are the working poor, veterans, homeowners and renters, families with children, farmers, people with disabilities, and the elderly.

The reality is that in spite of the hard work these organizations do on behalf of their clients, many services still go unmet. According to the LSC website, “Nearly a million poor people who seek help for civil legal problems are turned away because of the lack of adequate resources. The justice gap represents the difference between the level of civil legal assistance available and the level that is necessary to meet the legal needs of low-income individuals and families. That means for every 100 problems for clients served by LSC programs, between 62 and 72 of the problems are unable to receive the help they need.”

HOW LEGAL MANAGERS CAN HELP

Like any problem, no one solution will eliminate our social ills. However, the Foundation sees that we can directly help our local LSOs in meeting a portion of their needs. Much in the same way many of the attorneys in our firms offer free pro bono hours, we, too, can provide our expertise, include LSOs in our local chapter educational events, and offer other financial resources to their cause.

The Foundation’s trustees invite you to sign up to help at their website, reach out to any one of them to learn more about how the chapters can help and in turn how the Foundation can support your individual efforts in helping a local LSO. Together we can truly help reach the underserved in our communities and beyond.

We believe that the spirit of our volunteerism, the caring and supportive efforts that define our ALA community, and the depth of experience we each hold are the traits that strengthen us individually and the communities we reside.

The Foundation is once again sponsoring the Silent Auction at the upcoming ALA Annual Conference & Expo in National Harbor, Maryland. The net proceeds of this major fundraiser will help support the Administrative Pro Bono program, the Susan French Emerging Leader Scholarships, and the David Brezina Memorial Session speaker at each Annual Conference. This year's Brezina speaker is Elizabeth Birch, the former Chair of the Board of Directors of the National Gay and Lesbian Task Force. Additionally, she served as the Executive Director of the Human Rights Campaign (HRC) from 1995 to 2004. Under her direction, the HRC grew substantially in members, budget and ability to steer the national conversation in ways that opened minds to a culture of acceptance and reduced discrimination against the LGBT community.

Considering our focus on supporting LSOs directly, the trustees will also be donating a portion of the proceeds directly to Tahirih Justice Center, which provides free immigration, family, and civil legal services, as well as a connection to vital social services, so its clients can rebuild their lives in safety. Your donations and winning bids will not only support the Foundation's future initiatives but also go directly toward meeting the needs of the underserved and under-represented.

Additionally, coming soon to this online portal: <http://bit.ly/2FEDY2U>. You will be able to see all the donations you can bid on through Annual Conference. And, of course, direct donations to the Foundation are always welcome and very much appreciated! Secure donations can be made directly through its webpage on the ALA website: <http://bit.ly/2G3w6FP>.

We believe that the spirit of our volunteerism, the caring and supportive efforts that define our ALA community, and the depth of experience we each hold are the traits that strengthen us individually and the communities we reside. We hope to have you as partners in this program. We look forward to hearing from you! ■

ABOUT THE AUTHOR



Stephanie A. Hood

Executive Director, Hemenway & Barnes, LLP
Foundation President (2017-2018)

 foundation@alanet.org



Get the Virtual Experience

ALA will be offering its Virtual Conference experience again this year during the 2018 Annual Conference & Expo, May 3–6 in National Harbor, Maryland.

Three highly anticipated sessions will be streamed live on **Friday, May 4** and recorded for later viewing.



10:30 a.m.–12 p.m. ET

Building Trust and Respect in the Law Firm Through Understanding Behavior Styles



2:15–3:30 p.m. ET

Why Today's Impatient, Impulsive and Intolerant Clients Are Leaving Your Firm



4:15–5:45 p.m. ET

Accommodations and Leaves of Absence: Law Firms Confronting the FMLA and ADA

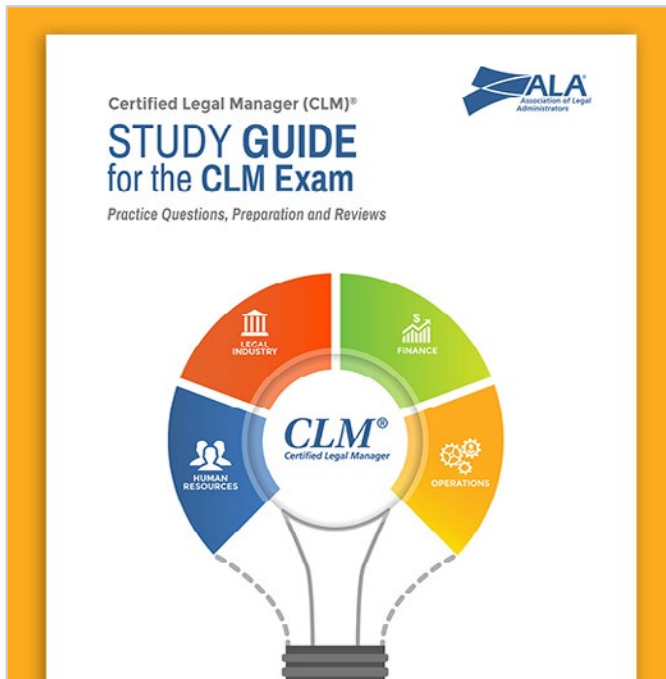


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Learn more at
alanet.org/virtual-conference

What's Happening at Headquarters?



GET CERTIFIED

March 14 is the application deadline for the May 14 Certified Legal Manager (CLM)® exam. September 5 is the application deadline for the November 5 exam. Mark your calendars! Registration is open for both dates.

And now there's a study guide to help you prepare! ALA recently published the *Study Guide for the CLM Exam*. It's available in a PDF format, so prospective CLMs can view it digitally or print sections as needed. (If you have previously taken the CLM exam but didn't pass, you can take advantage of 50 percent off the *Study Guide* for your next attempt. Just contact certification@alanet.org.)

Buy a copy of the study guide here:
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The Chapter Leadership Institute (CLI) is consistently ranked among ALA's top events by attendees. This year, we're seeking your expertise to help develop the very best thought-provoking and engaging ideas for sessions pertinent to not only chapter leadership, but leadership in general. Presentation proposals are **due April 11**. CLI will take place July 19–21 in Denver.

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One great way to assert your leadership at your workplace is to systematically implement project management and process improvement programs. And one great way to assure you have the skills to do so is to attend the Legal Lean Sigma® and Project Management Yellow Belt Certification Course.

Occurring May 1–2 in National Harbor, Maryland, the workshop is designed to equip you with foundational skills in the various methodologies of project management and process improvement. Instructors Timothy B. Corcoran and Catherine Alman MacDonagh, JD — Chief Executive Officer of the Legal Lean Sigma Institute — employ a dynamic format to instill these time- and money-saving concepts in law firm leaders. Sign up today!

And be sure you're registered for our Annual Conference & Expo that immediately follows on May 3–6. You won't find a better opportunity for more than 80 education sessions, more than 75 expert speakers and keynote speaker John Quiñones, an ABC News correspondent and host of the television show *What Would You Do?* — not to mention the invaluable networking opportunities.

Visit alanet.org/conf18 to register for the Legal Lean Sigma and Project Management Yellow Belt Certification Course and Annual Conference.



QUANTIFYING INFORMATION MANAGEMENT

Wondering whether your firm is getting the most value out of its data and knowledge? Curious whether you're managing information efficiently? On behalf of members, ALA has embarked on an Information Assets Management Survey in partnership with Experience Matters and the University of South Australia to find out how firms are doing.

James Price of Experience Matters joined the *Legal Management Talk* podcast to talk information as a business asset and about the survey itself. Listen via the Apple Podcasts app or ALA's website: alanet.org/podcast.