

CHAPTER 12

ESSENTIAL GUIDE TO PRACTICE MANAGEMENT

Rachel Edwards

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Professional Liability Fund

Practice Management Attorneys

Essential Guide to Practice Management

1. PowerPoint Slides
2. Resources from the PLF provide a great variety of free CLEs, practice aids, publications, newsletter articles, and blog posts.
 - a. PLF publications available at https://www.osbplf.org/services/resources/#plf_books
 - b. PLF CLEs available at <https://www.osbplf.org/services/resources/#cles>
 - c. PLF practice aids available at <https://www.osbplf.org/services/resources/#cles>
 - d. PLF blog, *InPractice*, at <https://www.osbplf.org/blog/inpractice/>
 - e. PLF newsletter, *InBrief*, available at <https://www.osbplf.org/services/resources/#inbrief>
(use the search box to help you to locate articles on topics you are interested in)
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
 - 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
 - c. **Calendaring**
 - i. PLF Practice Aids *see Office Systems and Procedures*
 - a) Docketing & Calendaring Checklist
 - b) Reminder and Tickler Systems
 - c) Docket Control Follow-Up
 - d. **Conflicts**
 - i. Practice Aids *see Conflicts of Interest*
 - a) Checklist for Avoiding Phantom Clients
 - b) Conflict of Interest Systems and Procedures
 - c) Declined Prospective Client Information Sheet
 - d) Request for Conflict Search and System Entry
 - e) Conflict of Interest Self Audit
 - f) Business Transactions with Client Disclosure
 - g) Conflict Disclosure and Consent Letters
 - h) Conflict Informed Consent Checklists
 - e. **File Management**
 - i. Practice Aids *see Office Systems and Procedures*

- a) File Retention and Destruction Guidelines
 - b) File Closing Checklist
 - c) Mail Handling
 - d) New Client Information Sheet with Disclaimer
 - e) Production of Client File
 - f) Setting Up an Effective Filing System
 - ii. Practice Aids *see Paperless Office and Cloud Computing*
 - a) Checklist for Scanning Client Files
 - b) Documenting Email as Part of the Client File
 - c) Paperless in One Hour
 - d) Saving Text Messages as Part of the Client File
 - 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 Cybersecurity and Data Breach*
 - a) Information Security Checklist for Small Businesses
 - b) Notice to Clients re Theft of Computer Equipment
 - c) Protecting Yourself and Your Law Firm from Data Breach
 - d) Removing Metadata
 - e) What to Do After a Data Breach
 - ii. InBrief Articles
 - a) September 2019- Protect Your Data by Using Encryption
 - b) June 2019- Cybersecurity and Employee Training
 - c) January 2019- File Retention and Destruction Procedures: Additional Safeguards to Protect Your Firm from Lost or Exposed Client Data
 - d) April 2017- Unwanted Data: How to Properly Destroy Data in Hardware
 - e) December 2016- What's Backing Up Your Data?
 - iii. Practice Aids *see Using Technology*
 - a) ABA Technology Resources
 - b) Disclaimers
 - c) How to Backup Your Computer
 - d) Technology Resources for Mac Users
 - iv. Practice Aids *see Paperless Office and Cloud Computing*
 - a) Floating in the Cloud (The Ethics of Electronic Client Files)
 - a) Online Data Storage Providers

Essential Guide to Practice Management

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Practice Management Attorneys:
Rachel Edwards
Monica Logan

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





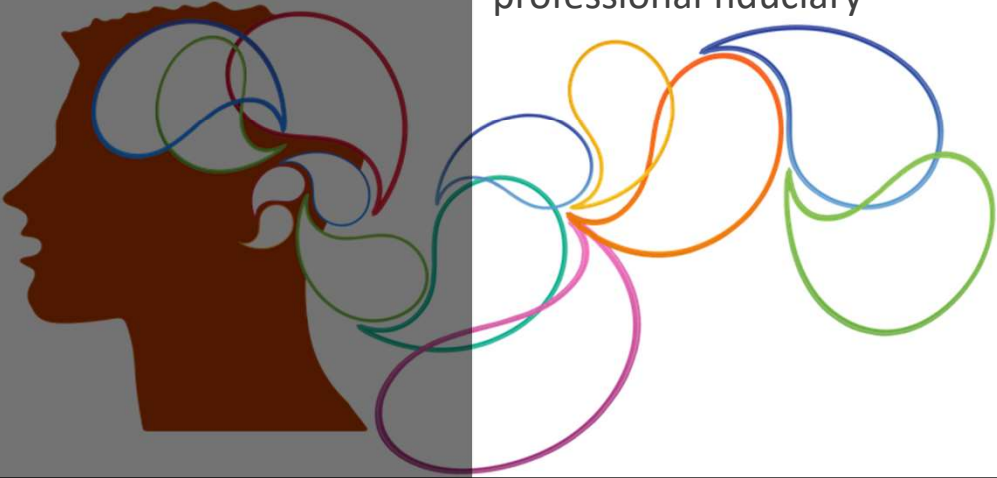
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Trust Accounting

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 5 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
Aida 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





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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

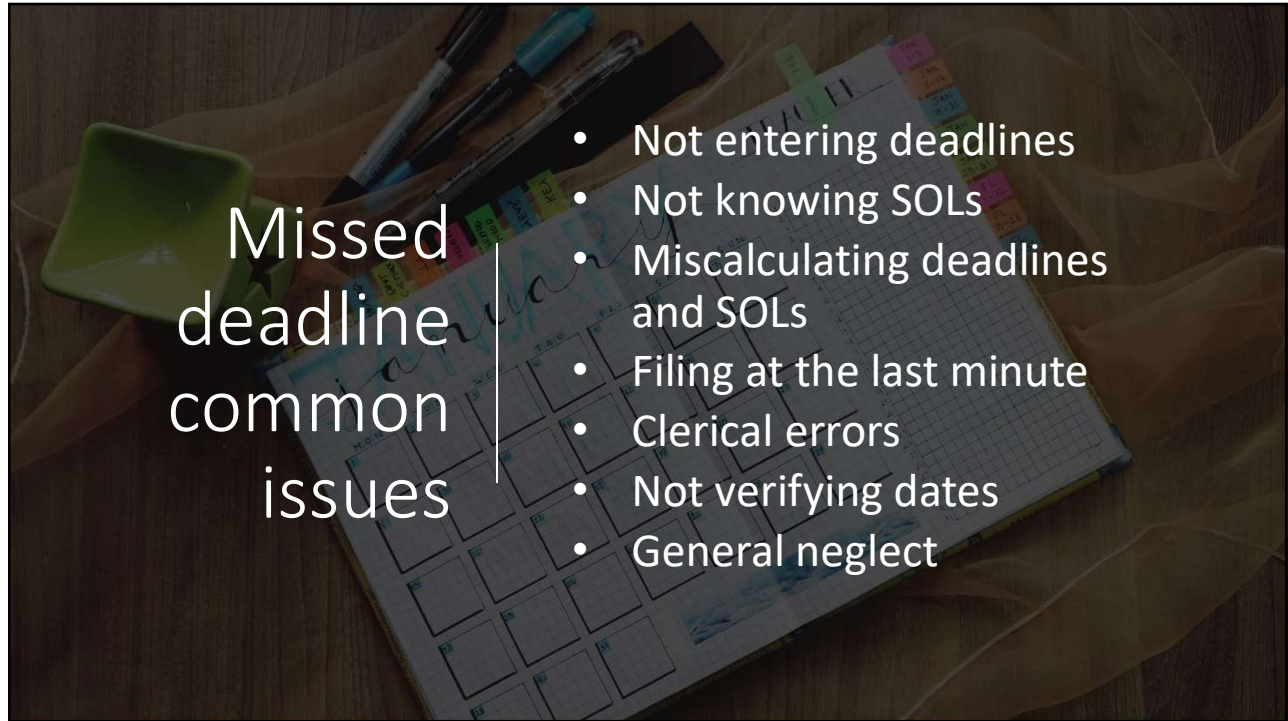
Accepting credit cards


- 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



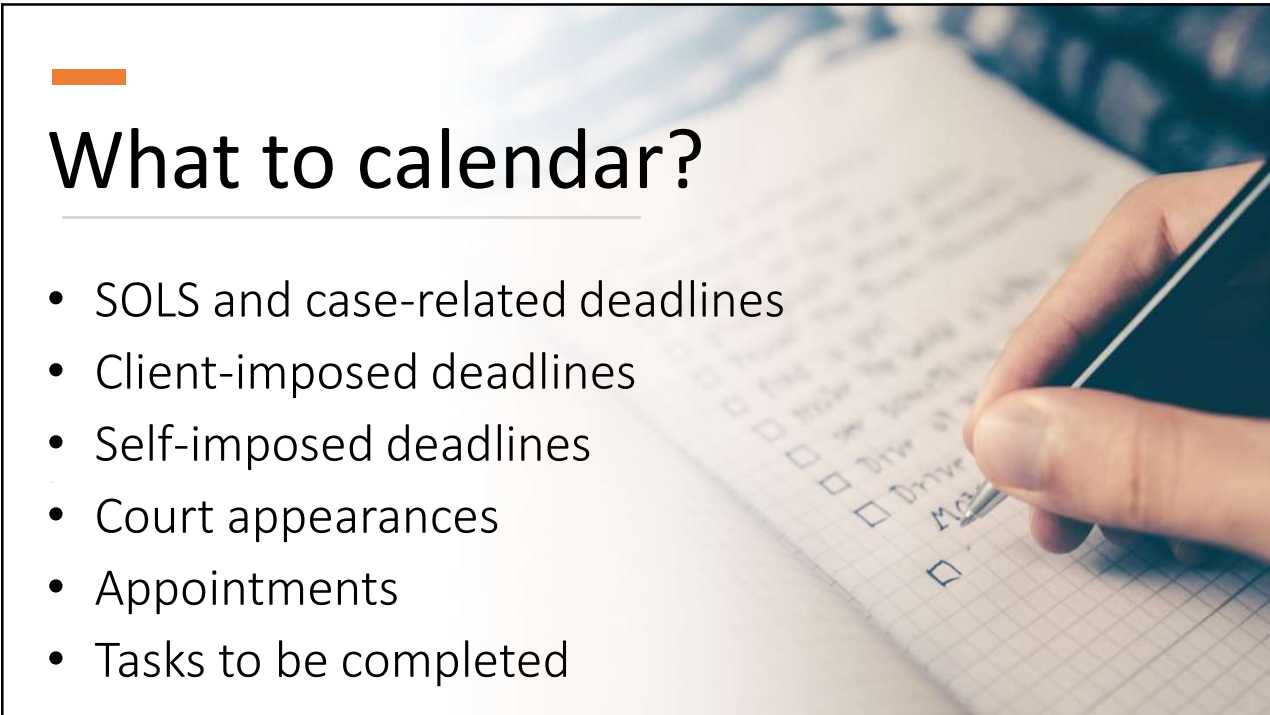
 <p>Professional Liability Fund</p>	<h2>Calendaring</h2> <hr/> <p>Common issues Tips to avoid missing deadlines</p>
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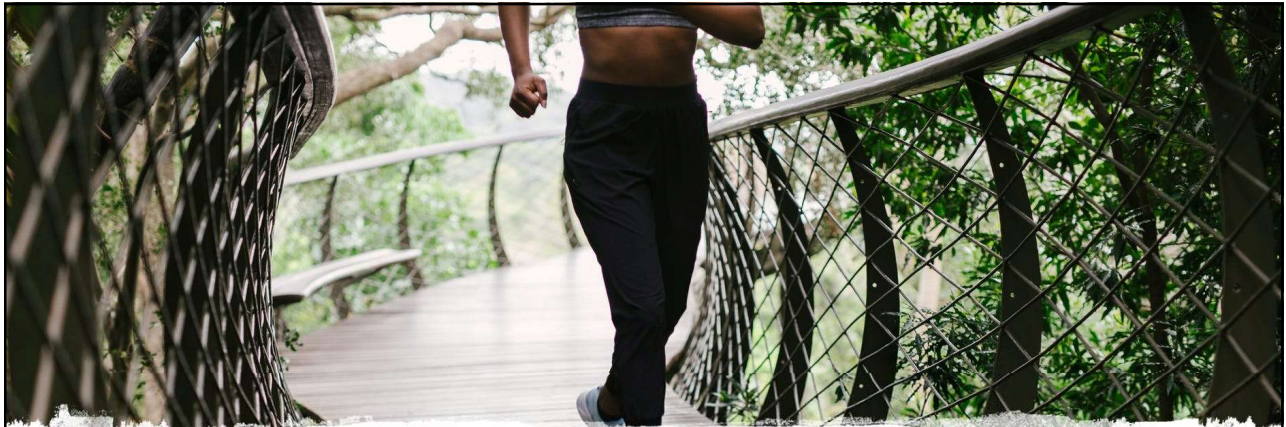
1. Use calendar to:

- 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

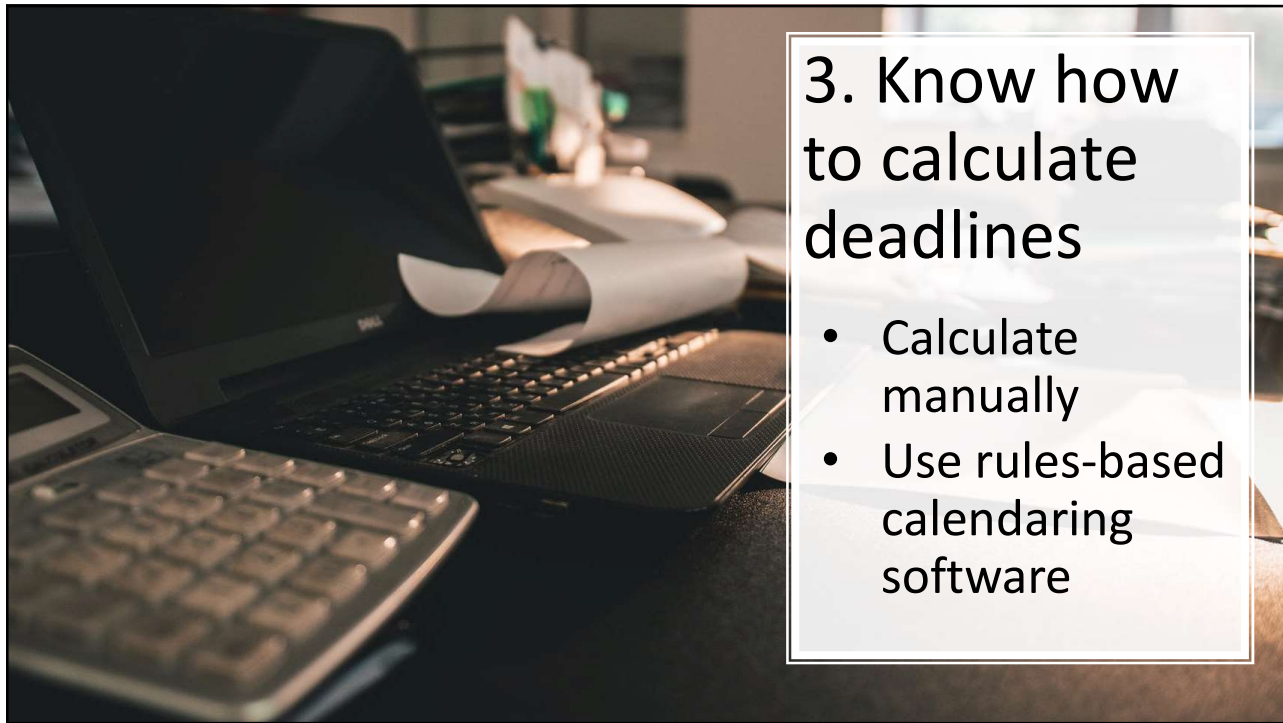


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Legal Publications

2. Know statutes of limitation



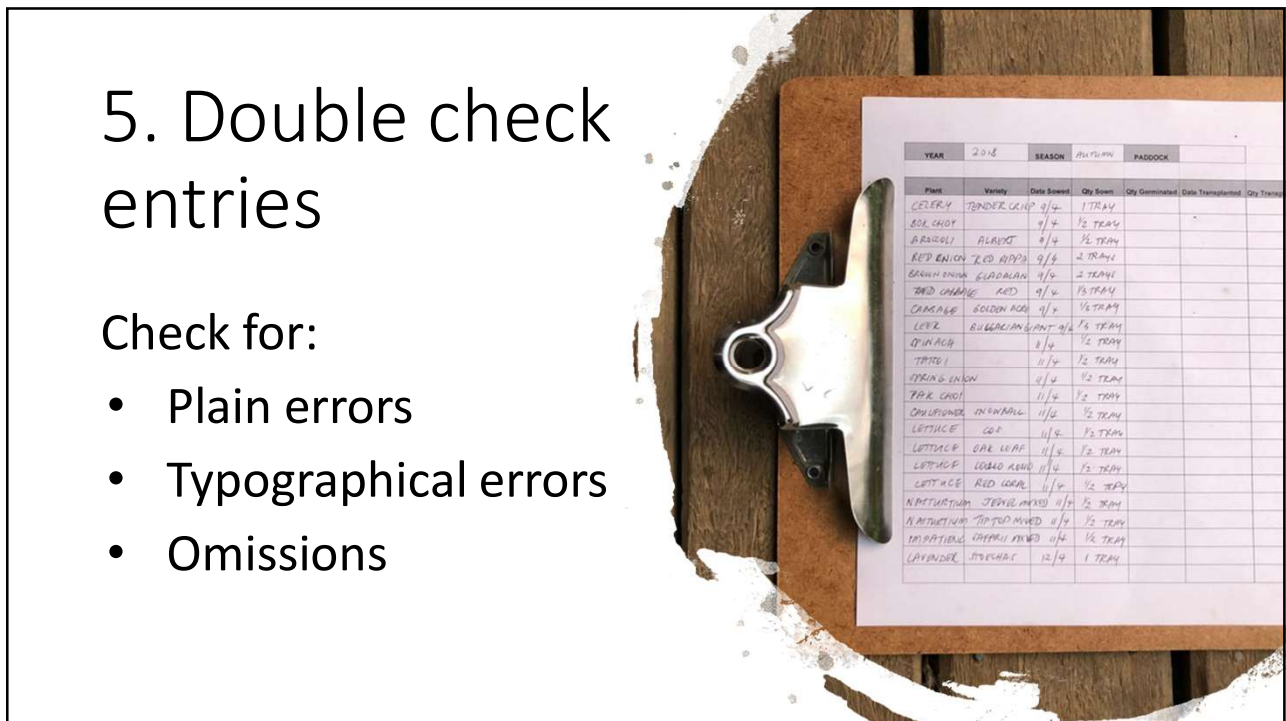
Rules-based calendaring software

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

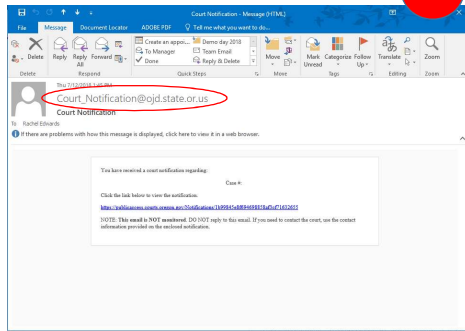


5. Double check entries

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

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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:  CLIENT CONFLICT CHECK
 **RTG** Conflict

All-in-
one:  Clio  CosmoLex
 PRACTICEPANTHER  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

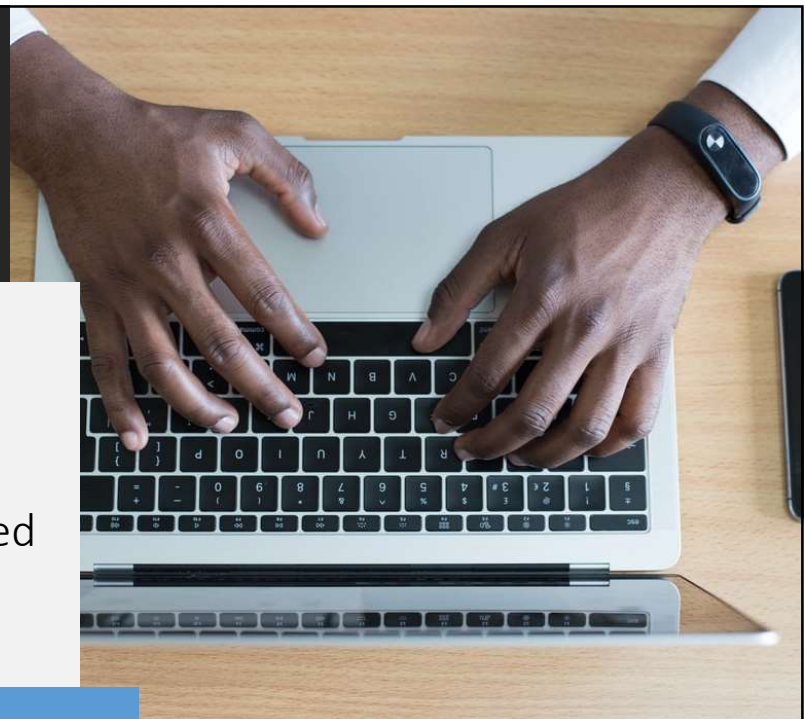





Rule 4: Know When to Run a Conflict Check

- 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

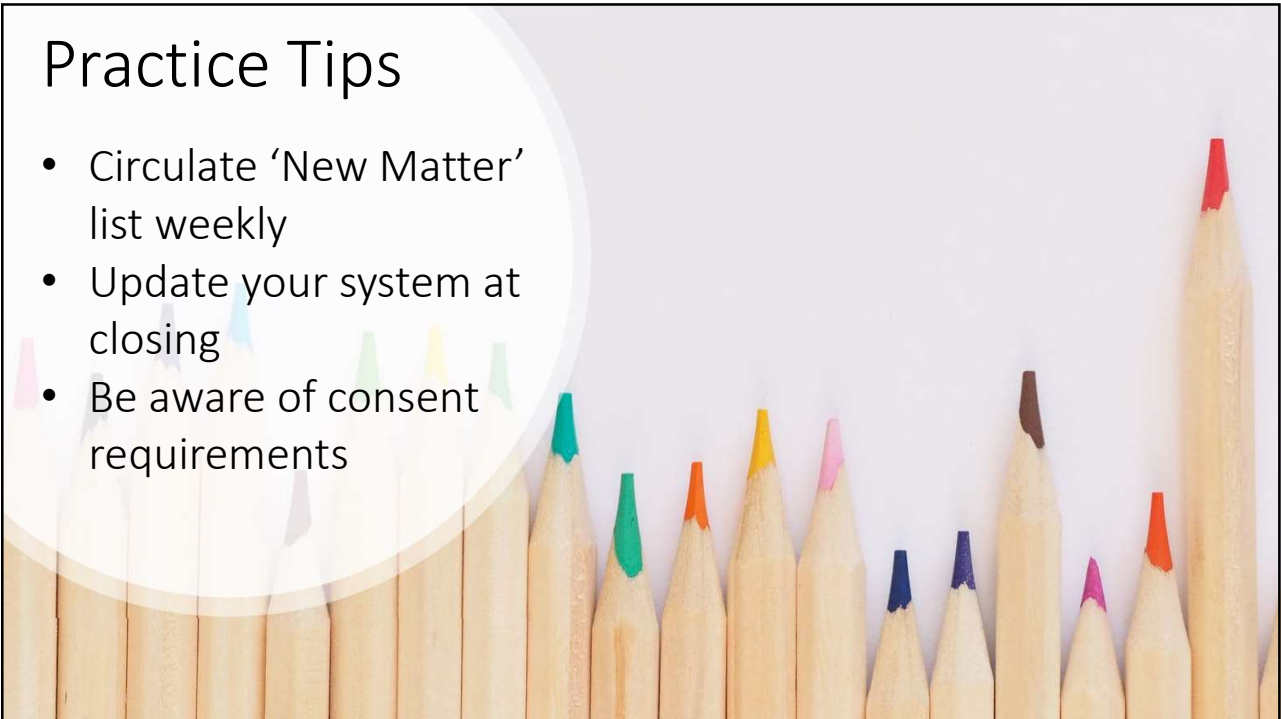
Screen incoming lawyers


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





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File Management

- Client File
- Documentation
- Retention
- Storage



Client Files

What is the client file?

Formal Opinion No 2017-192

Therefore, as a general proposition, and absent viable attorney liens,² a lawyer is obligated to deliver the entire client file to the former client or forward it to the client's new counsel upon receiving client consent. *In re Arbuckle*, 308 Or 135, 775 P2d 832 (1989); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988). In most instances, the entire client file

will include documents and property of the client; litigation materials, including pleadings, motions, and discovery materials; all correspondence; all other materials, including expert opinions, witness statements. The client file also includes records, and information that the lawyer maintained for use in the specific client matter, such as e-mail, audio files, digital photographs, and internal memoranda that may contain the exceptions discussed below, the

There are a number of circumstances in which documents that are contained in the client file maintained by the lawyer may be withheld from the client. For example, Client A's documents, a legal memo

must maintain in the representation of a client. Oregon implicitly impose on lawyers an obligation to maintain the lawyer's work product (related to the lawyer's work for the client) in confidence. Oregon Rule of Professional Conduct 1.6 (competent representation). Oregon Rule of Professional Conduct 1.6 (impliedly authorized). Other than documents and documents with original content, the lawyer may exercise professional judgment to determine whether the production of a client file is necessary to provide a client competent

² OSB Formal Ethics Op No 2003-6 (*Schlusser Co., Inc.*, 335 Or 209, 63 P3d 1000 (2003)).

³ See Oregon RPC 1.0(q), which defines a "record" as a record of a communication or representation that the production of a "client file" request is not judged by the broader discovery standards found in ORCP 36 or FRCP 26 that would be applicable in litigation, for example, a legal malpractice action.

... 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**.³

OSB Formal Ethics Opinion No. 2017-192

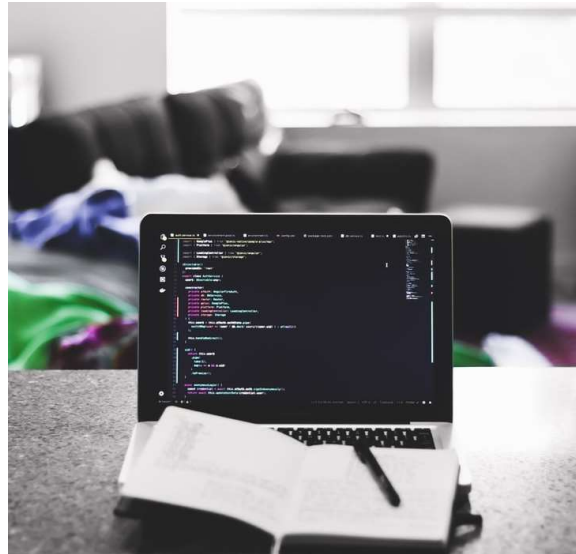
(8/2017)

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 to clients
- Prevents misunderstanding
- Helps the lawyer articulate thought process
- Wards off a claim for legal malpractice
- Provides lawyer with 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

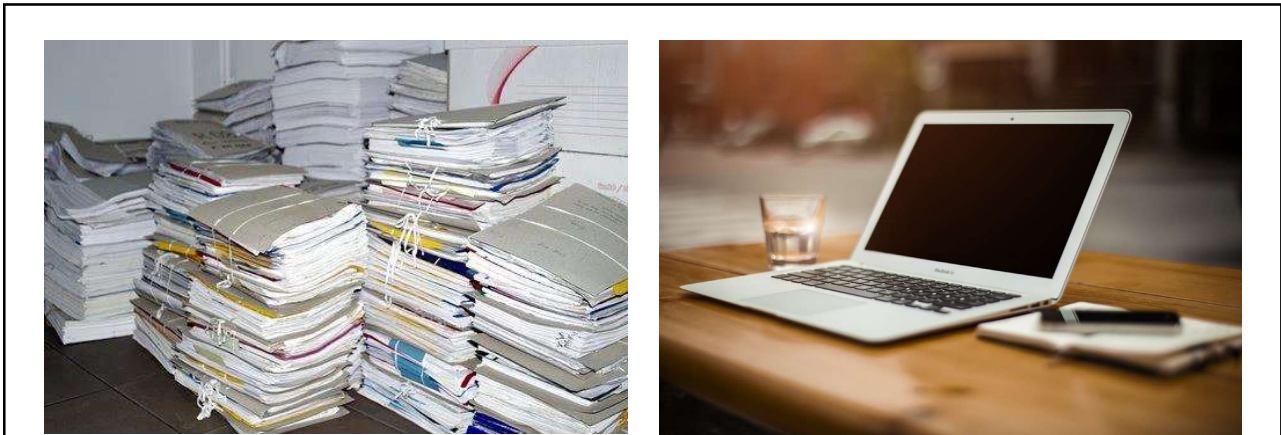


Retention



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*



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

- External hard drive
- External solid state drive
- Network attached storage
- Backup server

SOFTWARE

- Windows Backup
- MAC TimeMachine
- Acronis True Image
- AOMEI Backupper
- EaseUS Todo Backup
- Cloud backup service (Backblaze, Carbonite, iDrive, SpiderOak)

DEVICES W/SOFTWARE

- Seagate Backup Plus drive
- Western Digital My Passport portable drive
- Samsung T5 SSD



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Safe Use of Technology


Metadata
 Cloud computing
 Hardware and data destruction
 Social media



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

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

Related People
Author  Hong Dao
Add an author
Last Modified By  Hong Dao

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

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

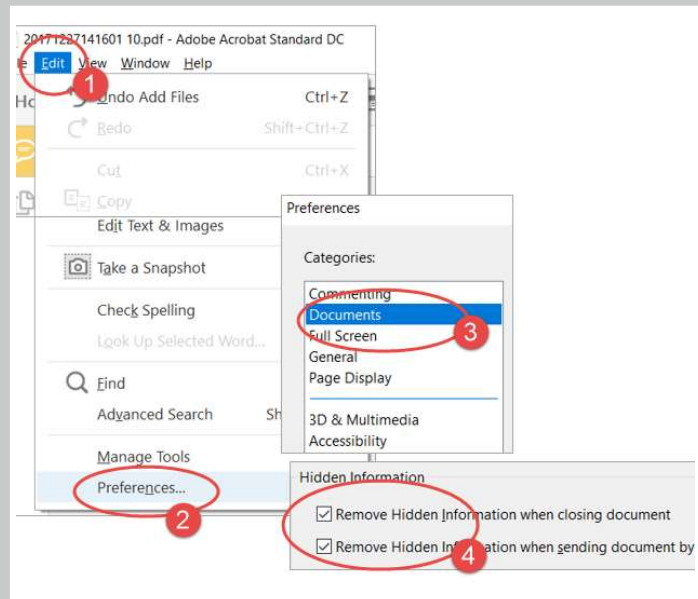
Competency: Disclosure of Metadata

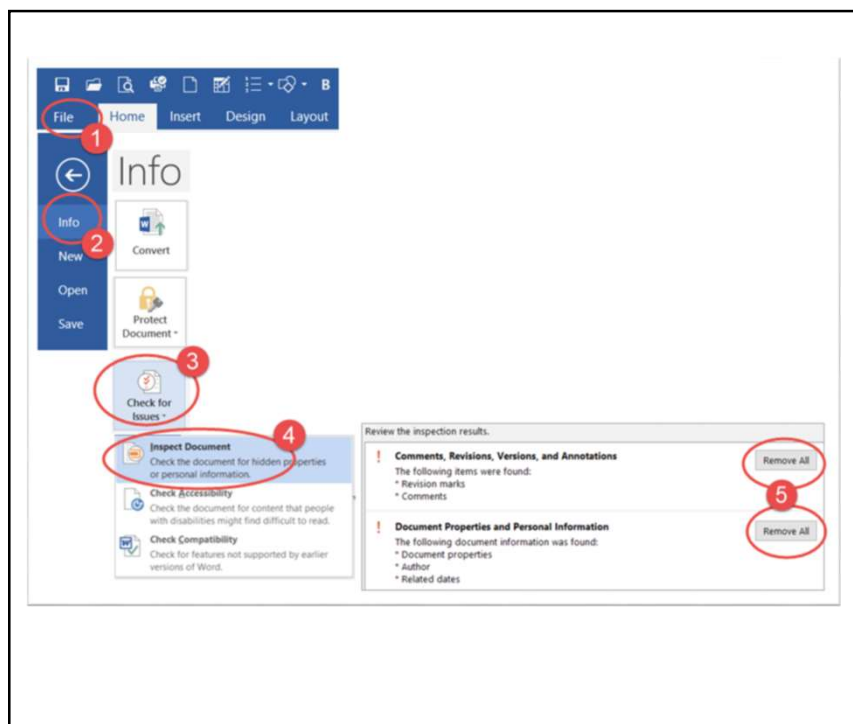
“Oregon RPC 1.6(c) requires that a lawyer **must use reasonable care to avoid the disclosure of confidential client information**, particularly when the information could be detrimental to a client. With respect to metadata in documents, reasonable care **includes taking steps to prevent the inadvertent 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:

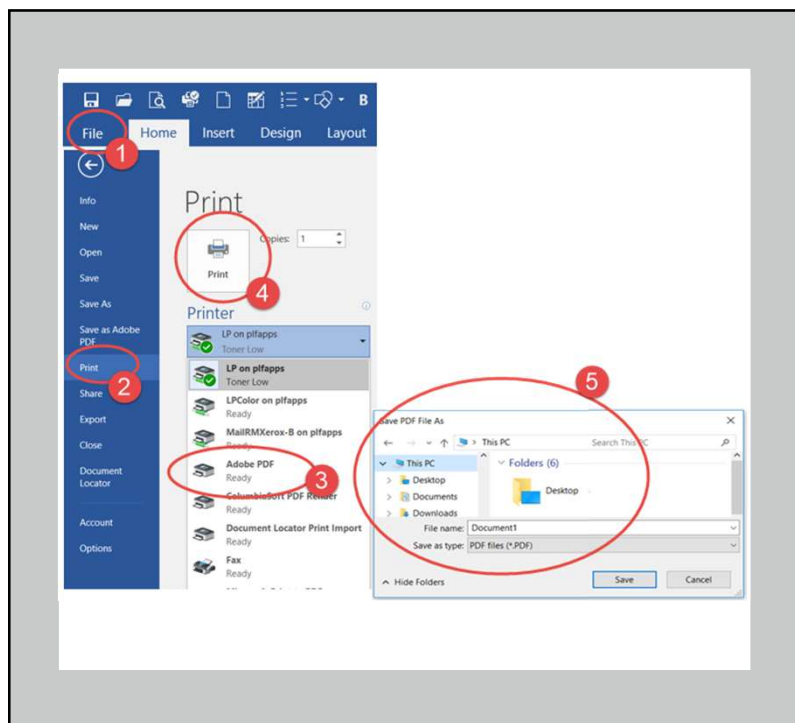
- Click on Edit
- Click on Preferences
- Select Documents
- Select when you want hidden info removed
- Click OK





Remove from MS Word:

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

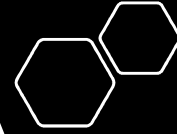


Print to PDF:

- 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



Software

Data Destruction


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

Use if you want to recycle, refurbish or donate computer

File Destruction

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

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



.....

Physically Destroy Hard Disk

- Do it yourself
- Bring it to a professional




Social Media

Clients want to talk about their case

- ORPC 1.1: Competence
- ORPC 1.4: Communication

- Clients may damage their case
- Contact may be prohibited by court order

Social Media

- You want to boast about a big win
 - You want to defend against a bad review
- 
- ORPC 1.6: Confidentiality
 - Professionalism

RESOURCES



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<https://www.osbplf.org> > Services

- Forms
- Books
- CLEs
- *In Practice* blog
- *In Brief* Newsletter
- Practice Management Assistance Program (PMAP)
- Oregon Attorney Assistance Program (OAAP)

Oregon State Bar

<https://www.osbar.org>

- Bar Counsel Articles
- Ethics Opinions
- BarBooks
- Legal Ethics Helpline: 503-431-6475
- CLEs
- Member Groups

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 (www.osbplf.org)

♦ Services > CLEs & Resources > Forms > eCourt >

Oregon eFiling Checklist for First Time eFiler

Contact Us

<https://www.osbplf.org>
503-639-6911 | 800-452-1639

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