



# PAPERLESS & REMOTE WORKING



2020 LAW FIRM INFORMATION GOVERNANCE SYMPOSIUM

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# INTRODUCTION

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The transition to a digital culture is not a new goal for law firms; in fact, for many it has been an ambitious undertaking for over a decade. However, until recently many firms have experienced varying and sometimes limited degrees of adoption success.

Enter 2020, and more specifically, the COVID-19 pandemic.

Most organizations, including law firms, were immediately forced into a remote working environment. An anticipated two-week deviation has stretched into several months with no defined end date. Many firms quickly adapted to the virtual working environment and have recognized significant benefits. As such, the motivation for a digital culture has never been greater and employees' desire to work remotely will not fade. However, without proper IG guidance, work from home users may create a significant risk to the firm by sending, storing or accessing data in repositories not acceptable to clients. They may also create a significant security and/or privacy risk to the firm by not properly securing data even within their own private residences.

In order to capitalize on the momentum created by the pandemic, IG departments need to respond quickly for a firm's cultural change to be successful and enduring. They need to address existing and potent new challenges, including printing at home, accessing documents which are only maintained in paper, and identifying/sourcing technology that helps make the digital transition more efficient

A key component of digital culture is the reduction of paper records when legally permissible. The costs to generate paper records are dwarfed by the costs of its maintenance and storage. The reduction in paper usage has minimal impact on digital storage costs since the majority of information is born digital. When justifying a paper-light environment through the lens of cost reduction, the IG practitioner should consider factors such as onsite/offsite storage, equipment and supplies, personnel requirements, and the need to have a thorough understanding of costs and challenges of service delivery in a remote, distributed work environment.

Operating in a paper-light environment has a variety of cost-related benefits for a law firm, whereas others are risk-related. The efficiency created by digital files for cross-office trans-global legal/client teams is not as easily quantified. The COVID-19 work paradigm has highlighted the preference and need to make this “normal.”

While it is true that working at home has reduced the amount of documents printed, we know that a percentage of every firm's population is still very reliant on paper. Many lawyers and support personnel are more comfortable reviewing documents they can hold in their hands, making markup revisions directly on the paper. In addition, others do not use their computer to read email but rather print everything, choosing to rely on a complete physical file. Printing documents when working from home can put your firm and its clients at risk. How then, do we ensure the security of printed material outside of our brick and mortar offices?

**NOW IS THE TIME FOR IG PROFESSIONALS TO TURN ACTION INTO POLICY AND LEVERAGE THE CURRENT DISRUPTION TO BRING ABOUT MUCH NEEDED CULTURAL CHANGE.**

# HANDLING PAPER DOCUMENTS WHEN WORKING FROM HOME

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To ensure printed documents are handled appropriately and consistently across the firm, it is vital that guidelines are included in any Work from Home (WFH) Policy. While many firms have taken a hard line to say no printing is allowed, others recognize the need for some staff to print. Therefore, it is critical to address how printed material outside of the office is classified, stored and disposed of securely. All records printed for reference (e.g., matter file) should be maintained together in a folder clearly labeled with the appropriate matter and stored in a secure location where they cannot be accessed by others (e.g., family members or guests). If they are to be retained, they should be taken to the office.

Records printed at home for reading or editing should be securely disposed of once no longer needed and not placed in the household garbage or recycling receptacle. All printed material containing firm, client name or representation details must be considered confidential. Methods to address WFH secure destruction of paper include:

- purchasing a cross-cut or micro-cut shredder (note that not all shredding or shredding services meet client requirements and regulations) to be used at home;
- identifying local resources that, utilize secure shredding services (e.g., Staples, Office Depot, FedEx or UPS);
- using of a shredding provider that offers residential services;
- taking the records into the office for disposal.

If records are not immediately shredded, they should be stored in a secure location until they can be properly destroyed. In order to ensure that paper printed outside the firm's four walls is captured and/or disposed of in the appropriate manner, it helps to know where it came from. Print control software can apply a marker on any document already in a Document Management System (DMS) to assist with easy identification of origin and ultimate destination.

# ORIGINAL DOCUMENTS

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Working with original documents remotely presents unique challenges that must be anticipated to ensure you can serve the needs of the firm's clients without compromising its duty to maintain confidentiality. This is especially evident when thinking about how to obtain and work with paper files that are traditionally stored in either the firm's central records center, at an off-site storage facility or in a local bank vault. New procedures should be considered for remote workers to ensure the proper chain of custody is maintained throughout the matter lifecycle.

Lawyers obtain original documents directly from their clients as part of discovery. These documents also come from third parties such as a foreign or domestic patent trademark office. Traditionally, they would arrive in the mailroom. Are they still being sent there or do they now go directly to the lawyer's home? Regardless, these documents should be scanned and the original returned to the client promptly for safekeeping following appropriate instructions along with providing evidence of delivery.

Lawyers also continue to generate original documents that require signature by the client or a third party. While some practices and jurisdictions support the use of e-signature technologies, others do not. A digital signature solution can eliminate the need for printing and scanning only to capture a signature and can generate a reliable chain of custody for documents that require signatures. Electronic notary solutions can also be implemented (in jurisdictions that allow it) to further reduce the amount of paper. In these situations, the lawyer needs to facilitate the transmission of the paper copy to the client and track the return of the executed copy, which is made more difficult when working remotely. Pulling documents from local bank vaults also becomes challenging when those who historically retrieved these items may be furloughed or not immediately available. To that end, signature cards at local banks may need to be updated to include the "essential" personnel who are available.

Any original document in use in a remote work environment must be properly managed so that it gets placed in the client file, tracked and managed in compliance with the firm's Information Governance policy. For example, firms handling documents such as wills and codicils need to ensure those documents are maintained appropriately as physical records. Firms may be able to reduce associated storage costs with changes in disposition workflow by returning documents to the client at the conclusion of a matter as opposed to storing them at the firm.

Newly generated paper and electronic documents should be captured whether in the office or at home. For paper documents that originate outside the firm's electronic environment, such as received mail or handwritten notes, a capture workflow can streamline the profiling process and act as an onramp to a DMS along with associated mandatory information. Likewise, newly generated electronic documents must also be captured. With personnel dispersed and remote, it is likely that there is a greater volume of electronic documents being created and saved in unofficial repositories. Auto-classification software applied to shared drives and user spaces can go a long way toward capturing and classifying large volumes of unstructured data that challenge a human's capacity.

# REMOTE COLLABORATION

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Lawyers and staff may want to use personal email accounts to share documents without understanding the governance implications. Many firms have policies against sending client or firm documents to personal accounts. In the new work from home environment, firms may want to reinforce any existing policies that address the use of personal accounts not only for email but for sharing files. In addition, firms should ensure that Data Loss Prevention (DLP) tools have an alert in place for when attachments are sent to a personal account.

The work from home environment has resulted in many clients requesting use of collaborative sites (e.g., Microsoft Teams, Chime, and Google Meet). Information Governance personnel must consider how to capture communications (including video recordings) and documents that might be stored in the client's collaborative space. If the firm is not the host of the collaborative platform, consideration should be given as to how documents are maintained to protect the firm's interests as the host retains custody and control of the information.

There are many technologies available to help Information Governance professionals move firms towards a paperless environment. As those decisions are being contemplated, it's imperative to realize that the work from home environment is not a temporary state - it is here to stay. Along those lines, conducting a survey of your lawyers and staff to identify notable changes to working style, specific technology needs and overall "what worked well and what could be improved" can be a valuable tool to help enable ongoing remote work in the post-COVID world.

# LOOKING FORWARD

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What does Information Governance in law firms look like in the post-COVID world? As discussed so far, firms have pivoted quickly to meet the new requirements that have arisen as a result of COVID-19. There have been pain points, but never wanting to waste a good crisis, opportunities should be seized. What might we see and do as we emerge on the other side of this pandemic to ensure that positive change continues?

Reliance on paper should continue to decrease. Digital mailrooms established to support the firm should remain to ensure the proper capture of paper documents. Tools that allow for digital editing will be implemented or improved-upon. The concept of the “digital workplace” will continue to gain traction at a pace we may have previously been challenged to achieve. As reliance on paper continues to decrease so too will the need for personal printers and multi-function devices (MFDs). Personal printers may be eliminated resulting in noticeable cost savings when leases on MFDs in the office are not renewed.

Firms will likely revisit the need for charge-back software such as CopiTrack/nQueue. Some firms charge for photocopying, but don't often charge for scanning. Less reliance on paper also lessens the need for these solutions; because of remote work, firms are already charging back less. It is likely that clients will not accept reverting back to the prior charge back protocols.

Firms may begin to provide a stipend for at least some, if not all, of their personnel to enable the purchase of equipment for home use. This may include: laptops, dual monitors, VPN phones and shredders.

Policies will be updated to address the various nuances of remote working. These policies may address topics such as secure destruction of paper, handling of original documents, use of digital signatures, use of personal devices in connection with firm or client related information, and confidentiality (that may run the gamut from securing content from family members and visitors to the use of personal assistant devices such as Alexa or Siri).

The momentum behind collaborative software will continue even after we return to the office. In using applications such as Microsoft Teams, Slack, DropBox, Box, Basecamp, etc. we have found new, agile ways of working with others - no matter where they are. This trend will continue to increase, helping to accelerate firms' digital transformation.

Traditional records staff whose responsibilities have been primarily focused on paper will need to be upskilled and re-tooled to support the digital workplace allowing for a transition to true information governance roles.

Lastly, but certainly not least, firms will need to implement training programs that ensure all personnel understand their roles and responsibilities in this new world, and be adept and proficient in using technologies that enable remote working. Clients are already starting to address these issues in their outside counsel guidelines. Firms will face increased pressure by clients to make sure their house is in order. If law firms aren't proactive, clients will likely ask you to follow their policies, putting you in a position of having to accommodate multiple unique plans.

People are both our strongest and weakest links, and it will be imperative to promote transparency with regard to rules and expectations as we venture into this next phase of remote work.

*This report is the first in a series of 4 that address Information Governance topics related to the surge in remote workers as a result of the COVID-19 pandemic.*

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