



## Put Into Practice: Risk Management Tips for Your Firm

SEPTEMBER 20, 2013 - ASHEVILLE

NOVEMBER 14, 2013 - GREENSBORO

NOVEMBER 21, 2013 - CLEMMONS

NOVEMBER 22, 2013 - CONCORD

JANUARY 24, 2014 - CARY

FEBRUARY 7, 2014 - FAYETTEVILLE

FEBRUARY 14, 2014 - WRIGHTSVILLE BEACH

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# Put Into Practice: Risk Management Tips for Your Firm

## AGENDA

### ■ Registration

### ■ Understanding and Mitigating the Risk of Fraud

Most people think they will never fall victim to a scam. More than ever good lawyers find themselves as the target of embezzlement, fraud or email scams. A panel of Lawyers Mutual claims attorneys will discuss the latest e-mail scams and the red flags to watch for, traits of fraudsters and how to assess risk in your law practice. Risk management suggestions will be offered to avoid scams and fraud, and coverage issues associated with these situations will be addressed.

### ■ Break

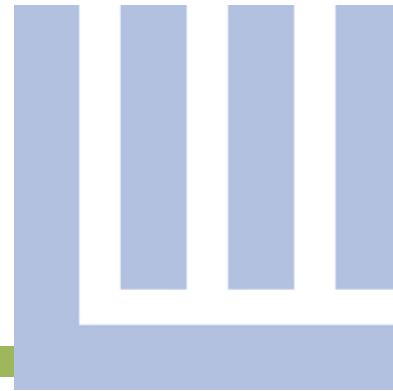
### ■ 30 Technology Tips

This lightning fast survey of law practice management tips will focus on helpful technology tips, software solutions and digital security.

### ■ Break

### ■ Literature and the Law

Lawyers are natural storytellers. The stories we tell – and how we tell them – make a difference. Jay Reeves, winner of the North Carolina State Bar 2013 annual fiction contest, will share ethical scenarios from fiction as a tool for learning to develop rapport, trust and clear communication with your clients and colleagues.



# Understanding and Mitigating the Risk of Fraud

[FREQUENTLY ASKED QUESTIONS](#)

[COUNTERFEIT CHECK SCAMS](#)

[ETHICS OPINIONS](#)

[HELP TEAM](#)

## **Understanding and Mitigating the Risk of Fraud Frequently Asked Questions**

1. How long should I wait after depositing a check to be sure the funds are “irrevocably credited” to my trust account?

It is impossible to know for certain when a check will be accepted and irrevocably credited by the payor bank. There are several factors that can delay the process, including:

- How the check is presented for collection (by direct agreement between the two banks, through a national clearinghouse, or through the Federal Reserve Bank system)
- Whether the check is transmitted electronically or physically presented to the payor bank
- Intervening weekends or holidays

RPC 191 warns that the delay before funds are irrevocably credited can be as much as fifteen days.

Lawyers Mutual recommends that you require wired funds for all transactions over a *de minimis* amount. This is particularly important when you are dealing with a new, overseas client or where other “red flags” of an email scam are present.

2. If my bank’s deposit agreement provides that funds will be “available” or “provisionally credited” upon deposit, can I immediately disburse?

No. If funds are provisionally credited and the payor bank later dishonors the check, the lawyer’s bank can issue a “charge-back” on its customer’s account. Deposit agreements often obligate the customer to reimburse the bank for any fraudulent check advances, shifting the loss to the lawyer.

3. If I fall for a counterfeit check scam, will the State Bar require me to reimburse my trust account?

Yes. RPC 191 states that an attorney has an affirmative duty to “immediately act to protect the property of the lawyer’s other clients by personally paying the amount of any failed deposit or securing or arranging payment from other sources upon learning that a deposited instrument has been dishonored.” Failure to cover the lost funds constitutes professional misconduct.

4. Who should I contact to report an attempted or successful email scam?

If you are targeted by an email scam, you can file a complaint with the Internet Crime Complaint Center at [www.ic3.gov](http://www.ic3.gov). You may want to contact the Attorney General’s Consumer Protection Division by calling — 1-877-5-NO-SCAM — or filing a consumer complaint online at [www.ncdoj.gov](http://www.ncdoj.gov).

You can also call Lawyers Mutual for assistance in evaluating a possible scam. We are monitoring the scams received by other North Carolina lawyers. Our claims attorneys can talk with you about common red flags that may indicate a scam and provide other information, such as follow-up questions for the client, that can help you determine if the matter is legitimate or fraudulent.

If you suffer a loss to your trust account, immediately report the problem to the State Bar and to Lawyers Mutual.

5. What should I do if I discover that my name or my firm's name has been used by a scammer?

We have received reports of email scams where the name of a real attorney or firm is used to lend credibility to the scheme. If your name has been used by a fraudster, you should contact Lawyers Mutual, the State Bar, and the authorities listed above. We also recommend that you add a notice to your website homepage notifying potential victims that the message is a scam and you are not involved in any way.





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## UNDERSTANDING AND MITIGATING THE RISK OF FRAUD

Put Into Practice:  
Risk Management Tips for Your Firm  
2013-2014 Lawyers Mutual Seminar Series

## Counterfeit Check Scams



## EXAMPLES OF SCAMS

- Debt Collection Scam
- Business Contract Scam
- Collaborative Family Law Agreement Scam



## RED FLAGS

- Client is From Another Country and Contacts Firm by Email
- Representation Typically Involves Collection of Money
- Email Received From Prospective Client is Individual and Not Company Email
- Debt or Obligation is Resolved Quickly or Too Easily
- Client is Desperate to get Money Quickly
- Lawyer Gets Large Fee Out of Settlement
- Certified Check Comes from P.O. Box that Doesn't Match Company's Address
- Client Requests a Wire Transfer From the Lawyer Once Money is Collected



## A SAMPLE CONVERSATION



Sample Documentation provided by:  
Dan Pinnington,  
Vice President, Claims Prevention & Stakeholder Relations  
Lawyers' Professional Indemnity Company



*Dear Counsel,*

*I am seeking legal representation from your law firm regarding a breach of divorce settlement agreement I had with my ex husband who now reside in your jurisdiction. We had an out of court agreement for him to pay me \$578,000.00 plus legal fees. He has only paid me \$78,000 ever since this agreement was reached. He has agreed already to pay me the balance yet he kept turning me around with numerous excuses.*

*So it is my belief that a Law firm like yours is needed to help me collect my due settlement from my ex-husband or litigate this matter if need be.*

*I need proper legal advice and assistance to know the best way to handle this issue. If this is your area of practice, please contact me to provide you with further Information.*

*Regards,  
Tammy Brewer.*





## The lawyer's reply begins the following conversation...



Good day to you and thanks for responding to my email. Please *pardon my late email response as my condition does not allow me to stay long on the computer. The consultation fee shouldn't be a problem*, kindly send me your firm fee / retainer agreement for my review and if OK upon receipt, I shall *make immediate provision for the fee*.

Kindly *let me know what your fees would be* in order for me to inform my *ex husband to expect contact* from you as you have been authorized to act on my behalf. *I would like to forward your details to him* on your approval, *so he knows a law firm is representing me* and I can sue for breach of agreement if he doesn't keep his promise. I would like to *give him this last chance to fulfill his obligations before we start legal proceeding*.

Thank you for your anticipated co-operation and understanding. Contact me should you require more information. I have *attached here a copy of the CPLA* and proof of partial payment for your peruse. *My ex husband name is Brian Smith*.

Regards  
Tammy Brewer



Lawyer: “We have **to run a conflict search** and then we will prepare an **engagement letter** for your review. You will also have to complete a client information form and forward **a copy your identification** as part of that package. What is your ex-husband’s profession?”



*I do not think this matter will result to litigation as he is not disputing the claim neither did he want to contest it. All I am seeking is a reputable law firm like yours to act on my behalf as I am sick of his various excuses. He got properties here in KY, MI, and in ON as well. He is well to do business man but just wouldn't want to come up with the balance on time as agreed. He agreed to pay but kept giving me numerous excuses and turning me around. Each time he noticed I am about to seek a legal counsel to sue for breach of the agreement we had, he always come up the notion that he want to pay and the moment I cool off, he won't come up with the payment.*

*I am seeking a counsel basically because it is taken longer for him to come up with the settlement as agreed on the CPLA, and I know with a counsel involvement, these funds will be release as soon as possible without going to court. After I notify him of my intention, he had requested for your firm contact details to enable him establish contact with you and set up an arrangement on how to remit the money he owed as I have instructed him without delays or possible litigation. Kindly send me your firm fee / retainer agreement for my review and if OK upon receipt; I shall make immediate provision for the fee.*

*Thanks as I look forward in receiving the agreement.*

*Regards*

*Ms. Brewer.*



Lawyer: "Ok. What we will propose in the engagement letter, is for an **initial monetary retainer of \$1,500 Canadian** (hopefully, we won't need to spend it all, but if litigation is necessary, we will require an additional retainer at that time)."



*Agreement received. I shall be reviewing it and get back to you soon with the signed copy and if OK, I shall make immediate provision for the fee. Also note that I have already given your firm information to my ex husband as he have requested for it to enable him establish contact with you and also make an arrangement on how to remit partial or full payment without delays or possible litigation. He emailed me stating that he does not want to be litigated and that **he is willing to pay**. I have asked him to contact you to discuss to that effect.*

*Thank you once more. I shall get back to you soon after my review of the agreement.*



Good day to you. Sorry for not getting back to you soon as promised. Work has been highly demanding over here lately.

Attach is the signed copy of the agreement. This is to inform you that a retainer fee **for \$1,500 as requested had been mailed to your office; also my Ex Husband had just confirmed to me that he has made a partial payment in the amount of \$145,000.00 in your firm's name without delay to avoid being litigated.**

I am presently **away on a reconstruction contract.** I will give you a follow up call as soon as time permit hopefully, within the week.

Please note that as soon as you receive the funds, do notify me for further directives.

Once again, thank you so much for making this happened

Identification – required in all cases where the client or third party is individual

Name: Tammy Brewer

Address: 8767 SEVIER DRIVE FLORENCE, NY 41042

Phone No: 206-804-6000 but turned off

Business Address: SAME AS ABOVE \$5-17 TOKYO-EO OIA-KU KAGAKU

Business Phone No: 151043772154

Occupation(s) SELF EMPLOYED (CONTRACTOR)

Verification - Additional Step if verification of identity is required:

Original Document Reviewed – Copy Retained

- ☒ Driver's Licence  
☐ Birth Certificate  
☐ Passport  
☐ Other(specify type) \_\_\_\_\_



Lawyer: Thank you. **We will await receipt and clearance of the initial retainer.** Is it possible for you to go to **a local attorney just to confirm your identity** as per the identification provided. Once we have that and the clearance of the initial retainer, we can open a file.



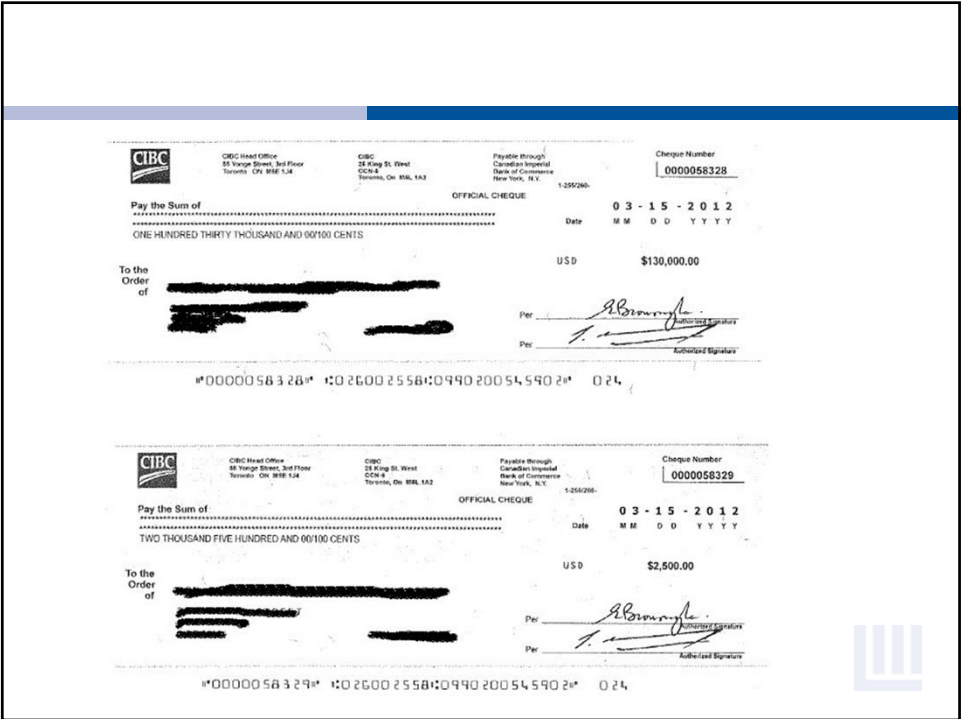
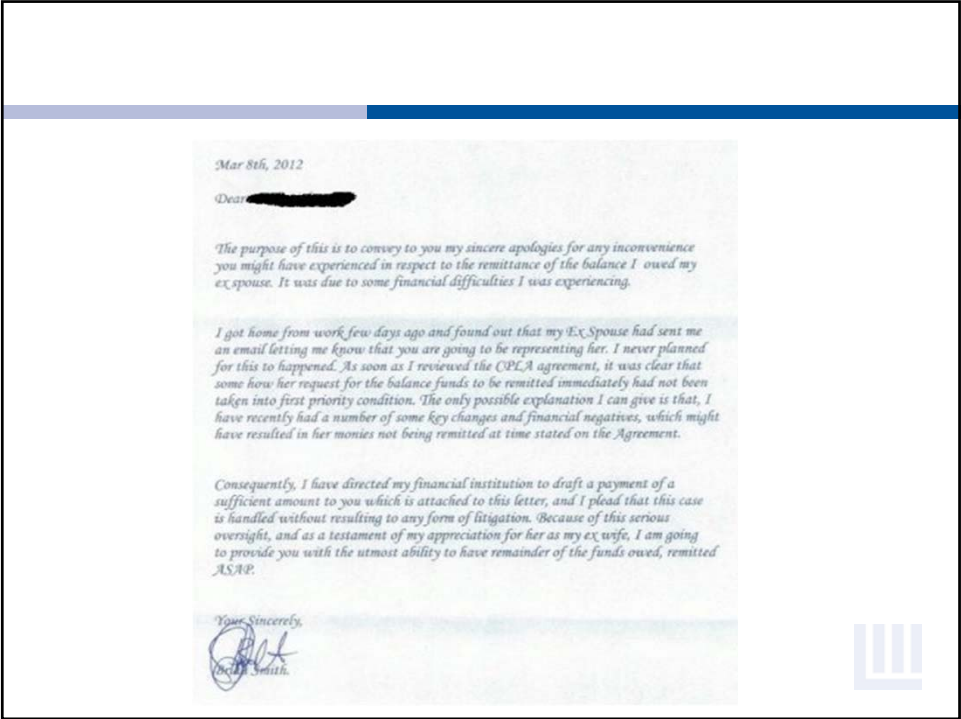
*I am presently away on a reconstruction contract in Japan. Since the Tsunami disaster, the entire affected region still in a ruins and I happen to be one of the contractors rebuilding the community. There is no one standing buildings, consulate or office in this area.*

*I have attached my Social Security Number card for your peruse. Do let me know upon receipt of the partial payment.*



Counterfeit checks and cover letter  
then arrive at lawyer's office





## HOW TO AVOID SCAMS

- Require Wire Funds from Debtor/Obligor
- Contact the Certified Check Sender
- Contact the Debtor to Verify Debt is Legitimate
- Request Retainer by Wire from Prospective Client
- Research the Prospective Client on the Internet



## HOW TO RESPOND WHEN FRAUD IS DISCOVERED

- Report to the FBI ([www.ic3.gov](http://www.ic3.gov))
- Report to the N.C. Attorney General ([www.ncdoj.gov](http://www.ncdoj.gov))
- In Cases Where Disbursement Against Fraudulent Check Is Made, Contact State Bar and Malpractice Carrier



## COVERAGE ISSUES

- Rendering or Failing to Render Legal Services
- Policy Exclusions



## LAWYERS MUTUAL MALPRACTICE POLICY

- **Exclusion (r):**  
(r) Any claim or any theory of liability asserted in a suit, based in whole or in any part upon disbursement by any Insured, or any employee, or agent of any Insured, of funds, checks, or any other similar instruments deposited to a trust, escrow or other similar account **unless such deposit is irrevocably credited to such account.**





# Could this happen to you?

## Getting duped on a bad cheque scam

In our newest effort to help Ontario lawyers appreciate where claims happen – and how to avoid them – we are pleased to introduce a new column to *LAWPRO Magazine*: “Could this happen to you?”

Lawyers have told us they like to hear about real scenarios and circumstances that resulted in malpractice claims. They say that this helps them better see how they can avoid making mistakes in their own practices. So, in this new column we will present the facts behind some of our actual claims files, and highlight the risk management lessons to help you avoid finding yourself in the same situation.

For our first “Could this happen to you?” column we are focusing on bad cheque frauds. When we deliver presentations to lawyers about how to recognize and avoid these frauds, we often hear “How could anybody actually fall for these schemes? I never would.”

Thanks to our efforts, we feel Ontario lawyers have greater “street smarts” when it comes to recognizing and avoiding bad cheque frauds. But, unfortunately, we are still seeing costly claims when lawyers occasionally fall for these frauds.

Reproduced on the next page is a sample of the report we get when a lawyer reports a claim using our online claim report form. It is a classic textbook example of a bad cheque fraud where the lawyer was duped. Upon discovering these frauds, banks generally reverse the credit that was given on the deposit of the fake cheque. Because the lawyer already disbursed funds in reliance on the fake cheque, this reversal removes trust funds belonging to other clients and/or leaves the lawyer's trust account with a negative balance.

Please read the claim report. Can you spot the red flags? Could it happen to you?

On these bad cheque frauds we would generally afford coverage under the LAWPRO policy for the loss of the trust funds belonging to other clients. Any remaining overdraft would be the responsibility of the lawyer as the lawyer's indebtedness to the bank would not fall within the coverage provisions of the LAWPRO policy, unless the lawyer complied with the coverage requirements of LAWPRO's enhanced coverage for overdraft resulting from counterfeit certified cheques and bank drafts (Endorsement 7). Those requirements are:

- (1) You must have waited at least eight business days following deposit of the instrument into your trust account before disbursing funds as instructed; or you must have received confirmation from either your financial institution or the drawee financial institution that the drawee financial institution has verified the validity of the instrument. As well, this confirmation must be documented in writing (whether by you or the financial institution) before payment instructions are given.

- (2) The drawee financial institution indicated on the counterfeit certified cheque or counterfeit bank draft must be a Canadian financial institution, and the instrument must have been inspected and deposited by you, or a partner or employee of yours.

Note that the amount of coverage provided is subject to a sublimit of \$500,000 per claim and in the aggregate (i.e. for all such claims reported by the lawyer or lawyers in the firm that year), inclusive of claim expenses, indemnity payments and/or costs of repairs. The coverage does not apply to retainer deposits, untransferred fees, or other amounts relating to legal fees, accounts or fee arrangements. As well, some limitations in deductible may apply.

### The risk management lessons

Please don't be complacent about these frauds. They are evolving and getting ever more sophisticated. Be vigilant! The supporting documents from the fraudsters – and the stories behind them – can be incredibly convincing. If a file you are handling seems like easy money, or otherwise too good to be true, think critically: Are there any details of the transaction that give you pause? Watch for the red flags that can indicate that an otherwise legitimate-looking matter is a fraud.

When in doubt, visit the [AvoidAClaim.com](http://AvoidAClaim.com) blog and compare the potential client's name and story to those of dozens of names known to be used by fraudsters. If you suspect you are acting on a matter that might be a fraud, call LAWPRO at 1-800-410-1013 or (416) 598-5899. We will talk you through the common fraud scenarios we are seeing and help you spot red flags that may indicate you are being duped. This will help you ask appropriate questions of your client to determine if the matter is legitimate or not. If the matter you are acting on turns out to be a fraud, we will work with you to prevent the fraud and minimize potential claims costs.

If you have been successfully duped, please immediately notify LAWPRO as there may be a claim against you.

If you have been targeted by any of these frauds, please forward any of the emails and supporting documents that you have received to [fraudinfo@lawpro.ca](mailto:fraudinfo@lawpro.ca).

More fraud prevention information and resources are available on the “practicePRO Fraud page” ([practicepro.ca/fraud](http://practicepro.ca/fraud)), including our “Fraud Fact Sheet,” a handy reference for lawyers and law firm staff that describes common frauds and the red flags that can help identify them.

Be sceptical, stay safe and don't let it happen to you. This article originally appeared in *LAWPRO Magazine*

“practicePRO: 15 Years of Claims Prevention (Vol. 12 no. 2). It is available at [www.lawpro.ca/magazinearchives](http://www.lawpro.ca/magazinearchives)

The practicePRO and TitlePLUS programs are provided by LAWPRO Magazine

## A sample claim report.

### Can you spot the "red flags"?

#### Red flags of a fraud

- 1 Out-of-the blue request for service by non-resident
- 2 Retainer involves collection of funds
- 3 No opportunity to review originals of supporting documents
- 4 Payor/debtor alleged to be a local resident (to you)
- 5 Debtor pays up after little or no effort on lawyer's part
- 6 Debtor's cheque will appear authentic, but is from the account of an entity that appears to be unrelated
- 7 A third party is involved in facilitating the payment
- 8 Client pushes for immediate payment
- 9 Client has urgent need for the funds
- 10 Client requests a wire transfer from the lawyer's trust account and tells lawyer to hold back his/her fee

CLAIM NOTICE REPORT - CONFIRMATION NO. PC11111

Received: 08/24/2013

To: <claims@lawpro.ca>

From: Mort.I.Fied@outofpocket.ca

Subject: Claim Notice Report

I am reporting a claim or potential claim against me.

#### INSURED INFORMATION

1. Insured LAWYER LSUC Number: 12345

Insured LAWYER Name: Mort I. Fied

Mailing Address: 123 Blissful Lane, Unawares, ON, N0T 2T2

Telephone Number: 1-800-555-5555

Firm Name: Babin Woods LLP

Email: Mort.I.Fied@outofpocket.ca

#### CLIENT/CLAIMANT INFORMATION

2. Claimant Last Name: Big Canadian Bank

#### CLAIM INFORMATION

How did you become aware of the claim or potential claim: see below

Has a proceeding been commenced against you: not yet

Does your firm carry excess insurance: no

Area of practice: general litigation

#### DESCRIPTION OF CLAIM

In summary, my practice's trust account has incurred an unexpected overdraft of approximately \$132,000.00 after, at a purported client's request, I wired funds to an overseas bank account, having deposited a cheque that later turned out to be counterfeit. The details are as follows:

2 Last month I received an email from a party who claimed to reside overseas, and who was seeking to retain my services in a collection matter. The purported client claimed to be the payee on a promissory note for \$260,000.00, which was alleged to be in default. 3 The named debtor on the note (a scanned copy of which the "client" forwarded to me via email) was alleged to be a resident in my city. The purported client instructed me to make attempts to collect on the note. 4

As a result of my collection efforts, the purported debtor forwarded to me a cheque in the amount of \$134,768.99. The payor of the cheque was a well-known insurance company, though the cover letter was from an intermediary company called The Consultants Partnership. The payment was alleged to be payment in satisfaction of a claim by the purported debtor against his own insurance, which the debtor was forwarding in partial satisfaction of the promissory note debt. 5

Mistakenly believing that the cheque bore all the indicia of authenticity, I deposited the cheque into my trust account, and, as I had been instructed, immediately advised my "client" of my receipt of the funds. My "client" explained that he was eager to receive the funds because as soon as possible because they were needed to secure a time-sensitive investment overseas. 7 8

My "client" instructed me to wire him, from my trust account, an amount representing the amount recovered from the "debtor", less my fees for my services and disbursements so far and less a reserve pending further possible litigation. In accordance with these instructions, on the morning following my deposit of the insurance company's cheque, I wired to the client funds in the amount of \$132,250.00 CDN. 10

Four days later, I received notice from my bank, Big Canadian Bank, that my trust account was overdrawn in the amount of approximately \$108,000.00, because the insurance company cheque forwarded by the purported "debtor" was counterfeit and did not clear in advance of my wiring of the funds to the "client".

I contacted local and provincial police, but have been advised that prospects for recovering the funds are poor.

My trust account, at the time of the fraud, contained \$24,250 in funds held in escrow on behalf of other clients.

# 2011 Formal Ethics Opinion 6

January 27, 2012

## Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property

*Opinion rules that a lawyer may contract with a vendor of software as a service provided the lawyer uses reasonable care to safeguard confidential client information.*

### Inquiry #1:

Much of software development, including the specialized software used by lawyers for case or practice management, document management, and billing/financial management, is moving to the “software as a service” (SaaS) model. The American Bar Association’s Legal Technology Resource Center explains SaaS as follows:

SaaS is distinguished from traditional software in several ways. Rather than installing the software to your computer or the firm’s server, SaaS is accessed via a web browser (like Internet Explorer or FireFox) over the internet. Data is stored in the vendor’s data center rather than on the firm’s computers. Upgrades and updates, both major and minor, are rolled out continuously...SaaS is usually sold on a subscription model, meaning that users pay a monthly fee rather than purchasing a license up front.<sup>1</sup>

Instances of SaaS software extend beyond the practice management sphere addressed above, and can include technologies as far-ranging as web-based email programs, online legal research software, online backup and storage, text messaging/SMS (short message service), voicemail on mobile or VoIP phones, online communication over social media, and beyond.

SaaS for law firms may involve the storage of a law firm’s data, including client files, billing information, and work product, on remote servers rather than on the law firm’s own computer and, therefore, outside the direct control of the firm’s lawyers. Lawyers have duties to safeguard confidential client information, including protecting that information from unauthorized disclosure, and to protect client property from destruction, degradation, or loss (whether from system failure, natural disaster, or dissolution of a vendor’s business). Lawyers also have a continuing need to retrieve client data in a form that is usable outside of a vendor’s product.<sup>2</sup> Given these duties and needs, may a law firm use SaaS?

### Opinion #1:

Yes, provided steps are taken to minimize the risk of inadvertent or unauthorized disclosure of confidential client information and to protect client property, including the information in a client’s file, from risk of loss.

The use of the internet to transmit and store client information presents significant challenges. In this complex and technical environment, a lawyer must be able to fulfill the fiduciary obligations to protect confidential client information and property from risk of disclosure and loss. The lawyer must protect against security weaknesses unique to the internet, particularly “end-user” vulnerabilities found in the lawyer’s own law office. The lawyer must also engage in periodic education about ever-changing security risks presented by the internet.

Rule 1.6 of the Rules of Professional Conduct states that a lawyer may not reveal information acquired during the professional relationship with a client unless the client gives informed consent or the disclosure is impliedly authorized to carry out the representation. Comment [17] explains, “A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision.” Comment [18] adds that, when transmitting confidential client information, a lawyer must take “reasonable precautions to prevent the information from coming into the hands of unintended recipients.”

Rule 1.15 requires a lawyer to preserve client property, including information in a client’s file such as client documents and lawyer work product, from risk of loss due to destruction, degradation, or loss. *See also* RPC 209 (noting the “general fiduciary duty to safeguard the property of a client”), RPC 234 (requiring the storage of a client’s original documents with legal significance in a safe place or their return to the client), and 98 FEO 15 (requiring exercise of lawyer’s “due care” when selecting depository bank for trust account).

Although a lawyer has a professional obligation to protect confidential information from unauthorized disclosure, the Ethics Committee has long held that this duty does not compel any particular mode of handling confidential information nor does it prohibit the employment of vendors whose services may involve the handling of documents or data containing client information. *See* RPC 133 (stating there is no requirement that firm’s waste paper be shredded if lawyer ascertains that persons or entities responsible for the disposal employ procedures that effectively minimize the risk of inadvertent or unauthorized disclosure of confidential information). Moreover, while the duty of confidentiality applies to lawyers who choose to use technology to communicate, “this obligation does not require that a lawyer use only infallibly secure methods of communication.” RPC 215.

Rather, the lawyer must use reasonable care to select a mode of communication that, in light of the circumstances, will best protect confidential client information and the lawyer must advise effected parties if there is reason to believe that the chosen communications technology presents an unreasonable risk to confidentiality. *Id.* Furthermore, in 2008 FEO 5, the committee held that the use of a web-based document management system that allows both the law firm and the client access to the client's file is permissible:

provided the lawyer can fulfill his obligation to protect the confidential information of all clients. A lawyer must take steps to minimize the risk that confidential client information will be disclosed to other clients or to third parties. *See* RPC 133 and RPC 215.... A security code access procedure that only allows a client to access its own confidential information would be an appropriate measure to protect confidential client information.... If the law firm will be contracting with a third party to maintain the web-based management system, the law firm must ensure that the third party also employs measures which effectively minimize the risk that confidential information might be lost or disclosed. *See* RPC 133.

In a recent ethics opinion, the Arizona State Bar's Committee on the Rules of Professional Conduct concurred with the interpretation set forth in North Carolina's 2008 FEO 5 by holding that an Arizona law firm may use an online file storage and retrieval system that allows clients to access their files over the internet provided the firm takes reasonable precautions to protect the security and confidentiality of client documents and information.<sup>3</sup>

In light of the above, the Ethics Committee concludes that a law firm may use SaaS if reasonable care is taken to minimize the risks of inadvertent disclosure of confidential information and to protect the security of client information and client files. A lawyer must fulfill the duties to protect confidential client information and to safeguard client files by applying the same diligence and competency to manage the risks of SaaS that the lawyer is required to apply when representing clients.

No opinion is expressed on the business question of whether SaaS is suitable for a particular law firm.

#### **Inquiry #2:**

Are there measures that a lawyer or law firm should consider when assessing a SaaS vendor or seeking to minimize the security risks of SaaS?

#### **Opinion #2:**

This opinion does not set forth specific security requirements because mandatory security measures would create a false sense of security in an environment where the risks are continually changing. Instead, due diligence and frequent and regular education are required.

Although a lawyer may use nonlawyers outside of the firm to assist in rendering legal services to clients, Rule 5.3(a) requires the lawyer to make reasonable efforts to ensure that the services are provided in a manner that is compatible with the professional obligations of the lawyer. The extent of this obligation when using a SaaS vendor to store and manipulate confidential client information will depend upon the experience, stability, and reputation of the vendor. Given the rapidity with which computer technology changes, law firms are encouraged to consult periodically with professionals competent in the area of online security. Some recommended security measures are listed below.

- Inclusion in the SaaS vendor's Terms of Service or Service Level Agreement, or in a separate agreement between the SaaS vendor and the lawyer or law firm, of an agreement on how the vendor will handle confidential client information in keeping with the lawyer's professional responsibilities.
- If the lawyer terminates use of the SaaS product, the SaaS vendor goes out of business, or the service otherwise has a break in continuity, the law firm will have a method for retrieving the data, the data will be available in a non-proprietary format that the law firm can access, or the firm will have access to the vendor's software or source code. The SaaS vendor is contractually required to return or destroy the hosted data promptly at the request of the law firm.
- Careful review of the terms of the law firm's user or license agreement with the SaaS vendor including the security policy.
- Evaluation of the SaaS vendor's (or any third party data hosting company's) measures for safeguarding the security and confidentiality of stored data including, but not limited to, firewalls, encryption techniques, socket security features, and intrusion-detection systems.<sup>4</sup>
- Evaluation of the extent to which the SaaS vendor backs up hosted data.

#### **Endnotes**

1. FYI: Software as a Service (SaaS) for Lawyers, ABA Legal Technology Resource Center at [abanet.org/tech/Itrc/fyidocs/saas.html](http://abanet.org/tech/Itrc/fyidocs/saas.html).

2. *Id.*

3. Paraphrasing the description of a lawyer's duties in Arizona State Bar Committee on Rules of Professional Conduct, Opinion 09-04 (Dec. 9, 2009).

4. A firewall is a system (which may consist of hardware, software, or both) that protects the resources of a private network from users of other networks. Encryption techniques are methods for ciphering messages into a foreign format that can only be deciphered using keys and reverse encryption algorithms. A socket security feature is a commonly-used protocol for managing the security of message transmission on the internet. An intrusion detection system is a system (which may consist of hardware, software, or both) that monitors network and/or system activities for malicious activities and produces reports for management.

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## **THE NORTH CAROLINA STATE BAR**

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# 2011 Formal Ethics Opinion 7

January 27, 2012

## Using Online Banking to Manage a Trust Account

*Opinion rules that a law firm may use online banking to manage its trust accounts provided the firm's managing lawyers are regularly educated on the security risks and actively maintain end-user security.*

### Inquiry:

Most banks and savings and loans provide "online banking" which allows customers to access accounts and conduct financial transactions over the internet on a secure website operated by the bank or savings and loan. Transactions that may be conducted via on-line banking include account-to-account transfers, payments to third parties, wire transfers, and applications for loans and new accounts. Online banking permits users to view recent transactions and view and/or download cleared check images and bank statements. Additional services may include account management software.

Financial transactions conducted over the internet are subject to the risk of theft by hackers and other computer criminals. Given the duty to safeguard client property, particularly the funds that a client deposits in a lawyer's trust account, may a law firm use online banking to manage a trust account?

### Opinion:

Yes, provided the lawyers use reasonable care to minimize the risk of loss or theft of client property specifically including the regular education of the firm's managing lawyers on the *ever-changing* security risks of online banking and the active maintenance of end-user security.

As noted in [Proposed] 2011 FEO 6, *Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property*, the use of the internet to transmit and store client data (or, in this instance, data about client property) presents significant challenges. In this complex and technical environment, a lawyer must be able to fulfill the fiduciary obligations to protect confidential client information and property from risk of disclosure and loss. The lawyer must protect against security weaknesses unique to the internet, particularly "end-user" vulnerabilities found in the lawyer's own law office. The lawyer must also engage in frequent and regular education about the security risks presented by the internet.

Rule 1.15 requires a lawyer to preserve client property, to deposit client funds entrusted to the lawyer in a separate trust account, and to manage that trust account according to strict recordkeeping and procedural requirements. *See also* RPC 209 (noting the "general fiduciary duty to safeguard the property of a client") and 98 FEO 15 (requiring a lawyer to exercise "due care" when selecting depository bank for trust account). The rule is silent, however, about online banking.

Nevertheless, online banking may be used to manage a client trust account if the recordkeeping and fiduciary obligations in Rule 1.15 can be fulfilled. The recordkeeping requirements for trust accounts are set forth in Rule 1.15-3. Rule 1.15-3(b)(3) specifically requires a lawyer to maintain the following records relative to the transfer of funds from the trust account:

all instructions or authorizations to transfer, disburse, or withdraw funds from the trust account (including electronic transfers or debits), or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also showing the name of the client or other person to whom the funds belong;

If the online banking software does not provide a method for making an official bank record of the required information when money is transferred from the trust account to another account, such transfers must be handled by a method that provides the required records.

To fulfill the fiduciary obligations in Rule 1.15, a lawyer managing a trust account must use reasonable care to minimize the risks to client funds on deposit in the trust account by remaining educated as to the dynamic risks involved in online banking and insuring that the law firm invests in proper protection and multiple layers of security to address those risks. *See* [Proposed] 2011 FEO 6.

A lawyer who is managing a trust account has affirmative duties to regularly educate himself as to the security risks of online banking; to actively maintain end-user security at the law firm through safety practices such as strong password policies and procedures, the use of encryption, and security software, and the hiring of an information technology consultant to advise the lawyer or firm employees; and to insure that all staff members who assist with the management of the trust account receive training on and abide by the security measures adopted by the firm. Understanding the contract with the depository bank and the use of the resources and expertise available from the bank are good first steps toward fulfilling the lawyer's fiduciary obligations.

This opinion does not set forth specific security requirements because mandatory security measures would create a false sense of security in an environment where the risks are continually changing. Instead, due diligence and frequent and regular education

are required. A lawyer must fulfill his fiduciary obligation to safeguard client funds by applying the same diligence and competency to manage the risks of on-line banking that a lawyer is required to apply when representing clients.

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# 2011 Formal Ethics Opinion 14

April 27, 2012

## Outsourcing Clerical or Administrative Tasks

*Opinion rules that a lawyer must obtain client consent, confirmed in writing, before outsourcing its transcription and typing needs to a company located in a foreign jurisdiction.*

### Inquiry:

Law Firm would like to outsource its transcription and typing needs to a company located in a foreign jurisdiction. Specifically, voice files would be sent via email and some documents would be scanned to the company via email. The communications would, in turn, be transcribed to paper. The files would include information about client matters and work product regarding client matters. Law Firm investigated the security measures the company utilizes and found them to be extensive.

Is Law Firm required to disclose the outsourcing of these clerical tasks to its clients and obtain their informed written consent as contemplated by 2007 FEO 12?

### Opinion:

Yes. 2007 FEO 12 provides that a lawyer must disclose the outsourcing of support services to an assistant in another country and obtain the client's informed written consent to the outsourcing. 2007 FEO 12 does not differentiate between the outsourcing of administrative as opposed to legal support services. Similarly, ABA Formal Opinion 08-451 (2008) provides that "where the relationship between the firm and the individuals performing the services is attenuated, as in a typical outsourcing relationship, *no information protected by Rule 1.6* may be revealed without the client's informed consent." (Emphasis added). The bar associations of New York and Ohio have reached similar conclusions. N.Y. State Bar Ass'n. Comm. on Prof'l Ethics, Op. 2006-3 (2006); Ohio Ethics Op. 2009-6 (2009).

The ABA opinion notes the existence of unique risk factors that must be evaluated when client information is outsourced to a foreign vendor. As noted in the ABA opinion:

[c]onsideration . . . should be given to the legal landscape of the nation to which the services are being outsourced, particularly the extent that personal property, including documents, may be susceptible to seizure in judicial or administrative proceedings notwithstanding claims of client confidentiality. Similarly, the judicial system of the country in question should be evaluated to assess the risk of loss of client information or disruption of the project in the event that a dispute arises between the service provider and the lawyer and the courts do not provide prompt and effective remedies to avert prejudice to the client.

The protection of client confidences is one of the most significant responsibilities imposed on a lawyer. Given the risk that a foreign jurisdiction may provide less protection for confidential client information than that provided domestically, the outsourcing of any task to another country that involves the disclosure of confidential client information requires disclosure and client consent confirmed in writing.<sup>1</sup> Consent "confirmed in writing" denotes consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See Rule 1.0(c). The client's consent to the outsourcing may be incorporated into the employment agreement.

### Endnote

Client consent is not required in 2011 FEO 6 although the opinion allows confidential client information to be transmitted over the internet and stored using servers that may be located in another country. The instant opinion can be distinguished because outsourcing requires disclosure of client information to third parties.

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# 2007 Formal Ethics Opinion 12

April 25, 2008

## Outsourcing Legal Support Services

*Opinion rules that a lawyer may outsource limited legal support services to a foreign lawyer or a nonlawyer (collectively "foreign assistants") provided the lawyer properly selects and supervises the foreign assistants, ensures the preservation of client confidences, avoids conflicts of interests, discloses the outsourcing, and obtains the client's advanced informed consent.*

### Inquiry:

May a lawyer ethically outsource legal support services abroad, if the individual providing the services is either a nonlawyer or a lawyer not admitted to practice in the United States (collectively "foreign assistants")?

### Opinion:

The Ethics Committee has previously determined that a lawyer may use nonlawyer assistants in his or her practice, and that the assistants do not have to be employees of the lawyer's firm or physically present in the lawyer's office. *See, e.g.*, RPC 70, RPC 216, 99 FEO 6, 2002 FEO 9. The previous opinions emphasize that the lawyer's use of nonlawyer assistants must comply with the Rules of Professional Conduct. Generally, the ethical considerations when a lawyer uses foreign assistants are similar to the considerations that arise when a lawyer uses the services of any nonlawyer assistant.

Pursuant to RPC 216, a lawyer has a duty under the Rules of Professional Conduct to take reasonable steps to ascertain that a nonlawyer assistant is competent; to provide the nonlawyer assistant with appropriate supervision and instruction; and to continue to use the lawyer's own independent professional judgment, competence, and personal knowledge in the representation of the client. *See also* Rule 1.1, Rule 5.3, Rule 5.5. The opinion further states that the lawyer's duty to provide competent representation mandates that the lawyer be responsible for the work product of nonlawyer assistants. *See also* Rule 5.3.

2002 FEO 9 states that, in any situation where a lawyer delegates a task to a nonlawyer assistant, the lawyer must determine that delegation is appropriate after having evaluated the complexity of the transaction, the degree of difficulty of the task, the training and ability of the nonlawyer, the client's sophistication and expectations, and the course of dealing with the client. *See also* Rule 1.1 and Rule 5.3.

Therefore, as long as the lawyer's use of the nonlawyer assistant's services is in accordance with the Rules of Professional Conduct, the location of the nonlawyer assistant is irrelevant. Rule 5.3(b) requires lawyers having supervisory authority over the work of nonlawyers to make "reasonable efforts" to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

When contemplating the use of foreign assistants, the lawyer's initial ethical duty is to exercise due diligence in the selection of the foreign assistant. RPC 216 states that, before contracting with a nonlawyer assistant, a lawyer must take reasonable steps to determine that the nonlawyer assistant is competent. 2002 FEO 9 states that the lawyer must evaluate the training and ability of the nonlawyer in determining whether delegation of a task to the nonlawyer is appropriate. The lawyer must ensure that the foreign assistant is competent to perform the work requested, understands and will comply with the ethical rules that govern a lawyer's conduct, and will act in a manner that is compatible with the lawyer's professional obligations.

In the selection of the foreign assistant, the lawyer should consider obtaining background information about any intermediary employing the foreign assistants; obtaining the foreign assistants' resumes; conducting reference checks; interviewing the foreign assistants to ascertain their suitability for the particular assignment; obtaining a work product sample; and confirming that appropriate channels of communication are present to ensure that supervision can be provided in a timely and ongoing manner. Individual cases may require special or further measures. *See* New York City Bar Ass'n. Formal Opinion 2006-3; San Diego County Bar Ass'n. Ethics Opinion 2007-1.

Another ethical concern is the lawyer's ability adequately to supervise the foreign assistants. Pursuant to RPC 216, to supervise properly the work delegated to the foreign assistants, the lawyer must possess sufficient knowledge of the specific area of law. The lawyer must also ensure that the assignment is within the foreign assistant's area of competency. In supervising the foreign assistant, the lawyer must review the foreign assistant's work on an ongoing basis to ensure its quality; have ongoing communication with the foreign assistant to ensure that the assignment is understood and that the foreign assistant is discharging the assignment in accordance with the lawyer's directions and expectations; and review thoroughly all work-product of foreign assistants to ensure that it is accurate, reliable, and in the client's interest. The lawyer has an ongoing duty to exercise his or her professional judgment and skill to maintain the level of supervision necessary to advance and protect the client's interest.

If physical separation, language barriers, differences in time zones, or inadequate communication channels do not allow a reasonable and adequate level of supervision to be maintained over the foreign assistant's work, the lawyer should not retain the foreign assistant to provide services.

A lawyer must retain at all times the duty to exercise his or her independent judgment on the client's behalf and cannot abdicate that role to any assistant. A lawyer who utilizes foreign assistants will be held responsible for any of the foreign assistants' work-product used by the lawyer. *See* Rule 5.3. A lawyer may use foreign assistants for administrative support services such as

document assembly, accounting, and clerical support. A lawyer may also use foreign assistants for limited legal support services such as reviewing documents; conducting due diligence; drafting contracts, pleadings, and memoranda of law; and conducting legal research. Foreign assistants may not exercise independent legal judgment in making decisions on behalf of a client. Additionally, a lawyer may not permit any foreign assistant to provide any legal advice or services directly to the client to assure that the lawyer is not assisting another person, or a corporation, in the unauthorized practice of law. *See* Rule 5.5(d). The limitations on the type of legal services that can be outsourced, in conjunction with the selection and supervisory requirements associated with the use of foreign assistants, insures that the client is competently represented. *See* Rule 5.5(d). Nevertheless, when outsourcing legal support services, lawyers need to be mindful of the prohibitions on unauthorized practice of law in Chapter 84 of the General Statutes and on the prohibition on aiding the unauthorized practice of law in Rule 5.5(d).

Another significant ethical concern is the protection of client confidentiality. A lawyer has a professional obligation to protect and preserve the confidences of a client against disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. *See* Rule 1.6, cmt. [17]. When utilizing foreign assistants, the lawyer must ensure that procedures are in place to minimize the risk that confidential information might be disclosed. *See* RPC 133. Included in such procedures should be an effective conflict-checking procedure. *See* RPC 216. The lawyer must make certain that the outsourcing firm and the foreign assistants working on the particular client matter are aware that the lawyer's professional obligations require that there be no breach of confidentiality in regard to client information. The lawyer also must use reasonable care to select a mode of communication that will best maintain any confidential information that might be conveyed in the communication. *See* RPC 215.

Finally, the lawyer has an ethical obligation to disclose the use of foreign, or other, assistants and to obtain the client's written informed consent to the outsourcing. In the absence of a specific understanding between the lawyer and client to the contrary, the reasonable expectation of the client is that the lawyer retained by the client, using the resources within the lawyer's firm, will perform the requested legal services. *See* Rule 1.4, 2002 FEO 9; San Diego County Bar Ass'n. Ethics Opinion 2007-1.

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Article 2A.  
Identity Theft Protection Act.

**§ 75-60. Title.**

This Article shall be known and may be cited as the "Identity Theft Protection Act". (2005-414, s. 1.)

**§ 75-61. Definitions.**

The following definitions apply in this Article:

- (1) "Business". - A sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. Business shall not include any government or governmental subdivision or agency.
- (2) "Consumer". - An individual.
- (3) "Consumer report" or "credit report". - Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any of the following:
  - a. Credit to be used primarily for personal, family, or household purposes.
  - b. Employment purposes.
  - c. Any other purpose authorized under 15 U.S.C. § 1681(b).
- (4) "Consumer reporting agency". - Any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
- (5) "Credit card". - Has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. § 160, et seq.).
- (6) "Debit card". - Any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.
- (7) "Disposal" includes the following:
  - a. The discarding or abandonment of records containing personal information.
  - b. The sale, donation, discarding, or transfer of any medium, including computer equipment or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.
- (8) "Encryption". - The use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.
- (9) "Person". - Any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.
- (10) "Personal information". - A person's first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b). Personal information does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including

- name, address, and telephone number, and does not include information made lawfully available to the general public from federal, state, or local government records.
- (11) "Proper identification". - Information generally deemed sufficient to identify a person. If a person is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity.
  - (12) "Records". - Any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.
  - (13) "Redaction". - The rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number is accessible as part of the data.
  - (14) "Security breach". - An incident of unauthorized access to and acquisition of unencrypted and unredacted records or data containing personal information where illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to a consumer. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key shall constitute a security breach. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure.
  - (15) "Security freeze". - Notice placed in a credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer. (2005-414, s. 1.)

**§ 75-62. Social security number protection.**

- (a) Except as provided in subsection (b) of this section, a business may not do any of the following:
  - (1) Intentionally communicate or otherwise make available to the general public an individual's social security number.
  - (2) Intentionally print or imbed an individual's social security number on any card required for the individual to access products or services provided by the person or entity.
  - (3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.
  - (4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.
  - (5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed.
  - (6) Sell, lease, loan, trade, rent, or otherwise intentionally disclose an individual's social security number to a third party without written consent to the disclosure from the individual, when the party making the disclosure knows or in the exercise of reasonable diligence would have reason to believe that the third party lacks a legitimate purpose for obtaining the individual's social security number.
- (b) Subsection (a) of this section shall not apply in the following instances:
  - (1) When a social security number is included in an application or in documents related to an enrollment process, or to establish, amend, or terminate an account, contract, or policy; or to confirm the accuracy of the social security number for the purpose of obtaining a credit

report pursuant to 15 U.S.C. § 1681(b)(2). A social security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

- (2) To the collection, use, or release of a social security number for internal verification or administrative purposes.
- (3) To the opening of an account or the provision of or payment for a product or service authorized by an individual.
- (4) To the collection, use, or release of a social security number to investigate or prevent fraud, conduct background checks, conduct social or scientific research, collect a debt, obtain a credit report from or furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 C.F.R. § 216.13-15, or locate an individual who is missing, a lost relative, or due a benefit, such as a pension, insurance, or unclaimed property benefit.
- (5) To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law.
- (6) To a business providing the social security number to a federal, state, or local government entity, including a law enforcement agency, court, or their agents or assigns.
- (7) To a social security number that has been redacted.

(c) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this Article are implemented.

(d) A violation of this section is a violation of G.S. 75-1.1. (2005-414, s. 1.)

### **§ 75-63. Security freeze.**

(a) A consumer may place a security freeze on the consumer's credit report by making a request to a consumer reporting agency in accordance with this subsection. A security freeze shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, a consumer reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report, provided that the consumer reporting agency does not state or otherwise imply to the third party that the consumer's security freeze reflects a negative credit score, history, report, or rating. A consumer reporting agency shall place a security freeze on a consumer's credit report if the consumer requests a security freeze by any of the following methods:

- (1) First-class mail.
- (2) Telephone call.
- (3) Secure Web site or secure electronic mail connection.

(a1) A nationwide consumer reporting agency, as defined in section 603(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., that receives a request from a consumer residing in this State to place a security freeze on the consumer's file, shall provide a notice communicating to the consumer that the freeze is only placed with the consumer reporting agency to which the consumer directed the request. The notice shall provide to the consumer the Web site, postal address, and telephone number of the other nationwide consumer reporting agencies and of the North Carolina Attorney General's Office and shall inform the consumer that he or she may use this information to contact other nationwide consumer reporting agencies to make security freeze requests and obtain information on combating identity theft. No part of the notice to the consumer shall be used to make a solicitation for other goods and services.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than three business days after receiving a written request from the consumer by mail. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 24 hours of receiving the request.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within three business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific period of time, or to a specific party, or for permanently lifting the freeze.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time or by a specific party while a freeze is in place, the consumer shall contact the consumer reporting agency by mail, phone, or electronically, request that the freeze be lifted or lifted with respect to a specific party, and provide all of the following:

- (1) Proper identification.
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.
- (3) The proper information regarding the third party who is authorized to receive the consumer credit report or the time period for which the report shall be available to users of the credit report.

(e) Repealed by Session Laws 2009-355, s. 1, effective October 1, 2009.

(f) A consumer reporting agency that receives a request by mail from a consumer to lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 15 minutes of receiving the request.

(g) A consumer reporting agency shall remove, temporarily lift, or lift with respect to a specific third party a freeze placed on a consumer's credit report only in the following cases:

- (1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.
- (2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(g1) A consumer reporting agency need not meet the time requirements provided in this section, only for such time as the occurrences prevent compliance, if any of the following occurrences apply:

- (1) The consumer fails to meet the requirements of subsection (d) or (j) of this section.
- (2) The consumer reporting agency's ability to remove, place, temporarily lift, or lift with respect to a specific party the security freeze is prevented by any of the following:
  - a. An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena.
  - b. Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.
  - c. Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption.
  - d. Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives.
  - e. Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems.
  - f. Commercially reasonable maintenance of, or repair to, the consumer reporting

agency's systems that is unexpected or unscheduled.

g. Receipt of a request outside of normal business hours.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time or to a specific third party while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be temporarily lifted for a specific period of time or to a specific third party or removed. A consumer reporting agency shall remove a security freeze within 15 minutes of receiving an electronic request for removal from the consumer or within three business days of receiving a written or telephonic request for removal from the consumer, who provides all of the following:

(1) Proper identification.

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.

(6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.

(9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

(10) Any depository financial institution for checking, savings, and investment accounts.

(11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(12) A person for the purpose of furnishing or using credit reports for employment purposes

pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15 U.S.C. § 1681b(a)(3)(F).

(13) A person for the purpose of criminal background record information.

(m) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(n) The following persons are not required to place in a credit report a security freeze pursuant to this section provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

- (1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.
- (2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.
- (3) A consumer reporting agency that does all of the following:
  - a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.
  - b. Does not maintain a permanent database of credit information from which new credit reports are produced.

(o) A consumer reporting agency shall not charge a fee to put a security freeze in place, remove a freeze, or lift a freeze pursuant to subsection (d) or (j) of this section, provided that any such request is made electronically. If a request to put a security freeze in place is made by telephone or by mail, a consumer reporting agency may charge a fee to a consumer not to exceed three dollars (\$3.00), except that a consumer reporting agency may not charge any fee to a consumer over the age of 62, to a victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person, or to the victim's spouse. A consumer reporting agency shall not charge an additional fee to a consumer who requests to temporarily lift for a specific period of time or to a specific third party, reinstate, or remove a security freeze. A consumer reporting agency shall not charge a consumer for a onetime reissue of a replacement personal identification number. A consumer reporting agency may charge a fee not to exceed three dollars (\$3.00) to provide any subsequent replacement personal identification number.

(o1) A parent or guardian of a minor residing in this State may, upon appropriate proof of identity and proof of their relationship to the minor, inquire of a nationwide consumer reporting agency, as defined in section 603(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., as to the existence of a credit report for the minor of the parent or guardian. If a credit report for the minor exists, the nationwide consumer reporting agency shall make reasonable efforts to prevent providing a credit report on the minor until the minor reaches the age of majority. If a credit report for the minor does not exist, the nationwide consumer reporting agency has no obligation to create one.

(p) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:



### **"North Carolina Consumers Have the Right to Obtain a Security Freeze."**

You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization. A security freeze can be requested in writing by first-class mail, by telephone, or electronically. You also may request a freeze by visiting the following Web site: [URL] or calling the following telephone number: [NUMBER].

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transactions, or other services, including an extension of credit at point of sale.

The freeze will be placed within three business days if you request it by mail, or within 24 hours if you request it by telephone or electronically. When you place a security freeze on your credit report, within three business days, you will be sent a personal identification number or a password to use when you want to remove the security freeze, temporarily lift it, or lift it with respect to a particular third party.

A freeze does not apply when you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should plan ahead and lift a freeze if you are actively seeking credit or services as a security freeze may slow your applications, as mentioned above.

You can remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party by contacting the consumer reporting agency and providing all of the following:

- (1) Your personal identification number or password,
- (2) Proper identification to verify your identity, and
- (3) Proper information regarding the period of time you want your report available to users of the credit report, or the third party with respect to which you want to lift the freeze.

A consumer reporting agency that receives a request from you to temporarily lift a freeze or to lift a freeze with respect to a particular third party on a credit report shall comply with the request no later than three business days after receiving the request by mail and no later than 15 minutes after receiving a request by telephone or electronically. A consumer reporting agency may charge you up to three dollars (\$3.00) to institute a freeze if your request is made by telephone or by mail. A consumer reporting agency may not charge you any amount to freeze, remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party, if any of the following are true:

- (1) Your request is made electronically.
- (2) You are over the age of 62.
- (3) You are the victim of identity theft and have submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of your identifying information by another person, or you are the spouse of such a person.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(q) A violation of this section is a violation of G.S. 75-1.1. (2005-414, s. 1; 2006-158, s. 1; 2009-355, s. 1; 2009-550, s. 5.)

### **§ 75-64. Destruction of personal information records.**

(a) Any business that conducts business in North Carolina and any business that maintains or otherwise possesses personal information of a resident of North Carolina must take reasonable measures to

protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures must include:

- (1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that information cannot be practicably read or reconstructed.
- (2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the information cannot practicably be read or reconstructed.
- (3) Describing procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity.

(c) A business may, after due diligence, enter into a written contract with, and monitor compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

- (1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent.
- (2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review.
- (3) Reviewing and evaluating the disposal business's information security policies or procedures or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in North Carolina or disposes of personal information of residents of North Carolina must take all reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information.

(e) This section does not apply to any of the following:

- (1) Any bank or financial institution that is subject to and in compliance with the privacy and security provision of the Gramm Leach Bliley Act, 15 U.S.C. § 6801, et seq., as amended.
- (2) Any health insurer or health care facility that is subject to and in compliance with the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.
- (3) Any consumer reporting agency that is subject to and in compliance with the Federal Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended.

(f) A violation of this section is a violation of G.S. 75-1.1, but any damages assessed against a business because of the acts or omissions of its nonmanagerial employees shall not be trebled as provided in G.S. 75-16 unless the business was negligent in the training, supervision, or monitoring of those employees. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation. (2005-414, s. 1.)

#### **§ 75-65. Protection from security breaches.**

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact

information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include all of the following:

- (1) A description of the incident in general terms.
- (2) A description of the type of personal information that was subject to the unauthorized access and acquisition.
- (3) A description of the general acts of the business to protect the personal information from further unauthorized access.
- (4) A telephone number for the business that the person may call for further information and assistance, if one exists.
- (5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.
- (6) The toll-free numbers and addresses for the major consumer reporting agencies.
- (7) The toll-free numbers, addresses, and Web site addresses for the Federal Trade Commission and the North Carolina Attorney General's Office, along with a statement that the individual can obtain information from these sources about preventing identity theft.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

- (1) Written notice.
- (2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.
- (3) Telephonic notice provided that contact is made directly with the affected persons.
- (4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:
  - a. E-mail notice when the business has an electronic mail address for the subject

persons.

- b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.
- c. Notification to major statewide media.

(e1) In the event a business provides notice to an affected person pursuant to this section, the business shall notify without unreasonable delay the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the future, and information regarding the timing, distribution, and content of the notice.

(f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision; or a credit union that is subject to and in compliance with the Final Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, issued on April 14, 2005, by the National Credit Union Administration; and any revisions, additions, or substitutions relating to any of the said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

(j) Causes of action arising under this Article may not be assigned. (2005-414, s. 1; 2009-355, s. 2; 2009-573, s. 10.)

#### **§ 75-66. Publication of personal information.**

(a) It shall be a violation of this section for any person to knowingly broadcast or publish to the public on radio, television, cable television, in a writing of any kind, or on the Internet, the personal information of another with actual knowledge that the person whose personal information is disclosed has previously objected to any such disclosure.

(b) As used in this section, "person" means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity, but does not include any:

- (1) Government, government subdivision or agency.
- (2) Entity subject to federal requirements pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

(c) As used in this section, the phrase "personal information" includes a person's first name or first initial and last name in combination with any of the following information:

- (1) Social security or employer taxpayer identification numbers.
- (2) Drivers license, State identification card, or passport numbers.
- (3) Checking account numbers.
- (4) Savings account numbers.
- (5) Credit card numbers.
- (6) Debit card numbers.
- (7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).

- (8) Digital signatures.
- (9) Any other numbers or information that can be used to access a person's financial resources.
- (10) Biometric data.
- (11) Fingerprints.
- (12) Passwords.
- (d) Nothing in this section shall:
  - (1) Limit the requirements or obligations under any other section of this Article, including, but not limited to, G.S. 75-62 and G.S. 75-65.
  - (2) Apply to the collection, use, or release of personal information for a purpose permitted, authorized, or required by any federal, State, or local law, regulation, or ordinance.
  - (3) Apply to data integration efforts to implement the State's business intelligence strategy as provided by law or under contract.
- (e) Any person whose property or person is injured by reason of a violation of this section may sue for civil damages pursuant to the provisions of G.S. 1-539.2C. (2007-534, s. 2; 2012-142, s. 6A.7A(h).)

**§ 75-67.** Reserved for future codification purposes.

**§ 75-68.** Reserved for future codification purposes.

**§ 75-69.** Reserved for future codification purposes.

**§ 75-70.** Reserved for future codification purposes.

**§ 75-71.** Reserved for future codification purposes.

**§ 75-72.** Reserved for future codification purposes.

**§ 75-73.** Reserved for future codification purposes.

**§ 75-74.** Reserved for future codification purposes.

**§ 75-75.** Reserved for future codification purposes.

**§ 75-76.** Reserved for future codification purposes.

**§ 75-77.** Reserved for future codification purposes.

**§ 75-78.** Reserved for future codification purposes.

**§ 75-79.** Reserved for future codification purposes.

# Characteristics of a Fraudster

**81% of Fraudsters exhibit at least one of the following behavioral traits:**

- Living beyond means
- Financial difficulties
- Unusually close relationship with vendor or customer
- Control issues; unwillingness to share duties
- Divorce or other family problems
- Wheeler-dealer attitude
- Irritability, suspiciousness, or defensiveness
- Past employment-related problems
- Complaints about inadequate pay
- Refusal to take vacations
- Excessive pressure from work within organization
- Past legal problems
- Complaints about lack of authority
- Excessive family or peer pressure for success
- Instability and life circumstances

# **Crime Insurance and Cyber Liability**

## **Information Needed to Apply for Crime Insurance**

- Number of employees, as well as hiring procedures such as background checks, employment verification and references checked?
- Revenue, and in some cases more detailed financial info
- Audit controls – independent audits used, any recommendations been made by CPA, is there an internal audit dept.?
- Disbursement and check handling controls – dual signature, segregation of duties, etc.
- Wire transfer procedures

## **Information Needed to Apply for Cyber Insurance**

Basic info needed for the “add-on” policy:

- Revenue, what type of information do you collect, what general security features you have in place on your computer systems/networks
- Types of equipment used – thumb drives, smart phones, etc.
- Safeguards in place, such as encryption

For the stand-alone policy:

- In addition to the above information, you will need to provide more detailed info regarding your network security – firewalls, anti-virus software, etc.
- Information regarding any 3<sup>rd</sup> party vendors you utilize for your networks, or 3<sup>rd</sup> parties that have access to your client data
- What procedures are in place to test and audit network security
- Personnel information – what training is given to employees, are background checks given?
- Do you have policies in place for remote network use, changing of passwords, etc.

## Cyber Liability Facts

- Less than 1/3 of companies are insured against cyber attacks, yet 76% believe the risk is equal to or greater than natural disasters, business interruption, fire, etc.
- A recent study has shown that more than 15% of Law Firms reported their firm has experienced some type of breach in the past.
- FBI Warning to Lawyers – “Hackers see attorneys as a back door to the valuable data of their corporate clients”
- The Average Cost of a Data Breach is over \$200 per compromised record
- The FBI, NASA, Dept. of Defense and CIA have all been hacked – no one is immune

## What is a “Compromised Record”?

Identity Information:

- Info of any natural person that is “nonpublic personal info” as defined in Gramm-Leach Bliley Act of 1999
- Medical, health care info, “protected health information” – HIPAA
- Private personal info protected under local, state, federal acts/statutes, ordinances, etc.
- Driver’s license, state ID #, Social Security #, bank account #, credit card info
- In a sense, a record is the info of a person – so a file could have several records (ie real estate transaction)



## HELP TEAM

### What If I am Suddenly Missing, Incapacitated, Disabled or Dead (MIDD)?

#### I. LML HELP TEAM

The main purpose of this project is to develop a go-to team, armed with protocols and resources for “triage and immediate first aid” when one of our insured lawyers has a sudden illness, death, or other event that prevents him from taking care of his clients. Not only would this help LML avoid preventable claims, but we hope that it would provide comfort to our insured lawyers and their families and firms during a difficult time.

We would also like to have an educational aspect to this project to create awareness and prompt our insured lawyers to take proactive steps to make their own arrangements for emergencies before those situations arise.

#### II. PLANNING AHEAD (So you won’t need the HELP Team)

##### A. The Rules of Professional Conduct Require it

North Carolina Rule of Professional Conduct 1.3 says “A lawyer shall act with reasonable diligence and promptness in representing a client.” Comment 5 states, “To prevent the neglect of client matters in the event of a sole practitioner’s death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action.”

##### B. Steps You Can Take Now to Begin Advance Planning

1. Find one or more attorneys (“Assisting Attorney(s)”) to close your practice in the event of your death, disability, impairment or incapacity. The agreement should authorize the Assisting Attorney(s) to contact your clients for instructions on transferring their files, obtain extensions in litigation matters where necessary, wind down your financial affairs, provide your clients with a final accounting, collect fees on your behalf and liquidate or sell your practice, if necessary.

##### Resources:

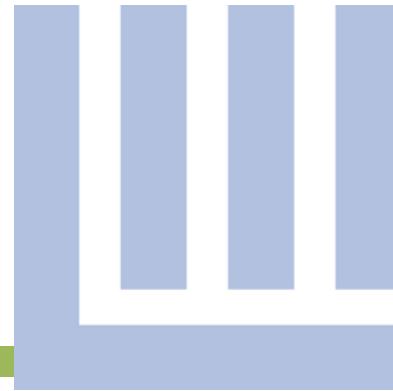
NCBA publication, “Turning out the Lights” and Lawyers Mutual publication, “Closing a Law Practice: Through Retirement, Moving to a New Firm or Death of a Fellow Lawyer.”

2. Provide financial resources to compensate the Assisting Attorney(s) and your staff during the winding down process.
  - a. Consider Business Overhead Expense Insurance - Business Overhead Expense coverage is disability insurance for your law practice. Despite your disability, operating expenses will continue. Besides covering the ordinary expenses, you may also include coverage that will provide a salary to an attorney who can come in and take over your cases while you are out. Business Overhead Expense insurance helps you maintain your profitability and sustain your firm until you return to work or close your practice, if you cannot return to work.
  - b. Maintain a small insurance policy with your estate as the beneficiary. Alternatively, your surviving spouse or other family members can be named as beneficiary with instructions to lend the funds to the estate, if necessary.
  - c. Consider critical illness insurance - This insurance will provide a lump sum benefit if you are diagnosed with one of the critical illnesses in the policy (heart attack, cancer, stroke, coronary artery bypass surgery and many more). The benefit can help pay for the cost of care and treatment, replace lost income due to decreased earning ability or fund a change in lifestyle, just to name a few.
  - d. Consider an Individual Disability policy. An individual disability policy protects personal income if disability occurs. Some policies include a "Compassionate Disability Feature" that will pay the insured a monthly benefit if the insured loses income while taking time away from work to care for a loved one who has a serious health condition.
  - e. Consider Disability and Life Buy-Out insurance. If your law partner dies or becomes permanently disabled, will you have in place a plan and a means for you to buy out your partner's interest in the firm? These products can provide the funds to purchase a business owner's share of the business in the event an owner becomes totally disabled and cannot work in the business, or in Life Buy-Out insurance, the owner dies.
3. Make sure your office procedures manual explains how to produce a list of client names and addresses for open files.
4. Keep all deadlines and follow-up dates current on your calendaring system.

5. Thoroughly document all client files. Consider preparing a file synopsis for every file and keep it current.
6. Keep your time and billing records current.
7. Familiarize your Assisting Attorney(s) and/or Authorized Signer with your office systems.
8. Renew your written agreement with your Assisting Attorney(s) and/or Authorized Signer each year.
9. Make sure you do not keep clients' original documents, such as wills or other estate plans.
10. Prepare a list of computer passwords and any other access codes to financial institutions, insurance information, professional organizations, etc.
11. Involve your staff in the process to build and maintain institutional knowledge. Work with your staff to prepare checklists of procedures, important passwords or key information that they or your Assisting Attorney(s) will need.

## Checklist for Assisting Attorney(s)

- ☐ Copy of bank's forms for trust acct access of AT.
- ☐ Power of Attorney authorizing AT to run business as needed, including as trust account signatory.
- ☐ List of passwords of computer, email, smartphones, and accts.
- ☐ Updated list or spreadsheet of all files that need to be transferred or closed.
- ☐ Instructions for family and personal rep. of your estate about responsibilities of AT
- ☐ Contact information for AT
- ☐ Updated List of firm contacts such as clients, employees, vendors, insurers, etc.
- ☐ Draft of letters to clients re notification about deceased lawyer and authorizing release of client file to new atty.



# 30 Technology Tips

30 TECHNOLOGY TIPS



**LAWYERS  
MUTUAL**

LIABILITY INSURANCE  
COMPANY OF  
NORTH CAROLINA

5020 Weston Parkway, Suite 200, Cary, North Carolina 27513

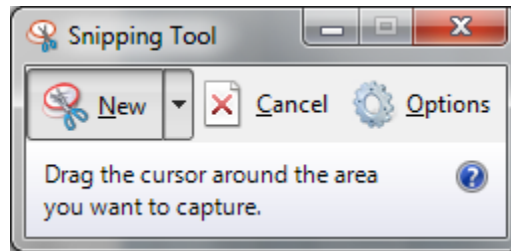
Post Office Box 1929, Cary, North Carolina 27512-1929

919.677.8900 800.662.8843 919.677.9641 FAX

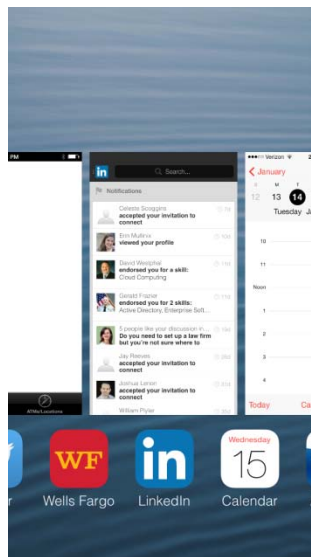
[www.lawyersmutualinc.com](http://www.lawyersmutualinc.com)

## 30 Technology Tips

1. **Snipping Tool for Windows 7** - This is one of the great forgotten tools of Windows 7. The Snipping Tool, located under the Accessories menu, allows users to “Snip” pieces from their screen and paste them as pictures into Word documents, emails or any place they need.

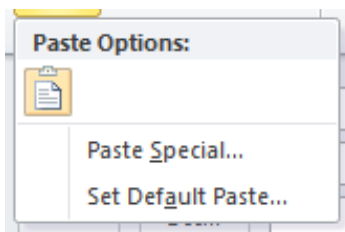


2. **Voice Recognition Software** - Since I can talk faster than I can type, voice recognition software has been a lifesaver for me. If you have tried voice-recognition software in the past and have not been pleased with it, give it a try again. The technology has greatly improved over the last few years, and it will be worth the short investment of time.
3. **Turn Off Apps on an iPhone** - Double touch the home button on your iPhone and a list of apps that are running on your iPhone is shown at the bottom of the screen. By dragging up on any of those apps, the running app can be terminated.



4. **Check Your Antivirus Software** - This may be a very boring subject, it is also still vital as part of your computer security. Maintain updated virus protection for your office computers. It is still the first line of defense for protection against the bad guys. Be sure that a weekly scan is run on your computer as well as automatic updates.
5. **Virtual Receptionist Services** – Don’t have your clients or potential clients greeted with an automated assistant. Contract with a virtual assistant company that will treat your clients like gold. They will answer your phone, screen you calls and make your office shine – without even being there.

6. **Update Your Website** - Your website is your firm's first impression to potential customers. If your website has not been updated within the last year, consider giving it an overhaul for an updated look and feel.
7. [www.thisiswhyimbroke.com](http://www.thisiswhyimbroke.com) - This site is one of my favorites for technology gifts and unnecessary items. Need a killer whale submarine for \$40,000? Sure! Find some useful and not so useful gifts for you or your colleagues.
8. **Buy a ScanSnap Scanner** - This is the best desktop scanner for law firms hands-down. Bundled with a license of Adobe Acrobat Standard, this workhorse of the scanner will provide easy access to searchable scanning.
9. **Write a Blog and Read Them Too** - Blogging is a great way for attorneys to be a standout in their field as an expert. From lawyerist.com to David Pogue of the New York Times, there is a blog (or ten) for everyone.
10. **Timeline 3D** - Timelines have never been easy to create. This app will help create and present beautiful timelines in a snap.
11. **Use Paste Special in MS Office products** - If you are tired of pasting data into documents, emails and briefs with incorrect formatting, choose the Paste Special option under the Paste Menu. Choose Unformatted Text to leave the bad formatting behind.



12. **Use Multiple Monitors** - Studies have shown that using a second monitor can increase productivity up to 33% for both staff and attorneys. Use your monitor on your laptop as your second screen and give your staff that second monitor that will help them help you.
13. **Speedy Redial on a Cell Phone** - A quick and easy way to redial the last number on a cell phone, press the Call button again. The phone will remember the last number dialed and give you the opportunity to dial it again.



14. **Lose Windows XP** - For those of you that are still running Windows XP on your computers, a deadline is approaching. On April 14, 2014, Microsoft will end support for Windows XP. It will be a target for hackers as soon as support is gone, so update now.
15. **Buy a Keyboard for Your Tablet** - Tablets are great, but by buying a keyboard to use with the tablet, it becomes much more of a business tool. The keyboard can be integrated within the case or carried separately as a Bluetooth device.

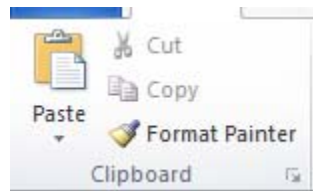
16. **Store Data in the Cloud and Encrypt It** - If you're currently using a system like Dropbox or Box.net, consider adding a second layer of security on top of your password. Encrypt your data in cloud storage by using a program like Viivo or Boxcryptor.
17. **Password-Protect Your Smart Phone and Tablet** - Smartphones are great tools for attorneys. However, they can be vulnerable if they fall into the wrong hands. Protect your client's confidential data by putting at least a simple password on your screen or tablet. Better yet, disable the simple password and opt for more secure password up to 37 characters.



18. **Go To Court With An iPad** – Anyone who goes to court can use apps like TrialPad to present wirelessly in court with an iPad. Use the companion app, TranscriptPad, to annotate transcripts on the road. One more business use to justify that iPad purchase.
19. **WordLens App** - This free app translates printed words and signs into your own language. Great travel tool if you do not speak the language.
20. **Limit Your PowerPoint** - PowerPoint slides should not be used as a prompt for the presenter. They need to convey the most important, impactful data in your presentation. By limiting your PowerPoint to simple clear messages, the audience will be listening to you and not reading your PowerPoint.
21. **Update Your LinkedIn Profile** – LinkedIn has been around for a while, but have you looked at your LinkedIn profile lately? Take a few minutes to put up a new picture, add more content and your recent publications. People are using LinkedIn. Are you?
22. **Read the Terms of Service** - When engaging in cloud computing, many attorneys assume that the terms of service of one provider are the same as every other. They are not! Be sure to read the terms of service for any provider where you store your client's confidential data.



23. **Forget Your Fax Machine** - Many law firms have the (wrong) idea that they need to maintain a physical fax machine in order to send and receive faxes. Just because your client has not moved into the age of electronic faxing does not mean that your firm needs to keep a fax machine sitting in the office. Investigate online fax services like EFax and MyFax, or free services can be found with a little research. You can receive and send your faxes electronically and your client can keep their fax machine.
24. **WordRake** – New in 2013, this editing software is built for attorneys. As an Add-In to Microsoft Word, WordRake strips out extra “legalese” and helps you get to the point. Quick.
25. **Use Virtual Assistants** - In 2013, your assistant does not have to work in the office with you. Consider engaging a virtual assistant for short or long term assignments. They would work just like an assistant in your office. They can do anything from calling clients, to managing calendars, to booking travel, and any other projects that don’t require them to be physically in the office.
26. **Buy Adobe Acrobat Professional** – Buy the more expensive version of Adobe Acrobat Professional (approximately \$450) to electronically bates stamp and redact documents. The cost is worth it if you need to slip sheet something into a document before it is produced.
27. **Utilize Format Painter in MS Office** –The Format Painter tool, available in all versions of Microsoft Office, is a great way to be able to copy formatting, not the content, from one place to another within a document, presentation or spreadsheet. You can use this for consistent formatting throughout your document.



28. **Don't Buy Windows 8 (Yet)** - Windows 8 has gotten a bad rap, and it is unfortunate that most of the bad reviews are true. With a touchscreen and tablet focus, Windows 8 has proven difficult for most attorneys that have been forced to use it. Windows 8.1 brought back the Start Menu and some of the functionality that was missing. Windows 8 isn't going away but maybe you can wait it out.
29. **Backup (and Restore) Your Cloud Data Locally** - Tools like Dropbox are a wonderful way to store and share documents. But it is still your data and it needs to be backed up. Periodically, copy your data from Dropbox, Box.net, Google Drive, SkyDrive (whatever flavor of storage you prefer) to your local backup drive. Test some files to make sure that your backup works in case disaster strikes.
30. **Lawyers Mutual Risk Management Resources** - Be sure to check out the risk management resources at <http://www.lawyersmutualinc.com/risk-management-resources/articles> including great policies for equipment disposal, data security, disaster planning and recovery, social media and other tech policies and office procedures.



# Literature and the Law: How stories can make us better lawyers

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# **Literature and the Law**

## *How stories can make us better lawyers*

**By Jay Reeves**  
[jay@lawyersmutualnc.com](mailto:jay@lawyersmutualnc.com)

*“Life-transforming ideas have always come to me through books.” – Oliver Wendell Holmes Jr.*

Lawyers are natural storytellers.

The stories we tell – and how we tell them – make a difference. Not just in our own lives but also to our family, friends, clients, colleagues and community.

Scratch a good trial lawyer and just below the surface you will find a superb story-teller. Ask a contract attorney whether a little word can make a big difference. See if a family lawyer can spell D-I-V-O-R-C-E.

And have you ever caught yourself – or perhaps your lunch companion – saying the following:

*“Let me tell you what happened in court this morning.”*  
*“You wouldn’t believe this new client who just came in.”*  
*“Today was a nightmare at work.”*

What comes next, of course, is a story. It may be one of humility, hilarity or horror. Or it might combine elements of all three.

No matter. Stories of all types – true tales, wild yarns and inspiring anecdotes – have the power to inform, enlighten and educate.

## **A. Learning Legal Truths From Fiction**

### **1. Stories teach us legal ethics.**

*“Inside every lawyer is the wreck of a poet.” - Clarence Darrow*

The Rules of Professional Conduct do not exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. – N.C. Rule of Professional Conduct 0.2 Scope [3]

**A Sergeant of the Law**  
*Geoffrey Chaucer, Canterbury Tales*

He was both wise and slightly suspicious of everything. He spent a lot of his time consulting with his clients outside St. Paul’s Cathedral in London. He was well respected and chose his words carefully when he spoke. He had served as the judge in a criminal court before, and his vast knowledge and wisdom had made him famous. He’d earned a lot of money as a judge and had become a great and powerful

landowner. He had memorized all of the laws, court cases, and decisions in England over the last 300 years and could therefore write the most perfect legal document. He was an incredibly busy person but always made himself look busier than he really was. He traveled in a simple multicolored coat that was tied together with a silk belt and some small pins. And that's all I really have to say about his clothing.

### **To A Friend Whose Work Has Come To Nothing**

*William Butler Yeats*

Now all the truth is out,  
Be secret and take defeat  
From any brazen throat,  
For how can you compete,  
Being honour bred, with one  
Who, were it proved he lies,  
Were neither shamed in his own  
Nor in his neighbors' eyes?

Bred to a harder thing  
Than Triumph, turn away  
And like a laughing string  
Whereon made fingers play  
Amid a place of stone,  
Be secret and exult,  
Because of all things known  
That is most difficult.

### **Surgeons Must Be Very Careful**

*By Emily Dickinson*

Surgeons must be very careful  
When they take the knife.  
Underneath their fine incisions  
Stir the culprit – Life!

## **2. Stories help us see the world through someone else's eyes.**

Loyalty is an essential element in the lawyer's relationship to a client. – N.C. Rule of Professional Conduct 1.7 [comment 1]

A lawyer's representation of a client does not constitute an endorsement of the client's political, economic, social or moral views or activities. – N.C. Rule of Professional Conduct 1.2

### **To Kill A Mockingbird**

*By Harper Lee*

"You never really understand a person until you consider things from his point of view – until you climb into his skin and walk around in it." Atticus Finch

“I wanted you to see what real courage is, instead of getting the idea that courage is a man with a gun in his hand. It’s when you’re licked before you begin but you begin anyway and you see it through no matter what. You rarely when, but sometimes you do.” Atticus Finch

### **What’s Going On**

*By Marvin Gaye*

“Mother, mother  
There’s too many of you crying  
Brother, brother, brother  
There’s far too many of you dying.  
...

Picket lines and picket signs  
Don’t punish me with brutality  
Talk to me, so you can see  
What’s going on.”

### **3. Stories spark our creativity.**

*“The business of the law is to make sense of the confusion of what we call human life - to reduce it to order but at the same time to give it possibility, scope, even dignity.*

*“What, then, is the business of poetry? Precisely to make sense of the chaos of our lives. To create the understanding of our lives.” - Archibald MacLeish (lawyer, poet, former Librarian of Congress)*

Advice couched in narrow legal terms may be of little value to a client ... moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied. – N.C. Rule of Professional Conduct 2.1

### **The Lawyer’s Farewell to His Muse**

*By Sir William Blackstone*

How blest my days, my thoughts how free,  
In sweet society with thee!  
Then all was joyous, all was young, and years unheeded rolled along.  
But now the pleasing dream is o’er  
These scenes must charm me now no more.  
Lost to the field and torn from you  
Farewell, a long, a last adieu.

Me wrangling courts and stubborn law,  
To smoke, and crowds and cities draw.  
There selfish faction rules the day  
And pride and avarice throng the way.  
Diseases taint the murky air.

And midnight conflagrations glare.

### **Lift Every Voice and Sing**

*By James Weldon Johnson*

Lift every voice and sing  
Till earth and heaven ring.  
Ring with the harmonies of liberty,  
Let our rejoicing rise  
High as the listening skies.  
Let us resound loud as the rolling sea.

Sing a song full of the faith that the dark past has taught us.  
Sing a song full of the hope that the present has brought us.

Facing the rising sun of our new day begun,  
Let us march on till victory is won.

### **4. Stories are fun**

*“Poetry and law have risen from the same bed” – Jakob Grimm (attorney and author, Grimm’s Fairy Tales)*

### **Devil in a Blue Dress**

*By Walter Mosley*

Degan Odell: Ain’t thinkin’ about no job? How you gonna live?

Easy Rawlins: I’m gonna go to work for myself. Take a little money I got saved up and go into real estate. Start fixin’ up folks’ gardens again ... and do a few favors on the side. Favors for friends.

Odell: What you talking about, favors?

Easy: Well, like a woman offered me thirty dollars to go track down her husband for her.

Odell: You talkin’ about private investigatin’ or somethin’. You could get in trouble doin’ that.

Easy: Like a man once said to me, Odell: Walk out your door in the morning and you’re already in trouble. It’s just how you’re mixed up in that trouble that counts.

## **B. How Strunk and White Can Make You a Better Lawyer**

1. Use the active voice
2. Use definite, specific, concrete language
3. Omit needless words

4. Write in a way that comes naturally
5. Do not overstate
6. Avoid fancy words
7. Be clear
8. Don't use irregardless
9. Write with nouns and verbs
10. Do not explain too much

**Source:** The Elements of Style, Strunk and White (MacMillan Publishing, New York)

### **C. ABA Journal Top Novels of All Time**

1. To Kill A Mockingbird (Harper Lee – 1960)
2. Crime and Punishment (Fyodor Dostoevsky – 1866)
3. Bleak House (Charles Dickens – 1852)
4. The Trial (Franz Kafka – 1925)
5. Les Miserables (Victor Hugo – 1862)
6. Billy Budd (Herman Melville – 1924)
7. Presumed Innocent (Scott Turow – 1987)
8. The Scarlet Letter (Nathaniel Hawthorne – 1850)
9. A Tale of Two Cities (Charles Dickens – 1859)
10. A Time to Kill (John Grisham – 1989)

**Source:** ABA Journal <http://www.abajournal.com/gallery/25greatestnovels>

### **D. Telling Your Own Story**

Who are you? What are your unique gifts and skills? What can you offer clients, colleagues and the community of lawyers that nobody else can?

Communicate that information creatively. Be interesting and informative. Make readers want more from you.

### **E. “Nylon and Steel” by Jay Reeves**

Winner, 2013 NC Bar Journal Story Contest

*Jay Reeves a/k/a The Risk Man is an attorney licensed in North Carolina and South Carolina. Formerly he was Legal Editor at Lawyers Weekly and Risk Manager at Lawyers Mutual. He enjoys making up stories, painting things blue and declining his children's request for money. Contact [jay@lawyersmutualnc.com](mailto:jay@lawyersmutualnc.com) or call 919-619-2441.*



## Speaker Biographies

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**Pegeen Turner** has more than 14 years of experience in the legal technology field. After working as an internal IT person for large and small law firms, she launched her own legal IT consulting firm, Turner IT Solutions in June of 2010. Her firm works with small and medium-sized firms as they start-up as well as firms that need help maintaining and integrating technology into their practice. In addition, she helps firms understand the risks of cloud computing and how to incorporate cloud computing into their practice. Contact Pegeen at [pegeen@legalcloudtechnology.com](mailto:pegeen@legalcloudtechnology.com), [www.legalcloudtechnology.com](http://www.legalcloudtechnology.com), @pegeenturner.

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**Jay Reeves** a/k/a The Risk Man is an attorney licensed in North Carolina and South Carolina. Formerly he was Legal Editor at Lawyers Weekly and Risk Manager at Lawyers Mutual. He will read from his short story "Nylon and Steel," winner of the 2013 NC State Bar Journal Annual Fiction Contest, at the fall CLE series. Contact [jay@lawyersmutualnc.com](mailto:jay@lawyersmutualnc.com) or call 919-619-2441.



**Adam Pierce** joined Lawyers Insurance Agency in 2008. He brings more than 12 years of experience in the property and casualty insurance industry ranging from underwriting to sales management. Adam grew up in Upstate New York and graduated from The State University of New York at Cortland in 2000. Aside from his role at Lawyers Insurance, Adam is active in the Independent Insurance Agents of North Carolina and recently earned his Accredited Adviser in Insurance (AAI) designation.



**Troy Crawford** joined Lawyers Mutual in 2010 as claims counsel. His primary area of work with Lawyers Mutual is real estate claims. Prior to joining Lawyers Mutual, he worked as subrogation counsel for Investors Title Insurance Company. Troy also co-founded the law firm of Crawford, Christopher & Parker, PA where he practiced civil litigation, estate planning, and real estate matters. He graduated cum laude from both North Carolina State University and Campbell University School of Law.

**Will Graebe** joined Lawyers Mutual in 1998 as claims counsel before being promoted to Vice President of Claims in 2009. He focuses his efforts at Lawyers Mutual on transactional matters and real estate. Prior to joining Lawyers Mutual, he worked at the law firm of Pinna, Johnston & Burwell. Will graduated from Stetson University and Wake Forest University School of Law. He is an active member of the missions committee at the Soapstone United Methodist Church.

**Laura Loyek** joined Lawyers Mutual as claims counsel in 2009. Her focus areas are real estate and litigation. She previously worked for the law firms of Smith Moore and K&L Gates. Laura graduated summa cum laude from Wake Forest University and cum laude from Harvard Law School. She is an active member of the North Carolina Association of Women Attorneys and the Real Property Section of the NCBA.

**Warren Savage** joined the Lawyers Mutual as claim counsel in 2005. He focuses on litigation, appellate advocacy, criminal matters and professional responsibility in his work with Lawyers Mutual. A former partner with the law firm of Bailey & Dixon, Warren graduated from the University of Virginia and earned a Master of Arts in Teaching at the University of North Carolina at Chapel Hill before graduating magna cum laude from Campbell University School of Law. He spent several years as a high school English teacher and junior varsity basketball coach before entering the legal profession.

**Mark Scruggs** joined Lawyers Mutual in March 2001 as claims counsel. Formerly a partner with Spear, Barnes, Baker, Wainio & Scruggs, LLP in Durham, he has over 14 years' experience as a trial attorney concentrating in insurance defense litigation. Mark focuses his Lawyers Mutual work primarily in the area of litigation-related claims, as well as workers compensation and family law matters. He is a 1986 cum laude graduate of Campbell University School of Law. He is a past chair of the Law Practice Management section of the North Carolina Bar Association and currently serves as an advisory member of the State Bar Ethics Committee. He also serves on the "Transitioning Lawyers Commission" to address issues facing aging lawyers. Mark is active in his community, serving as president of the Kiwanis Club of Durham (1994-1995) and as a deacon and trustee for the Yates Baptist Church. An avid runner, he participates in 10K races and half-marathons.

**Camille Stell** served as risk management paralegal for Lawyers Mutual from 1994 to 2000. She returned in 2009 as Director of Client Services before being promoted to Vice President of Client Services in 2013. She previously worked at the law firms of K&L Gates; Kennedy, Covington, Lobdell & Hickman and Young, Moore & Henderson as both a paralegal and as a recruiting and marketing professional. An accomplished speaker and author, she has spoken for legal professionals on a local, state and national level. Camille graduated from Meredith College and the Meredith College Paralegal Program. A past Chair of the Law Practice Management Section of the North Carolina Bar Association, she has served on the editorial board for *Legal Assistant Today* magazine, *Women's Edge* magazine, *Carolina Paralegal News* and as Supplements Editor for *North Carolina Lawyers Weekly*.

**Please describe yourself:**

- ☐ Lawyer/Attorney    ☐ Paralegal  
☐ Legal Assistant    ☐ Office Administrator/Manager  
☐ Other (please specify): \_\_\_\_\_

**Please describe the size of your firm:**

- ☐ Solo    ☐ 2-5 lawyers  
☐ 6-10 lawyers    ☐ 11-20 lawyers  
☐ 21-30 lawyers    ☐ 31-40 lawyers  
☐ 41-50 lawyers    ☐ More than 50 lawyers  
☐ Government    ☐ In-house Counsel  
☐ Other (please specify): \_\_\_\_\_

**Please identify your area of practice:**

- ☐ Real Property    ☐ Estates/Trust/Probate  
☐ Criminal    ☐ Litigation-Plaintiff  
☐ Litigation-Defendant    ☐ Domestic Relations  
☐ Labor    ☐ Corporation Law  
☐ Intellectual Property    ☐ Municipal Law  
☐ Securities    ☐ Bankruptcy  
☐ Commercial    ☐ International  
☐ Tax    ☐ Admiralty  
☐ Environmental    ☐ Arbitration/Mediation  
☐ General Practice    ☐ Banking & Financial Institutions  
☐ Other (please specify): \_\_\_\_\_

**Please rate the following general factors concerning the seminar:**

	Excellent	Good	Fair	Poor
Program format	_____	_____	_____	_____
Seminar manuscript (available online)	_____	_____	_____	_____
Location (hotel)	_____	_____	_____	_____
Registration process	_____	_____	_____	_____

Suggestions: \_\_\_\_\_

**What was the deciding factor in your attending our seminar? Rate 1-8 (1-most important, 8-least)**

- \_\_\_\_\_ LM Brand    \_\_\_\_\_ Ethics credit  
 \_\_\_\_\_ Content    \_\_\_\_\_ Mental health credit  
 \_\_\_\_\_ Education in area of practice    \_\_\_\_\_ CLE credit  
 \_\_\_\_\_ Risk management advice    \_\_\_\_\_ Free/low cost  
 Other: \_\_\_\_\_

- Are you insured with Lawyers Mutual?**    ☐ Yes    ☐ No  
**Are you insured with Lawyers Insurance?**    ☐ Yes    ☐ No  
**Can we contact you for Lawyers Insurance?**    ☐ Yes    ☐ No

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Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Of the sessions you attended, please provide an overall rating for each session, and rate the presentation of each:**

	Excellent	Good	Fair	Poor
Risks of Fraud (overall)	_____	_____	_____	_____
Usefulness of information	_____	_____	_____	_____
Quality of presentation	_____	_____	_____	_____
Knowledge of speaker(s)	_____	_____	_____	_____
Comments: _____				

	Excellent	Good	Fair	Poor
30 Technology Tips (overall)	_____	_____	_____	_____
Usefulness of information	_____	_____	_____	_____
Quality of presentation	_____	_____	_____	_____
Knowledge of speaker(s)	_____	_____	_____	_____
Comments: _____				

	Excellent	Good	Fair	Poor
Literature and the Law (overall)	_____	_____	_____	_____
Usefulness of information	_____	_____	_____	_____
Quality of presentation	_____	_____	_____	_____
Knowledge of speaker(s)	_____	_____	_____	_____
Comments: _____				

**What topics or issues would you like to see addressed in future seminars?**

\_\_\_\_\_

\_\_\_\_\_

Location attended: \_\_\_\_\_