

**PRACTICING TRUSTS AND ESTATES LAW IN THE 21<sup>ST</sup>  
CENTURY**

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# Practicing Trusts and Estates Law in the 21<sup>st</sup> Century

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## I. Introduction.

### A. In General

Using contemporary technology is as essential to modern lawyering as a typewriter and carbon paper were to our parents' generation of practitioners. The requirements of technology won't disappear, no matter how hard some of us might wish for that to be so. A lawyer who is convinced that this phenomenon is a passing fad so that he or she can continue to practice law without paying any regard to it may as well retire because that lawyer won't earn any more money to contribute to the retirement plan. Contemporary technology affects a lawyer's provision of services, from the preparation of documents, to the conduct of research, through office management to client communication.

The challenge is to find efficient and cost effective technological tools that work for *you*. Having the right tools often means saving time and money – it often proves true that a stitch in time will save nine – doing some homework regarding the technological tools available to your practice will be well rewarded. The author has researched some marvelous software solutions that would have addressed every conceivable need, plus more. The drawbacks to these marvels are that invariably they are designed for law firms with 10 to 20 times as many lawyers as the author, with a comparable cost factor. While discovering the balance between the benefits and costs of these tools is the reader's personal project, knowing what is available and what others are doing can be a useful guide.

A practitioner should utilize a three-prong test when examining technology:

- **Efficacy** (does it do what I want it to do?);
- **Efficiency** (will it do it better than I do it now once I have learned how to use it?); and
- **Cost analysis** (how much time and money do I have to put into this tool to make it work and what's the next best alternative?)

[For some there is also the "fun factor" – sometimes one is willing to pay for the "bells and whistles" on the gizmo – but then one should realize that is what one is doing.]

Implementing a new product or procedure should include assessment of need, researching the new product or procedure, trying and evaluating it, purchasing or instituting it, and learning and obtaining training to use it for maximum benefit.

The purpose behind this research and investigation is to make effective use of technology. After all, the objective is more time that one can devote to the

rewarding aspects of the practice, continued high quality and timely delivery of legal services to clients, and more money in your bank account.

**B. Topics Covered in this Outline**

- 1. Trusts and Estates Specific Software**
- 2. Tax and Trusts and Estates Research: Paper, CD-ROM, Proprietary Legal Database, Internet**
- 3. Internet Resources**
- 4. Electronic Mail**
- 5. Computer and Other Security Issues**
- 6. Legal Practice Management Software**
- 7. Hardware**

**C. Locating useful information.**

Typically, the most relied upon sources for decision-making are the following:

- Product demonstrations/trial use
- Product reviews articles: especially direct product comparisons and new products
- Colleagues, consultants, and friends
- Product advertising

A comprehensive resource is the American Bar Association – its sections, website, journal, books, etc. See especially its Legal Technology Resource Center and the sections of Law Practice Management and Real Property, Probate and Trust Law. Membership in these sections is worth the annual dues.

Readers may find useful two books written by Daniel B. Evans that may be helpful:

- *How to Build and Manage an Estates Practice*, American Bar Association, 1999, ISBN: 1570737185. \$54.95. P.O. Box 10892, Chicago, IL 60610-0892, Tel.: (312) 988-5522. See <http://www.abanet.org/>
- *Wills, Trusts, and Technology: An Estate Lawyer's Guide to Automation*, ABA Publishing, 1996, ISBN: 1570733562. \$84.95. P.O. Box 10892, Chicago, IL 60610-0892, Tel.: (312) 988-5522. See <http://www.abanet.org/>. His website contains an updated version of the Appendix A (a list of trusts and estates software by category) of this book. See <http://evans-legal.com/dan/wtt-new.html>

Note that while the list has been updated (5/25/2001) it appears over-inclusive. For example, the document drafting software list categorizes fourteen software products. Unfortunately, less than half, perhaps fewer, are useful candidates. Despite his best efforts, the pace of technology outstrips the human capability to keep up.

For a fuller, although incomplete, list of resources please see the end of the outline.

## **II. Trusts and Estates Software**

### **A. Document Drafting – Forms and Software**

Document assembly software is a loose term that can refer to one of two approaches in creating client-ready documents. The term can describe an interactive software program that automatically produces documents based upon the user's input. Alternatively, it can mean "engine" or "shell" software program that is the structural platform used to create an automated document program in house. This outline will use the term to refer to software that automates the document drafting process.

According to an ABA survey trusts and estates law is the practice area that utilizes document assembly systems more than any other. Real estate and family law followed. In the ABA's 1998 Small Law Firm Technology Survey, 46.8% of the respondents reported using automated document assembly systems for their trusts and estates practice. This popularity stands to reason: both planning and administration lend themselves to the power of a computer driven document assembly.

Practitioners currently have five choices in document drafting wills and trusts:

1. Drafting each new document "from scratch;"
2. Drafting each new document by "filling the blanks" from a prior document that resembles the document to be drafted;
3. Using commercially available templates and forms (*e.g.* CEB products), with or without some customization in word processing software (macros, etc.);
4. Using commercially available drafting assembly software (*e.g.* products by West Group or Matthew Bender, both of which uses CAPS as the platform) ;
5. Creating your own drafting system with a "shell," "engine," or "platform" document assembly program (HotDocs, CAPS, FastDraft, GhostFill 2001, WinDraft, etc., which are the platforms that are used to create the products in the #4 category). Consultants are usually hired to implement this option.

For practitioners who have not yet moved to a document assembly program, Option 2 is probably the most popular approach. Nevertheless, for those interested in joining the 21<sup>st</sup> Century, the two most viable options are Options #3

or 4. Especially for smaller firms with only a few attorneys, the Option 5 takes too much time, effort, and expense.

It should not be hard to see the benefits of automating: faster generation of documents, with fewer errors, and consistency across documents. The challenge is to find the software solution that works best for you.

Here is a sample of products available:

### **1. Wills, Trusts, Powers of Attorneys, and Other Estate Planning Documents**

➤ Drafting California Revocable Living Trusts, ISBN: 0881248010; Drafting California Irrevocable Trusts; California Will Drafting, ISBN: 0881244775; California Durable Powers of Attorney, ISBN: 0881249564. CEB books with optional companion floppy disks. Continuing Education of the Bar-California, 300 Frank H. Ogawa Plaza, Suite 410, Oakland, CA 94612-2001, Tel.: (800) 232-3444.

The forms disk include complete instruments, with various alternative clauses as separate files that may be used by the cut-and-paste method: \$169, \$219, \$219, \$119 respectively, each with companion forms disk of \$39.95 each. Or you can obtain all of these books along with the material on the floppy disks on a CD-ROM, with a host of other CEB publications for an initial price of \$899.

The CEB forms have been the California standard for decades. Many practitioners will be familiar with the language of the forms. Using their templates will provide substantive security, although the technology is not state of the art.

➤ Modern Estate Planning (CD-ROM) by Matthew Bender, \$1,210, ISBN: 0820526487. Tel.: (800) 223-1940, [www.bender.com](http://www.bender.com).

The practice guide discusses and includes wills, trusts, estate, gift and fiduciary income tax returns, tax practice and procedure issues. Not CA specific. Available either on CD-ROM or paper. Can be purchased as part of a larger library. The utility of this program is severely hampered by its lack of sensitivity to California law.

➤ California Wills & Trusts Drafting System (CD-ROM) by Matthew Bender., ISBN: 0820529001, Tel.: (800) 223-1940, [www.bender.com](http://www.bender.com). Initial cost is \$1,017 (stand alone). Network version also available.

For drafting of wills and codicils, revocable trusts and amendments, irrevocable trusts, synopses of wills and trusts, durable powers of attorneys, letter to clients, estate planning questionnaire, marital property agreement. The drafter answers a series of questions and the system produces documents that can be exported into a

word processor for further fine-tuning. This program is specifically directed to California practitioners. The “default” language of program can be customized by the user. This allows the practitioner to modify the program to include particular language that the practitioner may prefer.

Matthew Bender also publishes *California Wills and Trusts – Forms* (ISBN: 082052008X), a 3 volume publication that consists of forms used by the drafting software, and *California Wills and Trusts – Text* (ISBN: 0820520071), a 3 volume publication that describes the issues involved in drafting wills and trusts. Initial cost is \$428. Practitioners can therefore read the language of the forms in hard copy before drafting any client documents, as well as an explanation of the applicable law. *(In the interest of proper disclosure, the author is the legal consultant for the Drafting System and an editor of the print product.)*

Drafting Wills and Trust Agreements on CAPS by Robert P. Wilkins and Capsoft (Clark, Boardman, Callaghan, West Group), 1992, [www.westgroup.com](http://www.westgroup.com), (800) 762-5272. Initial cost is \$695.

For drafting of wills, trusts, synopses of documents, property agreements, durable powers of attorney. Not California law specific. Comparison to Matthew Bender’s CAPS product – MB is more directed and comprehensive, perhaps more rigid, compared to West’s. MB is California law specific, which is a big plus.

➤ DL: Drafting Libraries. \$250/per library of documents.

Various “libraries” (e.g. Wills, Trusts, Separation Agreements) of documents available. Documents are produced based on multiple choice, yes/no, fill-in-the blank questions and can be further edited on word processor.)

➤ Trust Plus and TrusTerminator by Cowles Legal Systems, (800) 366-1730, [www.cowleslegal.com](http://www.cowleslegal.com). Initial costs are \$3,990 and \$2,990 respectively or \$4,990 for both (Cowles Complete).

Trust Plus – For drafting wills, trusts, synopses of documents, property agreements, and durable powers of attorney. State specific. Also includes documents related to trusts including SS-4 application, correspondence to trustees, insurance companies, IRS. It is intended to be a comprehensive estate planning practice system, thus includes various marketing materials.

TrusTerminator – It generates correspondence, transfer documents, inventory, and accounts. State specific. Can share data with Trust Plus.

➤ EP Expert, based on WinDraft, a shell/platform document assembly software, by Eidelman Associates, (800) 775-2786, [www.lawtech.com](http://www.lawtech.com). Initial cost for single user is \$995; Additional licenses (up to 5): \$4,995.

It appears from the website information that EP Expert is usually customized for each client through consulting services offered by Eidelman Associates.

## **2. Trust Funding, Administration, Termination**

➤ Henson's Transfers by Richard W. Henson (Brentmark Software, (800) 879-6665, www.brentmark.com). Prepares trust schedule and trust transfer documents, including state-specific forms like PCOR. Includes a nationwide database of county recorders, life insurance companies, etc. Redone in Windows, to be released summer 2002. \$695.

➤ California Trust Administration. CEB, 300 Frank H. Ogawa Plaza, Suite 410, Oakland, CA 94612-2001, Tel.: (800) 232-3444. \$195, with \$39.95 companion floppy disk with forms for use during trust administration (checklists, letters, accounts, petitions).

Note: GAW System Excel spreadsheet with explanation by contributor David B. Gaw can be useful for those who want detailed guidance on subtrust funding and allocation.

➤ California Trust Practice, by John A. Hartog and George R. Dirkes. Matthew Bender, (800) 833-9844, ISBN: 0820527610, \$193. Price includes companion floppy disk containing forms for use during trust administration (checklists, letters, accounts, petitions). [*Please note prior disclosure*]

➤ TrusTerminator by Cowles Legal Systems. Probate Administration, see above description in II.A.1.

## **B. Estate Planning Software: Calculations and Presentations**

### **1. Do You Even Need Estate Planning Software?**

The utility of estate planning software often serves as a topic of vigorous debate among two categories of planners. One group emphasizes the need to provide thorough calculations and projections as a method of persuading clients of the efficacy of estate planning. Showing clients what wealth can grow to makes GSTT planning a much easier "sell." Similarly, other, more sophisticated techniques also become more acceptable to clients when they can "see" the projected dollar cost and savings. Likewise, charitable trust planning is rendered far more understandable when reduced to dollar illustrations. In providing such projections, the attorney is rendering a genuine service to the client by providing fuller information upon which the client can base an informed decision. The fact that the attorney may generate additional fees is an incidental, but welcome benefit.

Another group argues that for most clients little need for estate planning projections exists. Many an estate planning lawyer have practiced for decades

without providing clients with such projections. With the steady increase in the estate tax applicable exclusion amount, the simple drawings or flowchart that the lawyer has prepared for years while explaining the estate tax system to clients should continue to suffice.

Nevertheless, for those attorneys who have the client base that requires any tax planning, or for those attorneys who believe that computer generated projections are the wave of the future, there is software to assist you.

## **2. What Features Do You Need?**

Depending on a practitioner's current or desired client base, he or she may not need every feature. Some companies produce a comprehensive version and a more basic version of their products; others may use a modular system to permit the addition of features onto a basic version.

In any event, these programs offer some or all of the following tools:

- Estate tax calculations
- Gift tax calculations
- Generation-skipping-transfer tax calculations
- Other calculations: special tax elections, life insurance trusts, liquidity need
- Retirement planning
- Charitable and split-gift planning
- Comparison Charts, graphics, explanations

Estate and Gift tax calculations are fundamental to all of these programs; therefore, the basic versions should always include these tools. GSTT calculations are similarly basic; if the program doesn't offer it in its cheapest version, select another vendor. Conversely, retirement planning and charitable planning are typically considered more sophisticated, and therefore are usually included within the "add-ons" at extra cost. See *Wills, Trusts, and Technology*, by Daniel B. Evans, for a more detailed discussion on these features.

As with all products, trying out the demo or trial versions is very useful.

## **3. Sample Product List**

- BNA Estate Tax Planner by BNA Software, a division of Tax Management, Inc. Download demo available. \$1,195; Additional licenses (1-9): \$205.00 each. BNA also make estate tax, gift tax and fiduciary income tax returns. Like several other vendors, the data entered on the planning software is intended to migrate seamlessly into the administration and tax preparation software.
- Estate Plan Plus, by ProBATE Software Publishing Co. (800) 288-9169, [www.probate-software.com](http://www.probate-software.com). \$895, for one user. The scaled

down version is called Visual Plan Plus. The cost is \$395 for one user. Download demo available and 30-day money back guarantee. The program can be purchased as part of larger package, which includes a fiduciary accounting and tax return preparation module.

- EPLAN by U.S. Trust Company of New York, (212) 852-3564, [www.ustrust.com](http://www.ustrust.com). No price info online. EPLAN also migrates into a Form 706 preparation program, but no other modules are available.
- NumberCruncher, QuickView, IRS Calculator by Leimberg & LeClair, Inc., (610) 527-5216, [www.leimberg.com](http://www.leimberg.com) Three separate programs: \$395, \$249, \$149 respectively for one user. No demo, but 30-day money back guarantee. NumberCruncher is an extremely powerful application. It is also very reasonably priced for the features offered. The Website totes an endorsement by Natalie Choate.
- TigerTables, Tiger Tables Software, 4529 Pershing Place, St. Louis, Missouri 63108, (314) 231-2800, ([www.tigertables.com](http://www.tigertables.com)). Features include (1) an **estate tax calculator** which will do interrelated estate tax computations where a portion of the residue is otherwise deductible (marital or charitable deduction) but bears tax; and (2) an **amortization program** which will calculate for any missing variable (principal amount, payment amount, length of term or interest rate) and do a nice printout of a summary or full amortization schedule. The new version also has several new variations for a self-canceling installment note: it will calculate principal and interest premiums for self-amortizing, interest-only and level-principal loans and print a payment schedule. Among the features are a nearest age calculator utility and private annuity calculations.
- ViewPlan (combining former Vista and Progeny); BeneView; Factory by ViewPlan Division of CCH Inc., (800) 826-2127, [www.viewplan.com](http://www.viewplan.com). Three separate programs: \$925, \$865, \$455 respectively for one user. Another very powerful program, with extremely attractive graphics for client presentations.

### C. **Fiduciary Accounting and Tax Returns (gift, estate, fiduciary income tax)**

The value of a fiduciary accounting system is that it can assist immensely in the organization of an administration, whether it be a probate or trust. Often the task of entering the data can be given to paraprofessional staff after a moderate amount of training. One program, the ACTEC Quicken overlay, can be used by clients directly. A fiduciary accounting system should be seriously investigated by any practitioner who has an administration practice.

The companies below provide both fiduciary accounting and tax return products. The great advantage to this "integrated" approach is that the data need be entered only once to be able to be used for multiple purposes.

- ProBATE Software Publishing, (800) 288-9169, [www.probate-software.com](http://www.probate-software.com), (ProBATE Plus, 706 Plus, 709 Plus, 1041 Plus)
- Fast-Tax Trust Services Zane Product Group (Zane/Fiduciary Accounting System), (800) 331-2533, [www.zanenet.com](http://www.zanenet.com)
- Lackner Computer Group, Inc., (412) 279-2121, [www.lacknergroupp.com](http://www.lacknergroupp.com), ("6 in 1" includes state estate tax return, but not a gift tax return, Form 709, preparation module)
- West Group ("FATE") fiduciary accounting software, (800) 762-5272, [www.westgroup.com](http://www.westgroup.com). Melds seamlessly into the West proprietary tax return programs; unfortunately for California users, the vendor currently has modules only for Florida, New York, and Virginia; for reasons the company is unable to explain adequately, introduction of the California module remains "imminent."

The companies below provide only fiduciary accounting products.

- American College of Trust and Estate Counsel (ACTEC), 3415 South Sepulveda Boulevard, Suite 330, Los Angeles, CA., (310) 398-1888, [www.actec.org](http://www.actec.org). Note that the ACTEC product is not truly stand-alone. Rather, it is a fiduciary accounting template that overlays onto a standard Quicken program. In consequence, the program is less powerful than others, but very easy to use, and inexpensive.
- TEdec Systems, Inc. (TEdec Fiduciary Accounting System), (800) 345-2154, [www.tedec.com](http://www.tedec.com).

The companies below provide tax return products:

- BNA Software (BNA 706 Preparer, etc), (800) 372-1033, <http://zeus.bna.com/soft/ETS.html>.
- DataTech Software Inc. (Quick and Easy Estate Practice), (800) 556-7526, [www.quickandeasy.com](http://www.quickandeasy.com).
- LaCerte Software (host of tax software for accountants, including 706, 709, 1041), (800) 876-6672, [www.scoft.com](http://www.scoft.com).
- US Trust, 1-800-USTRUST, [www.ustrust.com](http://www.ustrust.com), provides a Form 706 and 709 preparation program that integrates seamlessly with its estate planning software or as a stand-alone. The program provides powerful calculations, but remains DOS-based, which is a drawback in a computer world moving to Windows XP.
- West Group provides a Federal gift and estate tax return preparation program that integrates with FATE. The tax return preparation program is available in both Windows and DOS. Users report technical difficulties with the Windows version, but not the DOS version. As noted above, the FATE integration feature is of dubious utility in California.

## **D. Asset Valuation**

Preparers of estate and gift tax returns require proper valuation of financial assets. Practitioners no longer need rely locating the financial pages of newspapers from the date of transfer from the recycle bin or other obscure receptacle. This information is readily available from several securities valuation services. Most of these vendors sell proprietary software that enable the user to access the current information on-line. For those who remain suspicious of the Internet, CDs with the database are periodically forwarded.

- Appraise by Evaluations Services, Inc., (201) 754-8500, [www.appraisenj.com](http://www.appraisenj.com)
- EPScom by Clark Boardman Callaghan, West Group., (800) 323-1336, [www.cbclegal.com](http://www.cbclegal.com)
- EstateVal by Estate Valuations & Pricing Systems, Inc., (800) 237-3440, [www.evpsys.com](http://www.evpsys.com)
- Portfolio Evaluations by Estates, Evaluations & Estimates, (800) 597-0239, [www.estatevalue.com](http://www.estatevalue.com)
- Wallace Historical Securities Pricing by Financial Data Service, Inc., (714) 891-9243, [www.financialdata.com](http://www.financialdata.com)

Business valuation software – use for information, not to replace actual valuation by appraiser:

- Advanced Business Valuation by Essential Software, (414) 797-5500, [www.ess-soft.com](http://www.ess-soft.com)
- Business Quick-Plan by Kettley Publishing, (800) 777-3162, [www.kettley.com](http://www.kettley.com)

## **III. Tax and Trusts and Estates Research**

### **A. In General**

Current technology offers the same material more readily, and it can also offer research material not easily available previously. For example, legal research on CD-ROM enables the user to move faster between sections of a treatise or code. A CD-ROM also allows the researcher to do word searches, which is more comprehensive than a simple scan of the index. Now, the spreading use and development of the internet is rendering CD-ROM research obsolete. This development also means the creation of many resources not previously available: virtual communities, immediately available information, free information, and easy access to sources previously inaccessible.

Practitioner-users should always remember, however, that the most “technologically” advanced way may not always be the fastest method or the most cost effective medium. For example, paper products are “slower,” but they are

more leisurely, and easier to absorb for those to whom computers are not an ordinary part of life. (In digression, researchers have ascertained that a monitor screen smaller than 23 inches will always be harder for information absorbing than paper. Therefore, if one wishes to replace paper entirely with electronics, buy a monitor no smaller than 23 inches, preferably larger) Paper also has the advantage of only being eaten by the dog, while electronic media can “crash” and be irretrievably lost without a proper backup.

Nevertheless, readers should not assume that the legal arena will become “paperless” immediately. Conversely, the trend toward paper reduction is irreversible. Given the astounding pace of technology over the past decade, any predictions about how soon a trend will become the standard is silly speculation. For at least the next two years, though, the author believes that practitioners will continue to rely upon both paper and paperless sources.

## **B. Research Tools**

When undertaking legal research in the current environment, the first choice is selecting the medium. In part this decision will turn on the question to be answered. If the problem requires resort to a treatise, paper will be preferable. If the research needs current information, because it is tax or case law sensitive, then the internet will be preferred. Internet research is most useful generally for federal laws or regulations, factual research, recent or hot topics, and material not available in traditional media. Keep in mind the strengths and weaknesses of each resource.

In the gamut of resources for research:

- Paper Library: Codes, Cases, Practice Guides, Treatises, Journals, etc. – it still may be the case that the written word may be all you need and in fact the preferred method for certain publications you use the most.
- CD-ROMS: Many paper products are also available on CD-ROMs and online. The “one-time” cost and the computerized search capability may be useful for items too costly or inconvenient to purchase individually in the paper version. E.g. BNA Tax Management Portfolios, Shepard’s Citations, CEB Estate Planning Practice Library (this product comes with online access).
- Proprietary Legal Databases: LexisNexis, Westlaw, LoisLaw, VersusLaw, JuriSearch. Codes, Cases, Practice Guides, Treatises, Journals, Law Reviews, Secondary Sources, Citation Checking, etc.
- Internet Resources: Many items available through traditional media are also available through the internet – codes, cases, articles – and a plethora of resources previously unavailable are now available: websites, directories, search engines, discussion groups.
- Online Communities: A notable consequence of the internet is the development of discussion groups and list-servs. Through the medium of e-mail, practitioners have access to interstate study groups. The sophistication of these

groups vary widely, but there exists undoubtedly one for every practitioner. The gratifying result is that locales are available to ask practice questions, and receive a fair number of useful replies. If a lawyer has not yet joined one of these lists, he or she is missing out on a valuable benefit. (See Section IV for further discussion on this topic.)

### C. Research Products and Internet Links

The ABA Tax Section website contains various useful links:

- Links to Substantive Federal Tax Sites
- Links to Federal Court Sites
- Links to State Tax Sites
- Links to Foreign Tax Sites
- Links to Gateways to Other Tax Sites
- Links to Miscellaneous Tax Sites
- Links to Software Sites Tax

The ACTEC website contains useful information and links:

- General estate planning
- Specialty trusts
- Retirement and financial planning
- Elder law
- Calculators
- Valuation issues
- General legal research

The Trusts & Estates Section of the California State Bar, formerly the Estate Planning, Probate and Trust Law Section, has a website that also contains much useful information, including access to past issues of the California Trusts and Estates Quarterly. It is located at [http://www.calbar.ca.gov/state/calbar/calbar\\_generic.jsp?cid=10705&id=7064](http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10705&id=7064). Members of the section can enter the private-Members Only-side of the website by using their bar number as both user id and password. Remember, if your bar number is lower than 100,000, one must enter a -0- to hold the first place. This website allows members to track section educational events, pending legislation, and other topics of current interest.

#### Other Useful Estate Planning Links

- [www.estateplanninglinks.com](http://www.estateplanninglinks.com) (started by Dennis Kennedy, continued by Dennis Toman)
- Findlaw's Wills, Trust, and Estates and Probate Home Page: [www.findlaw.com/01topics/31probate/index.html](http://www.findlaw.com/01topics/31probate/index.html)
- [www.briefreporter.com](http://www.briefreporter.com) You can purchase briefs in a myriad of subjects, including trusts and estates, for \$40 per brief.

➤ Sample Research Products Links

Tax Analysts: [www.tax.org](http://www.tax.org). The Federal Tax Research Library on TaxBase provides access to all the basic federal documents tax professionals require for tax research. This extensive collection of full-text documents includes statutes, regulations, rulings, and court decisions — all updated regularly to ensure that a comprehensive, current, and reliable Web-based tax library.

- CCH Inc.: [www.cch.com](http://www.cch.com). CCH offers more than 700 print and electronic products. Many are subscription publications that are updated daily, monthly or annually. CCH's flagship product is *The Standard Federal Tax Reports*. Among the other major publications for which the company is known are: *The U.S. Master Tax Guide*, and the *CCH Federal Tax Guide*.

- BNA Tax Management: [www.BNA.com](http://www.BNA.com). BNA publishes news, analysis, and reference products, providing intensive coverage of legal and regulatory developments for professionals in business and government.

- RIA: [www.riahome.com](http://www.riahome.com). Includes WG&L estate planning titles with RIA's estate planning analysis and primary source material; **Practical Estate Planning and Drafting after the Economic Growth and Tax Relief Reconciliation Act of 2001**; **Estate Planning Journal**

#### IV. Internet Resources

As we have all learned by now, the internet is a worldwide network of computers that provides the platform for human interaction and communication. E-mail and the World Wide Web are probably the two most popular uses of the internet for lawyers. E-mail is discussed in Section V below.

The Internet is a great resource for research. One of the keys to using the Internet effectively, however, requires that a research session start from a proper jumping off point. If the user is not within one of the proprietary databases, such as Lexis/Nexis or Westlaw, the researcher may wish to begin at one of the search portals, such as Google or Alta Vista. The utility of a search engine is measured by the speed with which it operates, and the relevance of the sites that it lists. A fast engine that returns sites that are only vaguely related is as useless as a slow engine that returns three useful sites.

Alternately, the researcher can begin with different research starting points. Jerry Lawson in his book, *The Complete Internet Handbook for Lawyers*, divides the starting points of research into three general categories:

➤ Discussion groups (you can read, question, answer): mailing lists, newsgroups, web discussion groups. See A below.

- Directories (you select a hypertext link from an organized list of categories): e.g. [www.Law.com](http://www.Law.com), [www.Findlaw.com](http://www.Findlaw.com), [www.LexisOne.com](http://www.LexisOne.com), [www.ilrg.com](http://www.ilrg.com) (Internet Legal Research Guide), [www.catalaw.com](http://www.catalaw.com)
- Search Engines (you put in search terms and a list of websites are generated for you to follow up): e.g. [www.lawcrawler.com](http://www.lawcrawler.com); [www.google.com](http://www.google.com)

Of course, many sites allow all three of these approaches to research.

## **A. Discussion Groups**

The ABA Section on Real Property, Probate and Trust Law sponsors a discussion group for section members. This list can be a useful way to introduce oneself to this medium. A continual danger with use of the internet is the ease with which hours fly by. Be careful about wasting time – check how much you are actually benefiting from the time spent reading the various e-mails from your discussion groups and remember you can always unsubscribe or exit the groups! You may consider creating your own discussion group as a way of networking with those you already know and a way of expanding your professional network.

### **1. Mailing Lists**

Mailing lists are distributed by e-mail. Listserv, Listproc, Majordomo, and Lare mailing list management programs. A list of free legal mailing lists can be found at [www.lib.uchicago.edu/~llou/lawlists/info.html](http://www.lib.uchicago.edu/~llou/lawlists/info.html), a site maintained by the University of Chicago.

Remember that the administrative e-mail address and the e-mail for posting are different! Be careful about simply clicking the “reply” button.

Legal technology issues mailing lists include:

[www.abanet.org/tech/ltrc/lists.html](http://www.abanet.org/tech/ltrc/lists.html), [www.technolawyer.com](http://www.technolawyer.com).

### **2. Newsgroups**

Newsgroups (usually run via Usenet) are collection of “articles” or postings that are publicly available. There are no e-mails directly sent to you as with mailing lists. For lawyers, newsgroups are more useful for nonlegal matter, such as software or hardware issues.

Newsgroups can be found through [www.reference.com](http://www.reference.com).

### **3. Web-based Discussion Groups**

E.g. [www.abanet.org/discussions](http://www.abanet.org/discussions)

When posting, use a descriptive title. If you know the answer, taking the time to do so will increase the chances that your questions will be answered.

## **B. Directories**

Various terms are used to refer to different types of directories: subject trees, mega pages, trailblazer pages. Good general purpose directories include: [www.yahoo.com](http://www.yahoo.com), [www.clearinghouse.net](http://www.clearinghouse.net).

You can make your own directory, using your bookmarks. This may be a convenience that can end up saving you a lot of time. This is done by translating a bookmark file into HTML format.

## **C. Search Engines**

Each search engine is unique – and none covers more than a fraction of the internet. For a thorough search, use more than one. Some search engines permit you to limit your search by date, location, language, etc. E.g. [www.hotbot.com](http://www.hotbot.com), [www.altavista.com](http://www.altavista.com).

# **V. Internet and Electronic Mail Issues**

## **A. Netiquette**

The term “netiquette” is the code of proper behavior online. Specific rules have been crafted to guide the online behavior of attorneys. The rules relating to online communications derive from those that already exist for print advertising. The State Bar of California released its (so-far) only opinion on Web site ethics in 2001. This opinion may be applied to other online forms of communication, including e-mail, URLs and domain names, e-mail addresses, online articles, discussion groups, and chat rooms. Web sites as a “communication” under Rule 1-400(A) of the California Rules of Professional Conduct and an “advertisement” under Business and Professions Code Sections 6157 to 6158.3. Surprisingly, Web sites are not considered to be a solicitation under Rule 1-400(B), even in a situation in which a potential client can e-mail a specific attorney directly from the site. To avoid being regulated by another jurisdiction or facing an accusation of unauthorized practice of law, COPRAC suggests that attorneys use a disclaimer on the site stating that they are advertising only in California and that they do not seek to represent someone based solely on that person’s visit to the Web site. The COPRAC opinion did not address whether an attorney’s domain name or e-mail address qualifies as a communication or advertising. Other states have answered this question in the affirmative. *See Arizona State Bar Opinion 2001-05* (a law-firm’s domain name does not have to be identical to the firm’s actual name, but it must not be false or misleading)

What type of graphics or images on an attorney’s site could be considered unethical? Placing a picture of a person on your site that implies that the person is either a member of your firm or is an actual client, when in fact the person is not,

may be considered misleading. This would appear to violate ABA Model Rule 1-400, Standard 13, unless the photograph is labeled as a dramatization.

ABA Model Rule 7.1 prohibits communications that contain “guarantees, warranties, or predictions regarding the result of the representation.” Advertising past successes on an attorney’s Web site may be deemed unethical because it may indicate to a potential client that he or she can expect similar results.

## **B. Web-Page and Internet Issues**

Rule 1-400(F) dictates that attorneys must retain for two years copies or recordings of any communications they have made by written or electronic media and applies to their Web sites and any revisions of their sites. The easiest way for attorneys to comply with this rule is to simply print a copy of each new or revised page that is added to the Web site and keep all the printouts in a chronological file. Attorneys who prefer less paper could save the HTML files that constitute the Web site on a separate disk or in a separate folder on a hard drive.

The ethical principles that apply to attorney advertising and communications in older media may serve as a guide for attorneys seeking to avoid ethics difficulties online. Web sites are considered communications and advertisements, as are other online communications. Attorneys’ online communications that do not appear on their Web page may give rise to ethical problems. For example, e-mail invitations for seminars or e-mail newsletters about an area of law should probably be labeled as an advertisement in the subject line. Standard 5 of Rule 1-400 requires attorneys to make clear that *printed* “[n]ewsletters, recent legal development advisories, and similar materials...[that are] transmitted in an envelope...shall bear the word ‘Advertisement,’ ‘Newsletter’ or words of similar import on the outside thereof.” A cautious attorney may therefore choose to apply Rule 1-400 to e-communications.

Blogs are becoming a marketing tool for large law firms eager to create a buzz about their practice areas. *Blog* is a contraction for *web log*. The original weblogs were link-driven sites. Each was a mixture in unique proportions of links, commentary, and personal thoughts and essays. Weblogs could only be created by people who already knew how to make a website. A weblog editor had either taught herself to code HTML for fun, or, after working all day creating commercial websites, spent several off-work hours every day surfing the web and posting to her site. These were web enthusiasts.

Many current weblogs follow this original style. Their editors present links both to little-known corners of the web and to current news articles they feel are worthy of note. Such links are nearly always accompanied by the editor’s commentary. An editor with some expertise in a field might demonstrate the accuracy or inaccuracy of a highlighted article or certain facts therein; provide additional facts he feels are pertinent to the issue at hand; or simply add an

opinion or differing viewpoint from the one in the piece he has linked. Typically this commentary is characterized by an irreverent, sometimes sarcastic tone. More skillful editors manage to convey all of these things in a sentence or two with which they introduce the link. Indeed, the format of the typical weblog, providing only a very short space in which to write an entry, encourages pithiness on the part of the writer; longer commentary is often given its own space as a separate essay. Increasing numbers of weblogs have eschewed this focus on the web-at-large in favor of a sort of short-form journal. These blogs, often updated several times a day, were instead a record of the blogger's thoughts. Links took the reader to the site of another blogger with whom the first was having a public conversation. Full-blown conversations were carried on between three or five blogs, each referencing the other in their agreement or rebuttal of the other's positions.

Big firms have unveiled blogs recently that focus on particular areas of the law or specific statutes. Some blogs include open discussions that allow reader comments, while others are less interactive. All, however, are geared toward casting specific legal information, and the firm's name, into the World Wide Web.

### **C. E-mail Tips**

Since everyone is using it, just a few reminders:

- Learn a few time-saving features on your e-mail program

E.g. Outlook – Use Rule Wizard to automatically file your e-mail from mailing lists and newsletters and the mail that you send out.

- **Format Flaws:** Set the default width of your e-mail to a narrow enough width (e.g. 65 characters) so that each of your lines do not end up wrapping around to two lines, resulting in awkward reading. For Outlook: Tools, Options, Mail Format, Settings, Automatically wrap – set to 65.
- **Use Signature Blocks:** Just like your letterhead, it lets others know who you are and how to get a hold of you. Use a permanent e-mail address. Signature Block is different from Digital Signature, see D below.
- **Acronyms Can Save Time:**
  - FTF face to face
  - FWIW for what it's worth
  - JK Just kidding
  - NP No problem
  - YMMV Your mileage may vary
- **Zipping or Zipped Files**

Zipping files can make them smaller and thus faster to send and receive.

Zipped files need to be unzipped in order for them to be usable. Winzip, PKZIP are leading products for compressing and decompressing files.

#### **D. E-mail Security Issues**

##### **1. Convenient But Not Secure Enough**

E-mail is fast and cheap, but how secure is it? Practically, the answer is, it is secure enough, especially if security measures are taken as necessary. Although it is a federal crime to intercept e-mail (18 U.S.C. § 2511), criminality is often an ineffective deterrent. It may not protect you from disciplinary action for not safeguarding client confidences or from civil liability if a damaged client brings a malpractice action. ABA Formal Opinion 99-413 holds that sending unencrypted e-mail does not violate the Model Rules of Professional Conduct. E-mail can be made more secure through encryption. Use of encryption can demonstrate your intention to keep the information confidential. In addition, you may want to obtain a client's release and waiver after full disclosure of potential risks before using e-mail for confidential communications. An attorney's e-mail signature should not include anything that could be interpreted as false, deceptive, or tending to confuse or mislead the public.

##### ➤ Passwords

This traditional form of encryption uses a single password or "secret key" approach – those who know the password (have the key) can open the document. This means that you still have to convey the "secret key" to the recipient by some other secure method or by the same insecure method.

##### ➤ Public Key Encryption:

This modern method of encryption uses a two key method, using a "public" key and a "private" key. The main idea underlying this modern method is that a message encrypted or locked with one of the pair, can only be decrypted or unlocked with the other of the same pair. The private key is kept secret, but the public key can be widely distributed, e.g. on your website. Thus, someone can send you a file encrypted using your public key and only you will be able to decrypt it.

Common e-mail encryption programs: PGP (Pretty Good Privacy) and S/MIME.

Note that encryption on your browser that allows for secure communication to and from a secure site, does not encrypt your e-mail.

While there is no clear legal standard for when e-mail should be encrypted, lawyers should be mindful that as encryption gets easier and more widely used, the standard for safeguarding client's privacy will rise.

##### ➤ Digital Signatures

Digital signatures use public key encryption to verify who sent a particular message. Software is making digital signatures easier to use. These digital signatures may come to be used to bind a party in commercial transactions. Establishing a framework for the authentication of computer-based information requires a familiarity with concepts and professional skills from both the legal and computer security fields.

A digital signature should have the following attributes:

- **Signer authentication:** A signature should indicate who signed a document, message or record, and should be difficult for another person to produce without authorization.

- **Document authentication:** A signature should identify what is signed, making it impracticable to falsify or alter either the signed matter or the signature without detection. Signer authentication and document authentication are tools used to exclude impersonators and forgers and are essential ingredients of what is often called a *non-repudiation service*. A non-repudiation service provides assurance of the origin or delivery of data in order to protect the sender against false denial by the recipient that the data has been received, or to protect the recipient against false denial by the sender that the data has been sent.

- **Affirmative act:** The affixing of the signature should be an affirmative act which serves the ceremonial and approval functions of a signature and establishes the sense of having legally consummated a transaction.

- **Efficiency:** Optimally, a signature and its creation and verification processes should provide the greatest possible assurance of both signer authenticity and document authenticity, with the least possible expenditure of resources.

The Science and Technology Section of the ABA has prepared legal guidelines regarding the use of digital signatures, available for free download at: [www.abanet.org/scitech/ec/isc/dsgfree.html](http://www.abanet.org/scitech/ec/isc/dsgfree.html).

## 2. Ethical, Evidentiary, and Liability Issues

Maintaining adequate security, of your e-mail, as well as of your computer and your office, is part of your professional duty.

- **Ethical Duty of Confidentiality:** ABA Formal Opinion No. 99-413 (March 10, 1999), *Protecting the Confidentiality of Unencrypted E-Mail* holds that a lawyer may transmit information relating to the representation of a client by unencrypted e-mail sent over the Internet without violating the Model Rules of

Professional Conduct. The Opinion holds that the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint. Nevertheless, attorneys have the duty to keep client information confidential. Business & Professions Code § 6068: “It is the duty of an attorney to do all of the following:...(e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” This duty of confidentiality or secrecy is broader than the basically evidentiary matter of attorney-client privilege for “confidential communications between client and lawyer.”

➤ Attorney-client privilege: The lawyer-client privilege is an evidentiary issue.

The mere use of somewhat “insecure means” does not mean that the privilege is waived. Evidence Code § 952 reads: “As used in this article, ““confidential communication between client and lawyer” means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

**A communication between a client and his or her lawyer is not deemed lacking in confidentiality solely because the communication is transmitted by facsimile, cellular telephone, or other electronic means between the client and his or her lawyer.”**

➤ Malpractice Liability: If a client suffers through the lawyer’s failure to properly protect the client’s information, the lawyer will face potential malpractice liability. Where matters involve much money or personal reputation, encryption is advised.

## VI. Computer and Other Security Issues

Computer security needs to be taken seriously. Computer security is part of your professional duty of confidentiality.

➤ Passwords: Use them!

➤ Malicious Code: Viruses etc.

Prepare for the worst: Do full backups and keep archive copies. Keep a clean write-protected boot disk.

Avoid infection: Viruses has been found even in shrink wrapped retail software – screen before installing. Another unlikely but actual source include computer repair consultants.

Know what the symptoms of virus are: computer unusually slow, radical change in free RAM, date or time stamp changing oddly, hard or floppy disk drive lights coming on for no reason.

Use Antivirus software

- Firewalls (hardware or software): Use and test them! Do not use DSL without a firewall.

[www.grc.com](http://www.grc.com), [www.zonealarm.com](http://www.zonealarm.com), [www.tinysoftware.com](http://www.tinysoftware.com)

- Portable Computers: Passwords are not enough – Encrypt.
- Wireless Networks: “War Driving” - War drivers or whackers can find your wireless network with antennas on their portable computers. Take steps to secure your networks.
- Facsimile Transmissions: Be sure you have the right number. Soon, internet enabled facsimiles sending faxes as e-mail attachments will lower costs and enable encryption.
- Cellular and Portable Telephones: Remember, you are broadcasting.

## **VII. Legal Practice Management Software**

### **A. Word Processing and Other Daily Tools.**

Whether you use Word or WordPerfect, it pays to know time-saving tips on the programs you use everyday. Seconds add up to minutes to hours. Invest a little time to learn a few tricks.

Here are some word processing tips:

- Autocorrect/auto text (Word) or Quickwords/Quickcorrect (WP)
- Automatic paragraph numbering
- Cross reference
- Generation of table of contents
- Word: Previous Revisions (Shift + F5) to get to last three locations that text is edited. Works even after you open the document after previously closing it.
- WP: Tables function. You can use many of the Quattro Pro spreadsheet functions right in a WP file.

### **B. Practice Management**

Running a law office business includes keeping track of an assortment of information and there is a plethora of software that aims to make it easier to do so. There are literally dozens of practice management products.

To simplify matters a bit, practice management programs are case management programs with additional features. Case management programs aims to help you “manage” your case: client and case database, document management, document automation, case notes, calendar, reports. Practice management includes more communication management and “back office” (i.e. accounting) features.

You have to assess the status and effectiveness of your current “practice management-ware” and determine whether software can improve your current practices.

Unless you are completely satisfied with your current status, the evaluation of your “current practice management” status will have to involve at least taking a cursory look at the programs out there. It is not that the programs necessarily can deliver what they promise, but it may give you insight of how you can modify your current practices, with or without using such software.

Implementation of new software **will** change the way you practice: undertake this project with careful planning and patience. Remember to train, train and train some more!

There are various different software that can do one or more of the following:

- Accounting (QuickBooks, PCLaw, Juris)
- Time and Billing (Timeslips, PCLaw, Juris, TABSIII)
- Personal Diary/Calendar/Task Management
- Docket/Calendar
- Tickler
- Case Notes/Diary
- Document Management
- Document Automation
- Litigation Support
- Conflict Checking
- Contact/Client List Management
- Database
- Links or synchronization of information with other applications.

**C. Popular Practice/Case Management Software**

The practice management software for smaller firms tend not to include accounting or time and billing.

- Time Matters
  - Calendars, Time, and Task Management
  - Client Relationships Management
  - Matter/Project Management
  - Document Management
  - Communications Management (phone call tracking, e-mail, mail tracking)
  - Billing and Expense Tracking
  - Synchronization with Outlook
- Amicus Attorney

An organization tool for most aspects of your office – this is the one that uses the picture of a law office as the initial screen:

- Files
- Contacts
- Calendar
- Time Sheets
- Communications
- Dailies

#### **D. Personal Digital Assistant**

Personal Digital Assistants have become ubiquitous in the professional services. Nevertheless, though becoming very popular, don't buy one until you know for what you want it. For those who learn to use one, a Personal Digital Assistant (PDA) can become an indispensable tool for staying organized, connected, and productive. Handheld manufacturers offer dozens of models, each targeting a slightly different user. The first step should be to decide which profile best suits your needs. For those on a budget who need a pocket-sized device to keep their address books, calendars, and to-do lists organized, as well as synchronize that information with a PC, a basic handheld will suffice. Investigate the: *PalmOne Zire 31* or *HP iPaq rz1710*. A business traveler who needs a tool that works with the firm's e-mail and helps keep him or her organized. Investigate the RIM *Blackberry 7250*. For those who get most of their work done on the go, a handheld can stand in for a full-fledged laptop in many situations. In this category, connectivity, battery life, and size are key factors. Integrated Wi-Fi or Bluetooth connectivity allows for checking and sending e-mail outside the office, while the right software allows for editing of Word and Excel files. If you plan on typing a lot of short e-mails or memos, a PDA with an integrated keyboard will come in handy. Many models are powered by batteries that are both replaceable and rechargeable, so you can swap in a fresh battery when needed. Investigate the: *Dell Axim x30* or the *Palm Tungsten C*.

Personal Digital Assistant Software: [www.jurispda.com](http://www.jurispda.com). Two New York Law School professors and an electronic services librarian have compiled an assortment of PalmOS® software that they believe to be the most useful for lawyers.

➤ Cellular Phone, Organizer, and Wireless E-mail—All in One -- e.g. Blackberry, Treo.

### **VIII. Hardware**

#### **A. Networks**

- Local Area Network
- Peer to Peer Network: Only for very small networks

#### **B. Intranet vs. Groupware**

Intranet is system for distributing information using internet-type of technology but for private use, rather than public.

It may be easier to set up an intranet than using groupware. Smaller firms can outsource the intranet function.

### **C. Printers**

HP printers get consistently high marks. It is a no wonder that HP's profits are substantial from their printer cartridges.

Brother MFC machines are also popular among solo practitioners.

### **D. Copiers**

Long the "Rodney Dangerfield" of the law office, digital copiers are changing the importance of this equipment. For example, digital copiers can be connected to the network to serve as a scanner, an additional printer, as well as a copier.

### **E. Backup**

Even pros differ as to whether tape is the best way to do a complete backup. What's not debated is that a complete backup should be done on a regular basis.

A new product spoken highly of by Neil J. Squillante, the founder of The TechnoLawyer Community is CPM Product's ABS (Automatic Backup System) drives. See [www.cmsproducts.com](http://www.cmsproducts.com).

### **F. Storage**

Off-site storage providers should be very nervous. Affordable machines are now available enabling offices to scan their paper files onto CD-RDR. Files so stored are instantly retrievable by means of very simple, and widely available, Microsoft software.

### **G. Remote Access**

1. Citrix Servers
2. VPN
3. PC Anywhere

## ***Resources***

Trusts and Estates Related Websites:

[www.abanet.org](http://www.abanet.org)

[www.abanet.org/tech/ltrc/](http://www.abanet.org/tech/ltrc/)

[www.calbar.org/epsection/](http://www.calbar.org/epsection/)

[www.actec.org](http://www.actec.org)

[www.sohoconsumer.com/legal\\_sw.htm](http://www.sohoconsumer.com/legal_sw.htm)

(Lists software for estate planning practice collected by website manager, as with any on-going list, some links are out of date.)

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

[www.estateplanninglinks.com](http://www.estateplanninglinks.com) (started by Dennis Kennedy, continued by Dennis Toman)

[www.findlaw.com/01topics/31probate/index.html](http://www.findlaw.com/01topics/31probate/index.html) (Findlaw's Wills, Trust, and Estates and Probate Home Page)

[www.briefreporter.com](http://www.briefreporter.com) (You can purchase briefs in a myriad of subjects, including trusts and estates, for \$40 per brief.)

Tax Analysts: [www.tax.org](http://www.tax.org)

CCH Inc.: [www.cch.com](http://www.cch.com)

BNA Tax Management: [www.BNA.com](http://www.BNA.com)

RIA: [www.riahome.com](http://www.riahome.com)

### **Other Resources:**

[www.llrx.com](http://www.llrx.com) (focusing on legal research and legal technology)

[www.virtualchase.com](http://www.virtualchase.com) (focusing on legal internet research)

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