

NEW YORK STATE BAR ASSOCIATION

STARTING A SOLO PRACTICE IN NEW YORK

MANAGING YOUR (CYBER) PRACTICE

MARC NATALE
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MAY 13, 2019

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MANAGING YOUR (CYBER) PRACTICE

AGENDA

1. Maximizing Efficiency: Hardware/Software/Cloud
2. Cybersecurity: Preventing and Mitigating Risk
3. Operational Issues: Data Management
4. Emergency Preparedness

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TECHNOLOGY: MAXIMIZING EFFICIENCY

- **Email**
 - Hosting. On site or remotely?
 - Which email service/client (Outlook, Thunderbird, Gmail, ProtonMail)?
 - Backups. How easy? How often?
 - Encryption. Are your emails being sent/received securely?
 - Saving/sorting email? Accounts for individual client matters?
 - Monitoring. Spam filtering. External monitoring for blacklisting.
- **Fax**
 - Still needed?
- **Scanning/Archiving**
 - Allows for a paper-free environment.
 - OCR functionality.
 - Storage issues. Physical vs. cloud storage costs.

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TECHNOLOGY: MAXIMIZING EFFICIENCY

Miscellaneous “In-house” Issues

- Network/Server – solo practitioners will likely not have the time or resources to maintain a server or network without hiring a vendor or on-site IT staff. Cloud services are available for all essential functions but need to be evaluated.
- Internet Access – more data flow requires faster, more reliable internet connections.
- Printers – depends on practice area.
- Website – online website building services allow attorneys with little or no knowledge of programming languages set up a website but consider hiring a professional website builder if more complex features (client login, payment portal, contact forms) are desired.
- Remote Access – being able to access data anywhere, from any device.
- End Users – make sure staff are properly trained in security protocols.

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TECHNOLOGY: MAXIMIZING EFFICIENCY

- Case management program
 - Hours/expense entry
 - Document management
 - Contacts
 - Calendaring
 - Notes
 - Email
 - Accounting
 - Cloud-based?

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TECHNOLOGY: MAXIMIZING EFFICIENCY

The Cloud

- Security – most cloud providers offer superior security than what's available in-house.
- Mobility – access data from different devices/locations.
- Continuity – redundancy delivers maximum availability of data.
- Scalability – no need for on-site servers or storage equipment.
- Collaboration – makes sharing data with colleagues in different locations a lot easier.
- Less reliance on infrastructure and lower cost.

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The Cloud

- Good – security, mobility, continuity, scalability, collaboration, greatly reduced hardware costs.
- Good and bad – allows devices of all types to access data if not configured or maintained properly. Need to pay more for more robust admin features.
- Bad – law firms are targets for their sensitive client information.
- Considerations when moving data to the cloud
 - Know where your data is stored. US, overseas, both?
 - Make sure the data is still yours. Check the service agreement.
 - Are robust (SSAE 16 Type II compliant) security measures put in place?
 - Transparency. Does the vendor alert the client if service issues arise?
 - Can you still obtain periodic backups of your data? Is archived or “dark” data easily available?

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TECHNOLOGY: CYBERSECURITY

Hardware & Software Issues (Outdated Operating Systems)

- Risks of staying with obsolete software (security, compliance, lack of hardware and software vendor support)
- Microsoft ended mainstream support for Windows 7 on January 13, 2015, but **extended support** won't end until January 14, 2020, meaning the company stops adding new features and ends complimentary support but it still provides bug fixes and patches. <https://support.microsoft.com/en-us/help/13853/windows-lifecycle-fact-sheet>
- Apple does not publish any end-of-life schedules. Usually, once Apple releases a new operating system version, there will be no further point release upgrades to prior operating systems. Security updates for the prior two operating system releases will be released, which includes Safari browser updates — so effectively a three version window.

Client operating systems	Latest update or service pack	End of mainstream support	End of extended support
Windows XP	Service Pack 3	April 14, 2009	April 8, 2014
Windows Vista	Service Pack 2	April 10, 2012	April 11, 2017
Windows 7 *	Service Pack 1	January 13, 2015	January 14, 2020
Windows 8	Windows 8.1	January 9, 2018	January 10, 2023
Windows 10, released in July 2015 **	N/A	October 13, 2020	October 14, 2025

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Hardware & Software Issues

- Software compatibility issues. Speak to vendors before upgrading to the latest operating system or other computer software.
 - Will their software work with the latest version of your operating system or other software that were previously compatible with other third party applications?
- Internet of Things
 - Electronics that have network connectivity and can send, receive, and store data – all without user interaction.
 - A rising e-Discovery issue.
 - According to Morgan Stanley, by 2020 there will be 75 billion Internet connected devices.
- Know when to update software. The Department of Homeland Security provides a service (US-Cert Alerts) which timely relays information about current security issues, vulnerabilities, and exploits, <https://www.us-cert.gov/ncas/alerts>.
- Browsers – don't allow your browser(s) to save your login credentials.

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TECHNOLOGY: CYBERSECURITY

Security and encryption

- Firms of all sizes are susceptible to a data breach:
 - Phishing
 - Malware
 - Denial of Service
 - Web Jacking
 - Wi-Fi Connections
 - Insider Threats
- Lost or stolen laptops/unencrypted external hard drives, mobile devices, long-term intrusions exposing entire networks.
- Compliance is not security.

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TECHNOLOGY: CYBERSECURITY

Phishing

- *The No. 1, No. 2 and No. 3 threat for law firms.*¹
- Infected emails are sent to individuals or large groups to get passwords or gain access to computers and networks.
- Spear phishing – cybercriminals identify individuals or a group to attack.
- Whale phishing – when an email is made to look like it comes from a managing partner or other senior associate.
- Misspellings and poor grammar were indicators of phishing but hackers are more sophisticated.

¹ Cyberthreats 101: The biggest computer crime risks lawyers face, http://www.abajournal.com/magazine/article/biggest_cybercrime_risks_lawyers

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TECHNOLOGY: CYBERSECURITY

Malware

- Malware is designed to gain access or damage a computer without the knowledge of the owner.
- Malware can take the form of spyware, keyloggers, worms, adware, images, Trojan horses, and cryptocurrency mining.
- A majority of malware is created for profit through forced advertising (adware), stealing sensitive information (spyware), spreading email spam, or to extort money (ransomware).
- Various factors make computers more vulnerable to malware attacks including outdated operating systems, giving users more elevated permissions, and poor user training and knowledge of what to avoid when using a computer.

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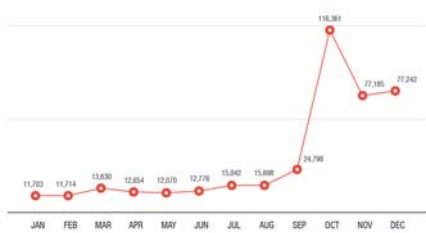
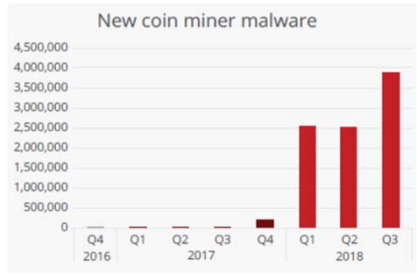
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TECHNOLOGY: CYBERSECURITY

Malware (Cryptocurrency Mining)

- Cryptocurrency mining was the most detected network event in devices connected to routers in 2017.
- Mining cryptocurrency via malware has grown more than 4,000% in 2018.

McAfee Labs Threats Report, December 2018

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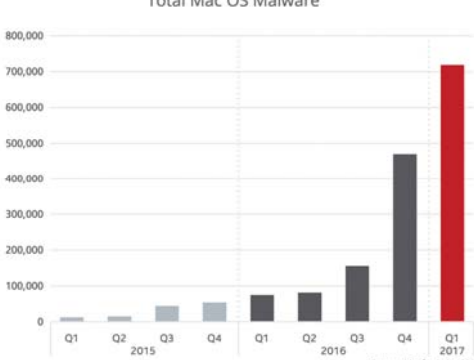
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Malware (Mac/iOS)

- Mac/iOS users are increasingly susceptible to malware attacks.
- According to McAfee, the number of malware attacks on Apple's operating system skyrocketed by 744 percent in 2016 and continues to climb in 2017.



Source: McAfee Labs, 2017.

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TECHNOLOGY: CYBERSECURITY

Ransomware

- Ransomware is a form of malware that takes advantage of open security vulnerabilities on a computer.
- It's usually the result of opening an infected email attachment (via phishing) or visiting a malicious website.
- Ransomware usually renders data inaccessible until a "ransom" is paid.
- Once a system is affected, the originator of the ransomware promises to provide a decryption key only after a payment is made.
- Ransomware attacks rose from 3.8 million in 2015 to 638 million in 2016, an increase of 167 times year over year.¹

¹ <https://blog.sonitwall.com/2017/02/sonicwall-threat-report-reveals-cybersecurity-arms-race/>

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Ransomware (prevention/response plan)

- Common sense – be wary of email attachments or unfamiliar sites.
- Backup – have a backup computer and a recent backup of data; cloud?
- Prevention/protection
 - Security programs – antivirus, antimalware
 - Update software
 - Turn off software macros
 - Remove/deactivate Adobe Flash or use a browser, like Google Chrome, that turns it off by default
- Identification – knowing when you're impacted and dealing with it quickly; contacting state and federal authorities.
- Removal tools - <https://www.nomoreransom.org/decryption-tools.html>
- Disclosure
- Cybersecurity insurance

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Data Breaches (other)

- Denial of Service – hackers flood a website with high levels of traffic, causing the internal and external networks to go down.
- Web Jacking – when a cybercriminal creates a clone of a legitimate website to trick users into giving access to their computers.
- Wi-Fi Connections – use of unsecured (hotels, cafes) or outdated Wi-Fi connections.
- Insider Threats – disgruntled employees or employees seeking to enrich themselves by selling a firm's data. Vendor/contractor threats.

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TECHNOLOGY: CYBERSECURITY

Security and encryption

Must-haves for firms:

- Internal governance
- Intrusion prevention – secure connections, firewalls. Wi-fi?
- Software updates – all software has a lifecycle
- Email security/encryption - STARTTLS, SSL/TLS
- Mobile security
- Two-factor authentication (authentication vs. authorization)
- Data retention policy
- Employee education about data security threats
- Review and updates
- Third-party vendor security policy checks
- Cyber risk insurance
- Password manager – LastPass, KeePass

Security fatigue?

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TECHNOLOGY: CYBERSECURITY

Security (Policies)

- According to the 2018 ABA TechReport, respondents reported on the existence of security policies at their firm:
 - Those that report having no policies – 29% (25% in 2017)
 - Those reporting that they don't know about security policies – 7% (no change)
 - There are no respondents in firms of 100+ reporting no security policies
 - The percentage with no policy decreases by firm size
 - 58% of responding solos (41% in 2017)
 - 25% in firms with 2-9 (no change)
 - 6% with 10-49 (5% in 2017)
 - 3% of firms with 50-99 (4% in 2017)

Source: ABA TECHREPORT 2018 (Cybersecurity), https://www.americanbar.org/groups/law_practice/publications/techreport/ABA-TECHREPORT2018/2018Cybersecurity/

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TECHNOLOGY: CYBERSECURITY

Security (Responsibility)

- While a dedicated, full-time Chief Information Officer is only appropriate (and affordable) only for larger law firms, every firm should have someone who is responsible for coordinating security.
- The larger the firm, the more it is necessary to have a full-time security officer or someone who is to dedicate a large part of their time to security.
- Who has primary responsibility for security in respondents' firms?
 - 84% solo practitioners do the work themselves (86% in 2017)
 - 27% of firms with 2-9 attorneys hire a part-time an external consultant/expert (29% in 2017)
 - More than one technical staff available:
 - 41% of firms with 10 to 49 attorneys (40% in 2017)
 - **47% of firms with 50-99 attorneys (65% in 2017)**
 - 56% of firms with 100-499 attorneys (58% in 2017)
 - 62% of firms with 500+ attorneys (55% in 2017)
 - A small percentage (2%) report that nobody has primary responsibility for security.

Source: ABA TECHREPORT 2018 (Cybersecurity), https://www.americanbar.org/groups/law_practice/publications/techreport/ABA-TECHREPORT2018/2018Cybersecurity/

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TECHNOLOGY: CYBERSECURITY

Cybersecurity insurance

- There has been a growing recognition of the need for cyber liability insurance.
- Many general liability and malpractice policies do not cover security incidents or data breaches.
- The percentage of attorneys reporting that they have cyber liability coverage is small but has been increasing
 - 34% overall (up from 27% in 2017, 17% in 2016, and 11% in 2015)
 - 27% for solos to about (up from 19% in 2017)
 - 35 - 45% for midsize firms (up from 30-35% in 2017)
 - 23% for firms of 500+ (up from 18% in 2017)
- In addition to cyber liability insurance, covering liability to third parties, there is also coverage available for first-party losses to the law firm (like lost productivity, data restoration, and technical and legal expenses). A review of the need for cyber insurance coverage should be a part of the risk assessment process for law firms of all sizes.

Source: ABA TECHREPORT 2018 (Cybersecurity), https://www.americanbar.org/groups/law_practice/publications/techreport/ABA-TECHREPORT2018/2018Cybersecurity/

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TECHNOLOGY: CYBERSECURITY

Hardware Vulnerabilities (Meltdown and Spectre)

- Exploit vulnerabilities in a computer's processor.
- The flaws arise from features built into chips that help them run faster and more efficiently. While patches are available, they have impacts on system performance.
- Allow programs to steal data stored in the memory of running programs. This includes passwords, photos, emails, instant messages and even documents.
- Most devices are vulnerable, including computers, mobile devices, and cloud storage.

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Hardware Vulnerabilities (Meltdown and Spectre)

- Am I affected? <https://www.grc.com/inspectre.htm>  **InSpectre**



The screenshot shows the InSpectre application window titled "InSpectre: Check Spectre and Meltdown Protection". It displays the following status information:

- Spectre & Meltdown Vulnerability Status**
- System is Meltdown protected: **YES**
- System is Spectre protected: **YES**
- Microcode Update Available: **YES**
- Performance: **GOOD**
- CPUID: **406C4** (full details below)

At the bottom, it provides a link to the GRC's InSpectre webpage and buttons for "Disable Meltdown Protection", "Enable Spectre Protection", and "Exit".

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Mobile Devices

- Mobile devices transmit and store all kinds of data, including call logs, contacts, calendars, emails, text messages, photo and video files, browser history, and GPS information.
- Bring your own device (BYOD) is an increasingly popular option for many law firms.
- Most lawyers regularly perform legal work outside their office.
- Amount of available data gives rise to confidentiality and e-discovery issues.

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TECHNOLOGY: CYBERSECURITY

What's in the wild

- What the internet knows about you¹
 - Personal information instantly culled on the open web from aggregator websites.
- What Google knows about you²
 - Search terms, browser activity
 - Videos watched
 - Geolocation
- What Facebook knows about you³
 - Profile/social presence
 - Places/ads checked
 - Chat messages
- What Amazon knows about you⁴
 - Shopping and other browsing activity from their suite of products (Amazon.com, Alexa, Kindle, Twitch, Ring, IMDB, Wholefoods)

1. <https://www.axios.com/what-the-internet-knows-about-you-c2c282d2-27df-466f-a655-38ca40c89a76.html>

2. <https://www.axios.com/what-google-knows-about-you-3f6c9b20-4406-4bda-8344-432471ec0816.html>

3. <https://www.axios.com/facebook-personal-data-scope-user-privacy-de15c860-9153-45b6-95e8-d4a8c47c34.html>

4. <https://www.axios.com/what-amazon-knows-about-you-2df28404-4975-4bc8-82da-ac702e601c98.html>

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TECHNOLOGY: CYBERSECURITY

Virtual private network (VPN)

- A VPN provides a secure, encrypted tunnel across the Internet. The information transmitted between the two locations via a point-to-point connection cannot be read by anyone else because the system contains several elements to secure both the user's private network and the outside network through which the remote user connects through.
- Your device exchanges trusted "keys" with a remote server. Once both computers have authenticated each other, all internet communication is encrypted and secured from eavesdropping.



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TECHNOLOGY: CYBERSECURITY

Wi-Fi

- Public WiFi networks, found at hotels, airports, and cafes, are NOT safe and are a major source for a cyberattack.
- Types of attacks:
 - Man-in-the-Middle attacks
 - Wi-Fi trap networks
 - Eavesdropping
 - Session hijacking
- What can you do?
 - Know your connections
 - Strengthen your passwords and guard them
 - Lock screens
 - If it looks too good to be true...
 - Software updates
 - Backups

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TECHNOLOGY: CYBERSECURITY

Website - requirements

- A name (URL, or web address)
- Hosting services (the place where your website “lives” online)
- SSL security certificate; other security tools to prevent intrusion
- Pictures and words that provide visitors an idea of what your business offers and the character of your company
- Clear descriptions of your products and services
- Engaging logos, images and content that are consistent with your company and message
- Simple layout that makes it easy for users to navigate
- Responsive – works well on mobile devices and loads quickly
- Contact forms and click-to-call phone buttons
- Clear contact details
- Search engine optimization (SEO)

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TECHNOLOGY: CYBERSECURITY

Website – managing your own website

- Is your website secure? HTTPS authentication?
 - Google Chrome and other browsers mark all HTTP sites as “**not secure.**”
- Make sure you have backups of your site.
- Update theme, plugins, and any other third-party components.
- Delete any old data or plugins/extensions that are no longer used or maintained.
- Have strong user login credentials.
- Have security software including a firewall and file scanning.
- General Data Protection Regulation (GDPR) compliance

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TECHNOLOGY: CYBERSECURITY

Website/data hosting considerations for choosing a hosting company

- Running up-to-date versions core software: CPanel, Operating System (server), caching technology, PHP, phpMyAdmin and MySQL?
- Isolating hosting accounts from each other?
- Are server logs available and how long are they kept?
- Can I back up data and how long are backups being retained?
- HTTPS/SSL certificates

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OPERATIONAL ISSUES: DATA MANAGEMENT

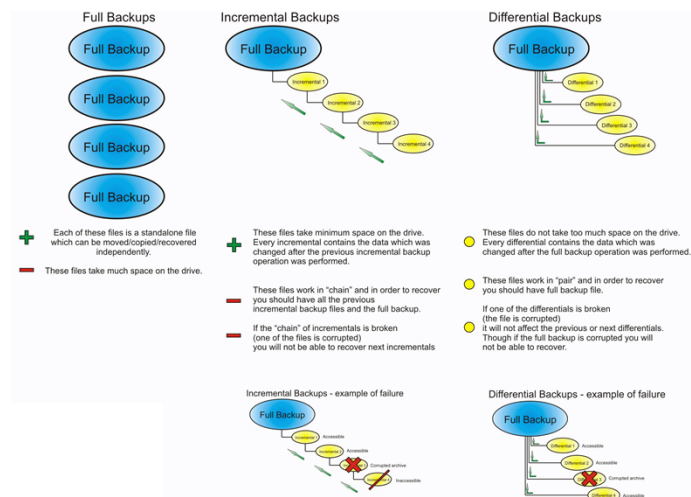
Backups

- **Full backup** - a full copy of your entire data set, which may also include software and system files. While full backups provide the best protection, most organizations only use them on a periodic basis because they use a lot of resources and are time consuming.
- **Incremental backup** - an incremental backup will result in copying only the data that has changed since the last full backup operation has been performed.
- **Differential backup** - a differential backup is similar to an incremental in that it will copy all data changed from the previous full backup. However, each time it is run afterwards, it will continue to copy all data changed since the previous full backup.

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OPERATIONAL ISSUES: DATA MANAGEMENT

Security and encryption

- ABA Model Rule 1.1, duty of competence, requires attorneys to know what technology is necessary and how to use it.
- ABA Model Rule 1.4, communication, also applies to technology.
- ABA Model Rule 1.6, defines the duty of confidentiality and is not limited to confidential communications and privileged information.
- ABA Model Rule 5.3, responsibilities regarding nonlawyer assistants.
- NYSBA Committee on Professional Ethics, Opinion 1019, confidentiality; remote access to firm's electronic files.
- NYSBA Committee on Professional Ethics, Opinion 842, using outside online storage providers to store client confidential information.

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OPERATIONAL ISSUES: DATA MANAGEMENT

- Template everything
- Procedures memos for everything

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EMERGENCY PREPAREDNESS

- Be ready at any time, for any situation, and have a plan.
- Utilize online resources
 - <https://www.health.ny.gov/environmental/emergency/>
 - <http://www.nyc.gov/html/oem/>
 - <http://emergency.cdc.gov/>
 - <http://www.ready.gov/>
- Backup procedure should in place and reviewed/updated often.
- Remote Access to email and data.
- Physical security should also be a priority.

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