Cloud Computing: How the ABA Is Missing the Point

by Paul Gaylord, President, Online Office Management LLC

Executive Summary

To increase billable hours, attorneys need the administrative efficiencies that are possible through technology. Recent innovations have opened the door to attractive solutions like Cloud computing, but there are ethical concerns.

Larger law firms, enjoying the advantages of economy-of-scale, have designed streamlined case management systems, while making internal provisions for security, compliance, and confidentiality. Solo attorneys, held to the same legal and ethical standards, feel the same need to streamline, but often lack the resources to create the same internal controls.

In this whitepaper we delve into issues surrounding Cloud computing, Software as a Service (SaaS), Platforms as a Service (PaaS), and other online solutions designed to reduce overhead and lower costs. By offering our perspective, we hope to clarify the technological issues and enable attorneys to make better decisions.

Conclusions

The American Bar Association has been slow to render a definitive opinion on Cloud computing and other technological innovations. This whitepaper is intended to point the way for attorneys who need to make their own decisions on technology. The position we have reached is that measures used in the Cloud to safeguard the security and confidentiality of client information are more stringent than generally-accepted standards for storing paper files and digital storage systems on local servers.

Of equal concern are issues of scalability and sustainability that cause solo attorneys to abandon office automation projects. In this whitepaper, we will offer our perspective on both of these critical areas.

Historical Perspective

Within the lifetime of many attorneys who are still practicing today, office automation has gone from typewriters and filing cabinets to portable computers with storage in the Cloud.

In the face of ethical concerns, solo attorneys often resort to traditional office management methods involving hiring administrative personnel, managing paper files, and using computers for recordkeeping only.

The problem is that it has become economically unfeasible to hire enough qualified administrative personnel to manage the large volume of paperwork. So the attorneys themselves, by default, handle the often-substantial overflow workload, making it impractical to take on a larger caseload and generate more billable hours.

Bar Association Guidance

On April 15th, 2010, the **North Carolina Bar Association** proposed (and subsequently withdrew) an opinion on Software as a Service (SaaS). The paper cited Rule 1.6 of the Rules of Professional Conduct, which covers a lawyer's responsibilities in safeguarding client information. The paper also cites Rule 1.15 of the Rules of Professional Conduct, which requires the lawyer to protect client information from destruction, degradation, and risk of loss.

On September 20, 2010, the **ABA Commission on Ethics 20/20** issued a memorandum inviting comments on recent technological issues. The paper states that the "…Commission has taken no positions about the matters addressed…" and that their plan is to use the comments to supplement their research for "various reports and proposals" they plan to draft within the next two years.

While the ABA seems to be open to the possibilities of various technologies, definitive guidance may be years in the making.

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Automation Trends

In non-law environments, companies have achieved tremendous gains in productivity by converting paper storage systems to digital formats. Typically, scanned documents are stored either as electronic images or converted to alpha-numeric format using Optical Character Recognition (OCR) to facilitate computer indexing, sorting, searching, and retrieval. Platforms are available in several formats.

1) Standalone Computers

In this scenario, documents are scanned to a laptop or desktop personal computer, which is not shared electronically with other computers. Additional storage and backup may be facilitated locally with external devices. Since the data is stored locally, hazards of theft, degradation due to equipment failure, and loss due to fire or other calamity, evoke ethical issues similar to those for paper files.

2) Local Servers

Similar to standalone computers, data is stored locally. The server enables multiple users to access the same data. Administration is somewhat simplified, because storage and backups of critical data and software involve the server only.

3) Outsourcing to Independent Contractors

In this scenario, data is stored on servers that are owned, operated and maintained by independent contractors. This solution solves many of the problems associated with local management of data, such as:

- Software configuration, maintenance, licensing, and upgrades

- Data integrity and backup

- Physical security of equipment

Model Rule of Professional Conduct 5.3, describing the lawyer's responsibilities in supervising non-lawyer assistants, is extended by Comment to include non-lawyers who serve as independent contractors.

4) Cloud Computing

This format involves the use of shared equipment, resources, and software. The advantage of cloud computing lies in the ability to utilize supercomputers, such as those developed for military and government use, at an economical cost. The dilemma for the attorney is that client data may be stored on equipment that is neither owned by you nor by a party with whom you have a direct independent contractor relationship. The legal tool available to facilitate the attorney's duty to supervise non-lawyer assistants or contractors is the vendor's Terms of Service. While the ABA has not promulgated a position on this, this seems to be where the debate is headed.

Issues and Standards

Until the ABA rules on cloud computing and other technologies, the attorney is obligated to determine whether his efforts to comply with Rule 1.6 of the Rules of Professional Conduct constitute reasonable precaution. The following areas should be condidered.

Security

Attorneys are rightly concerned about the risks of disclosure of confidential information and loss or degradation of files. In considering technologies, they can document their findings with regard to the following areas.

- Physical security of equipment operational sites
- Surveillance of physical sites
- Personnel access to areas where data is stored and accessed
- Remote access should be limited to access to files that are encrypted during transmission
- Standards that are HIPAA compliant may also be appropriate for client files
- SAS70 Type II auditing standards
- Fire suppression and power backup provisions
- User authentication
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- Login security
- Permission and rights management
- 3rd party network auditing
- Firewall protection
- Security patches
- Software upgrades
- Intrusion detection
- Protected data storage
- Virus scanning
- Secure Sockets Layer (SSL) data encryption
- Data backups and restoration capability
- System redundancy
- RAID (redundant array of independent disks)
- Disaster recovery plan

Efficiency

Computing contractors should be able to document their performance in the following areas.

- Network Connectivity
- Uptime
- Scheduled downtime for software upgrade
- Equipment maintenance scheduling

Setup Requirements

In considering local versus remote automation scenarios, attorneys need to evaluate their ability to manage the technical requirements of setup.

Software for standalone personal computers and local servers may require significant time and expertise for installation, hardware compatibility issues, configuration, upgrade management, troubleshooting, and so on.

The advantage of outsourcing solutions and Software as a Service (SaaS) is that programs reside externally on managed equipment, where software applications can be maintained centrally. For the end user, the experience involves not much more than acquiring necessary rights, login, and password to begin accessing and managing data immediately.

Sustainability

This is an area where many attempts at automation fail. Manipulating data digitally is easy, but the work of capturing the data requires a continuing investment of time and resources. Whether the data is eventually stored locally, on equipment owned by an outsourced provider, or in the Cloud, the data still must be captured using a scanner.

The law office must make provisions either to hire and manage administrative personnel to fulfill this ongoing need, or outsource the data capture function.

Decision Points

Solo attorneys need to find a way to take advantage of the possible gains in productivity, while satisfying the ethical necessities of the profession.

Comfort Level

Many attorneys are more comfortable with paper files, but this may be based more on familiarity. Paper files are at risk due to fire, theft, and the all-too-common problem of misfiling. Other professions have weaned themselves from paper files in favor of the greater efficiency of digital file storage. Lawyers are beginning to do the same.

Scalability and Sustainability

An automation project cannot bring production to a halt, nor can ongoing data capture and management requirements be allowed to become burdensome. Technology should be an immediate help, not an implementation nightmare and an ongoing hindrance.

Ethical Considerations

Contractors can deliver a higher level of security that can be attained through almost any local data storage scenario, whether in the form of paper files or local servers. The fact that local and national associations have not issued guidelines is more a reflection of their unwillingness to make judgments on technologies that are still evolving. Issues of security and confidentiality have been addressed by reputable providers to the satisfaction of the American Medical Association for HIPAA compliance and AICPA for auditing standards.

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Online Office Management LLC Solution

We present our solution, because we feel it is a viable alternative for solo attorneys and small law offices.

Resource Evaluation

We have surveyed the entire field of reputable data service providers to find those with the highest standards of security, usability, and performance.

Scalability

By using Software as a Service, setup and implementation are not issues. We can accept a single file or commit to a workload of almost any size. We do not require long term contracts or volume commitments because we are committed to growing as you grow.

Access

Rather than managing data on local servers, we offer the ability to access your case files from any high speed Internet connection in the world, with security handled through encryption and authentication.

Sustainability

We provide the administrative labor for data capture, including document pickup-and-return, scanning, indexing, and coding. This eliminates the most common cause of automation failure: personnel management.

Costs

Because our system is more than a storage device, we provide automated administration for billable services such as Notification Letters. In many instances, we find that the revenues from these optional services nearly offset the total cost of the services.

Efficiency

The result of the gains in efficiency is that the attorney is able to spend more time on billable work. These gains in productivity can mean the difference between a successful practice and a struggling practice.

Enhanced Security

Your data is more usable, more easily accessible, and even more secure than paper files or digital files stored on local computers.

Demo and Consultation

At Online Office Management LLC, we are committed to providing all the information you need in order to make your office automation decision.

Our service is completely scalable, with no commitments as to volume or time. In addition, we can help you calculate your potential to offset the cost of the service through automated systems that produce billable services.

We invite you to contact us and schedule a complimentary online demonstration of our system from the comfort of your home or office.

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