

The Legal Link



Arkansas
Chapter



Spring 2013

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The Legal Link

MISSION STATEMENT

- Promote and enhance the competence and professionalism of all members of the legal management team;
- Improve the quality of management in law firms and other legal service organizations; and
- Represent professional legal management and managers to the legal community and to the community at large.



Arkansas

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President's Message

by: **Angela Falco**

Spring and Growth

Spring is here, at least according to the calendar! Spring brings fresh rain followed by new growth, and, in ALA, it brings new officers. My hope is that we will have brilliant ideas followed by chapter growth while I'm President.

Each of the four Presidents who preceded me earned Platinum Level for the President's Award of Excellence! Therefore, I have huge shoes to fill, and will need all of the support of my fellow chapter members, who have proven themselves dedicated to the cause time and time again!

When asked if I would be President of our Chapter this year, I replied, "as long as there is a roadmap to follow because I have no idea what I'm doing."

I was assured there was, and I have spent the past month reading, reviewing, researching, and planning our route for the upcoming year. I hope you are all wearing your seatbelts because it might be a bumpy ride!



*Arkansas Chapter
President Angela Falco*



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2013 Schedule

January 16, 2013

Microsoft Office ®
Tips & Tricks for Law Firms (OM)

February 6, 2013

Document, Document, Document (HR)
** two hour extended format program

February 20, 2013

Profitable Law Firms:
There's No App for That (FM)

March 20, 2013

Initiating Alternative Fee Arrangements (FM)

April 17, 2013

Mentoring: It's Déjà Vu All Over Again (LI)

May 15, 2013

Marketing (Mis)Alignment: Closing the Gap
Between Marketing and Law Firm Leadership (LI)

June 19, 2013

Leveraging Technology for Small Firms (OM)

July 17, 2013

Negotiate the Lease:
Manuever the Maze of Real Estate Options (OM)

August 21, 2013

Financial Reporting Methods
that Allow Intelligent Business Decisions (FM)

September 18, 2013

Forecasting the Realistic Budget (FM)

October 16, 2013

Saying the Hard Things with Aloha (CM)

November 13, 2013 (2nd week of November)

The Ethics of Email and Social Media (LI)

WEBINAR

Wednesdays



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on your calendar for ALA Webinars.

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Paralegals: Professional? Yes. Exempt? No.

By: Michelle Tyree

When I became a member of ALA, I thought back to all of the lessons I could have learned, you know, the easy way? While that has, unfortunately, never been my lot in life, what I have learned may help others. A very tough (and expensive) lesson I learned was that our paralegals are considered to be non-exempt employees according to the Department of Labor (DOL). At first, I am not afraid to admit it... I was not sure what that meant. Seemed like a fancy government term to me. What it means is this: Unless your paralegals also carry some type of supervisory role over other employees in the firm, you are required to pay them BY THE HOUR.

Let me back up and tell you how this knowledge was imparted to me. I once had a dreadful employee, let's call her "Sabrina." Sabrina was fired for a multitude of valid reasons, which are insignificant to this lesson. When she left, she filed for unemployment. I responded to the unemployment offices' requests and she was eventually denied benefits. Well, as you can imagine, this put Sabrina in a less than satisfactory mood. In fact, it made her mad. Very, very mad. Sabrina called the Department of Labor and let them know that she was not paid overtime for any work performed over 40 hours, which to me, as the supervisor of this terrible employee, was a joke. I could *barely* get 40 hours of work out of her. Plus, we had a "flex time" policy in place that "compensated" staff members for any work outside of our normal working hours. The employees were happy with this, as were we in administration. The DOL, however, was not happy with it.

This left me with lots of questions. Who *is* covered by the Fair Labor Standards Act (FLSA)? What type of supervisory role is required? According to the handy-dandy little notebook provided to me by the DOL, the only exempt employees are "executive, administrative, and professional employees." Automatically, my thought was, "my paralegals are 'professional,' right?" Wrong. As the DOL later informed me, this was not true according to the regulations set out in the FLSA. The most succinct definition I was able to find regarding paralegal status is this from the National Federation of Paralegal Associations (<http://www.paralegals.org>), which states,

"The DOL specifically included language regarding the paralegal profession and continued its position that "paralegal" will specifically remain non-exempt pursuant to 541.301(e)(7), unless they hold advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties." The following is the language taken from the new regulations.

The Department received a number of comments from paralegals and legal assistants expressing concern that they would be classified as exempt under the proposed regulations. Other commenters urge the Department to declare that paralegals are exempt learned professionals. However, none of these commenters provided any information to demonstrate that the educational requirement for paralegals is greater than a two-year associate degree from a community college or equivalent institution. Although many paralegals possess a Bachelor's degree, there is no evidence in the record that a four-year specialized paralegal degree is a standard prerequisite for entry into the occupation. Because comments revealed some confusion regarding paralegals, the final rule contains new language in section 541.301(e)(7) providing that paralegals generally do not qualify as exempt learned professionals. The final rule, however, also states that the learned professional exemption is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer would qualify for exemption."

This led me to my next question. If a supervisory capacity is exempt, what type of supervisory role is required? Here's the short answer: "The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance." With these definitions, only five people were qualified to be considered non-exempt, and all but one works in our administrative department. We were required to go back through two years worth of time and calculate how much overtime each employee was entitled

Paralegals (cont.)

to receive. It took one year, three months, and two weeks of my time to navigate this process and comb through our records and calculate each employee and former employee. If I recall correctly, there were only a couple of weeks where Sabrina was eligible for overtime. We, begrudgingly, ended up having to pay her \$270 for the overtime she claimed. All in all, we paid about \$7,000 worth of back overtime. Fortunately, since we were not found to be a "willful" violator, we were not penalized for our oversight. (Just for a reference, it's a \$1,100 penalty for EACH violation.)

I know what you must be thinking, "But my paralegals are professionals and are on salary." Unfortunately, you would be wrong. Trust me. We made our case to the DOL and tried to explain why our paralegals are different. They use discretion when negotiating reductions with providers and insurance companies; they exercise independent judgment when working their files, etc. In the end, we changed our policy and the way we classify our employees, much to the chagrin of all employed here. I firmly believe that how paralegals are compensated does not diminish our profession or their value to the legal team. In other words, being classified as a non-exempt employee does not equate to a paralegal being considered "unprofessional."

Resources:

<http://www.paralegals.org/default.asp?page=32>

http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.pdf

<http://www.wagehour.dol.gov>

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Member Spotlight: Michelle Tyree

Tell us about your background, where you grew up and then transition into your career. I grew up here in Central Arkansas. I attended Sylvan Hills and went to Arkansas State University for a year. After that very fun year, I joined the work force and eventually went back to school. I graduated from Pulaski Technical College with an Associates Degree and continued to University of Arkansas at Little Rock. Currently, I am a senior and I plan to graduate with a degree in Political Science. I started working in the legal field as a receptionist and finally found a career.

Tell us about your family. My dad is an HVAC business owner and my mother is in banking. I have two sisters, a brother, and two beautiful nieces, who are 13 and 3 months. I got married in October of 2012 to the most wonderful man, Chris, who is an active duty Air Force Loadmaster.

How did you begin your career in the legal field? I started working for an attorney in 2001 as a receptionist. Soon I was promoted to be a legal assistant on multi-million dollar Ford/Firestone litigation. Talk about the deep end of the pool. In 2004, I joined The Brad Hendricks Law Firm as a paralegal and was promoted to Executive Administrator after a year.

What are your main responsibilities? My main responsibilities are ensuring our workplace is as efficient and pleasant as possible. I supervise all staff for adherence to policies and procedures. I ensure that all our advertising placements via television, phone book, and/or internet are correct and running appropriately. I reconcile bank statements and pay all client-related bills. All building maintenance issues are under my supervision and also handle all of Mr. Hendricks' personal affairs, including his CLE, travel, and everything else. I also ensure that our Professional Liability insurance is current and I handle all the employee benefits (insurance, vacation/sick time, & 401k).

How would your attorneys and staff describe you? I hope they would say I'm funny. I think I'm funny and I love to laugh. I also think they would say that I'm fair.

What is the best professional advice you ever received? I have two great mottos that I live and work by. The first was told to me by my boss: If you're not making mistakes, you're not working hard enough. The second is one I've heard about being a great assistant: Fulfilling your boss' request makes you a good assistant. Anticipating those requests and fulfilling them before being asked makes you a great assistant.

What do you like best about being a legal administrator? I love thinking outside the box to fix problems. My boss allows a lot of personal discretion for me to handle all office and staff related issues. He trusts my instincts and always backs my plays. I'm not a paint-by-numbers kind of girl. I'm always thinking of ways to improve and excel at my job.

If you weren't a legal administrator, what would you do? I'd probably still be in management somewhere. My Type A Personality motivates me to be the best I can be in every situation. I like to be in control, without being a power-tripping crazy person.

What are your outside activities? My husband and I are very active. We try to work out 5-6 times a week and we love to be outside. We have mountain bikes and enjoy camping. We have the best time together. I also love hanging out with my family.

What do you enjoy most about your affiliation with ALA? I enjoy all of it! I feel like I found a niche in which I can relate to professionals that do what I do everyday.

How has ALA benefitted you? It's given me a sense of camaraderie that I have never really known in my professional life. The resources I have to help me through difficult situations is now exponentially more than what I had prior to joining ALA.

Member Spotlight: Michelle Tyree

My friends describe me as... loving and clumsy.

Someone I really admire is... my dad. He's awesome.

My favorite quote is... by Harry Truman, "It's amazing what you can accomplish when it doesn't matter who gets the credit."

My favorite book is... *The DaVinci Code*, really anything by Dan Brown. He's an amazing writer.

My favorite musical artist is... Jack Johnson.

What is your favorite word? Love.

What is a word you dislike? Can't.

A sound or noise I love is... laughter.

A sound or noise I hate is... nails on a chalkboard.

My favorite trivia fact is... the human head weighs 8 lbs. I typically subtract that amount from my weight, because I don't care how much my head weighs.

Outside of my family, my most treasured belonging is... my wedding dress.

My favorite daydream or fantasy is... what my children will look like.

My favorite movies are... *Monty Python and the Holy Grail*, *Tombstone*, *Usual Suspects*, and *Army of Darkness*.



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Region 2 — October 10–12

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Region 4 — October 3–5

Hyatt Regency Albuquerque
Albuquerque, NM

Region 5 — September 19–21

Hilton Anchorage and The William A. Egan Civic
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Region 6 — October 31–November 2

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April 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10 Business Meeting	11	12	13
14 ALA Annual Conference	15 ALA Annual Conference	16 ALA Annual Conference	17 ALA Annual Conference	18	19 HSLA Reception AR Bar Center	20 AR Heart Walk
21	22	23	24 Administrative Professionals Day	25	26	27
28	29	30				



April Showers bring...

Schedule of Events

- April 9th—Business Meeting
- April 14-17th—Annual Conference
- April 20th—AR Heart Association 5k Heart Walk
- Administrative Professionals Day
- May 2nd—LoRraine Rowland's Birthday!
- May 8th— Business Meeting
- May 11th—NAMI 5k Walk
- May 19th— Carolyn Owens' Birthday!
- Memorial Day
- June 7th—Donna Blacklaw's Birthday!
- June 8th— Paula Anderson's Birthday!
- June 12th— Business Meeting
- Father's Day

May 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2 LoRraine's Birthday	3	4
5	6	7	8 Business Meeting	9	10	11 NAMI Walk
12	13	14	15	16	17	18
19 Carolyn's Birthday	20	21	22	23	24	25
26	27 Memorial Day	28	29	30	31	

... May Flowers!



June 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7 <i>Donna's Birthday</i>	8 <i>Paula's Birthday</i>
9	10	11	12 <i>Business Meeting</i>	13	14	15
16 <i>Father's Day</i>	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

Spring Programs for our Business Meetings

April 10th

Healthcare Reform – one year later

May 8th

Negotiating Leases

June 12th

Performance Counseling



Spring Cleaning Tips

- Organizing Closets.** Organizing your closet is the first step to organizing the rest of your home. Get rid of unused clothes and accessories, and organize the rest by how you get dressed in the morning and by color. Your closet will look appealing, and your everyday routine will be easier.
- Reorganize Bookshelves.** Sort books by size and subject. Remove and discard any ripped dust jackets (unless you think they might have value). Line books, some vertically, some horizontally, in a rhythmic pattern. This will relieve the monotony of rows.
- Wash Your Blinds.** Once or twice a year, wipe wooden blinds with a few drops of gentle wood cleaner on a nearly dry sponge. Aluminum blinds can be washed outdoors: Place them on an old sheet on a slanted surface, and scrub with water and a noncorrosive cleaner. Use a hose to rinse well, and then dry the blinds thoroughly with a towel to prevent rust.



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Quick-Fire Question

Question:

Some of our attorneys have poor timekeeping habits; they're often late submitting their time-sheets, and I'm sure they don't remember all their billable hours. How can I persuade them to do better?

Answer:

The whole issue of timekeeping is one of those eternal questions with no single good answer, unfortunately — some suggestions will work in certain firms and not others, but it's a pretty good bet that no method will work all the time in any individual firm. The following may help persuade your attorneys to get their hours in timely.

In a 1995 ALA News article, finance expert Ron Seigneur stated that studies have shown that a firm can easily lose as much as 15 to 20 percent of billable efforts when time is not captured on a contemporaneous basis. (Source: "It's About Time! Improve Profits Through Better Timekeeping." ALA News, February/March 1995.)

In the ALA Management EncyclopediaSM article "Attorney Timekeeping: It Matters!" the author, Patti Harris, a partner in a New York firm, makes the following statement:

Some administrators mentioned various "motivators" ranging from cash to chocolate...

"It is crucial that the attorney capture all of that billable time. Consider an attorney who fails to capture one billable hour per day. Assuming that a firm's attorneys' billable rate is \$200 per hour, the loss of one billable hour per day will cost the firm revenues of \$200 per day, \$1,000 per week and almost \$50,000 per year, per attorney. Good timekeeping habits are essential to good financial health for firms that live and die by the billable hour."

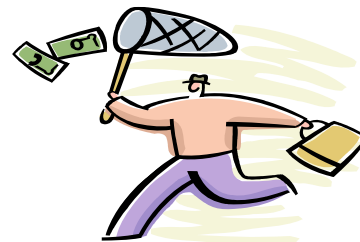
Contemporaneous Timekeeping: In addition to improving efficiency of the time entry function, it is critical for the attorney to keep track of time on a contemporaneous basis. Obviously, the memory is freshest at the time the task is performed. It is in the nature of many practices to thrive on interruptions — the 10-minute phone call — and the details are easily forgotten. In fact, studies have shown that if a person records time on the day after the work was performed, up to fifteen percent may be lost; attorneys can fail to recall up to forty percent of their billable time if they wait until the end of the month to record it.

Try creating your own scenario for your partners. Start with the assumption that an attorney loses one billable hour on each day that he/she does not record time contemporaneously. Then multiply that number by the average billing rate. Extend that out a full year for each attorney and then for the entire firm. Even if you are conservative and assume that each attorney loses only half an hour per day, the final total will be impressive. If your attorneys argue that they never forget to record all time, challenge them to the test: keep contemporaneous time for one week and compare that time to any other week previously recorded. Remind them that all additional hours captured go straight to the bottom line and improve the firm's profits — and nobody has to work any harder to make that happen!

In the fourth edition of his book *How to Start and Build a Law Practice*, Jay Foonberg says "[t]he famous Missouri Bar Survey shows that lawyers who keep time records earn 40 percent more than lawyers who don't. Recent studies indicate that lawyers who keep good time records earn 15 percent more than lawyers who keep poor time records." The bar survey Foonberg mentioned has been out of print for many years, but this does go along with the comments above. After all, no matter how good an attorney is at collecting on a bill, he/she can't collect something that was never billed out in the first place... and you can't bill without good records.

Timekeeping incentives. In the Encyclopedia article mentioned above, the author provides three ideas for incentives for getting lawyers to record and submit their time daily.

"Sometimes attorneys and other timekeepers need some additional inspiration to submit and review their time entries in a timely manner. Given the economic impacts suffered by the firm due to tardy timekeepers, a small economic incentive may be well worth it. For instance, in the author's firm, each attorney starts out the year with a timekeeping bonus of \$1,000. If complete time entries are not submitted for the prior week by 5:00 p.m. on Monday, the bonus pot is docked \$100. If the attorney is late more than 10 times, the firm begins to deduct the \$100 penalty from the regular year-end bonus. This has been a very effective tool for the firm, particularly once the firm informed the attorneys' spouses of the arrangement.



Quick Fire Question (cont.)

“In one firm, for every day an attorney submits his or her time by noon of the following day, the attorney receives a \$5.00 credit. Each week, the firm pays each attorney cash in the amount of credit earned in submitting time. As a result, this firm’s attorneys at all levels work hard to submit time by noon each day to get the additional money, even what must be a modest amount for senior partners. The firm found that it had significantly increased the hours it bills to clients more than offsetting the cost of the credit.

“Other inspirational methods include making the tardy attorney collect his or her paycheck in person from the managing partner, withholding partner draws and eliminating direct deposit benefits for the habitually tardy timekeeper.”

While some of these incentives may seem silly, the partners and legal administrators claim that they work. If you implement one of these ideas, report back to the entire firm, on a monthly basis, how much “new” time was captured.

Finally, don’t forget to have your attorneys and other timekeepers log the hours they spend on pro bono matters, internal projects or other non-billable work (such as writing an article for publication or serving on a bar committee). Even if such hours do not contribute to the revenue stream, this is valuable information for project planning, determining appropriate staffing or verifying that each attorney is devoting time to business development activities. The Smart WebParts blog offers a recent posting on “The Value of Tracking Non-Billable Time” discussing why it’s important to do this.

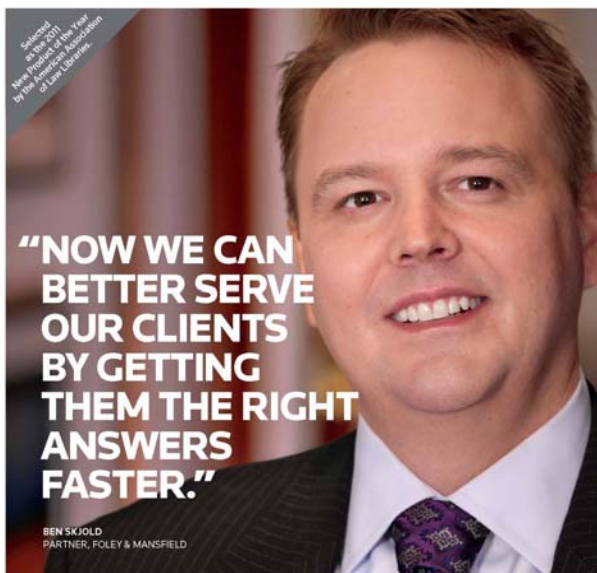
Timekeeping has come up a number of times in ALA’s online discussion groups. Some administrators mentioned various “motivators” ranging from cash to chocolate (very effective) — and all said that nothing works for a long time, so you’ll have to revisit this issue on a regular basis. It does help, though, that attorneys as a group tend to be very competitive, so any public distribution of information on whose timesheets are falling behind can encourage them. One experienced administrator said that a chart on his office door, with gold stars next to the name of each attorney who’d met daily timekeeping requirements, did wonders. You never know what will work!

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Bring Your Own Device: The Technical Perspective

By Dr. Gavin W. Manes, CEO of Avansic: E-Discovery & Digital Forensics

Bring your own device is not a new phenomenon; one of the oldest examples of BYOD is the common USB thumb drive. Until now, the defenses against losing information in BYOD were policies, restrictive settings, and hot glue (the best way to prevent a USB port from being used!). BYOD trends are now moving towards the primary computing resources for employees: laptops, tablets, and cell phones. Protecting against data loss in an environment of unknown, untrusted, and uncontrolled devices is a major challenge for both information protection and e-discovery.

There are three major issues that should be addressed in BYOD preparedness and policy: cloud computing/social media, privilege concerns, and preservation technical details. The first two are solved by carefully written and consistently enforced policies, similar to the days of USB thumb drives. The second is an extension of policy in that you must have pre-planned the technical ability to locate, preserve, and collect data from devices. Furthermore, you must control the hardware and the software that a device carries: some companies have solved this by providing a list of allowed devices.



Tablets and laptops are becoming more common in the workplace

Cloud Computing and Social Media

More information may be stored on the cloud in a “bring your own device” environment. Using the cloud for data storage, file sharing and webmail has a number of benefits, but legal professionals in particular should take into account their unique confidentiality and privilege requirements when entrusting the cloud with their client’s data. Corporations should be careful because devices can store data in the cloud without the user’s knowledge; a checkbox selected when setting up a cell phone or tablet may send data to a cloud destination for backup.

Social media is an incredibly powerful marketing tool that can also open the door to liabilities, lawsuits, and risk from competitors. Companies with clearly stated and regularly enforced computer/digital device policies are one step ahead of issues. Ensuring the employees understand the limits of their expectations of privacy and the appropriateness of online business-related posts is another excellent step towards maintaining a positive online presence and reducing litigation liability. Corporations understanding the risks of sharing, and imparting that knowledge to their employees, can also help protect critical business information.

Preservation Technical Details

The tenor of a litigation hold changes in a BYOD environment because the corporation may not have as tight a grip on the information assets of their employees. Those devices may also contain personal information (not a new problem, but potentially bigger in a BYOD situation) including bank account information, social security and credit card numbers, physical addresses, and passwords.

In *Pension Committee* and a number of other cases on the subject, attorneys must be the ones to identify what is relevant to the particular case rather than merely informing employees of the hold and thereby placing the burden of identifying key information on them. Emphasis is placed on the importance of management and/or counsel monitoring the process and not simply leaving employees to their own devices during the preservation process.

In terms of the actual collection of devices, it is important to note that cell phone and tablets, particularly iPhones and iPads, are notoriously difficult to forensically image. It is a general rule that the latest version, whether software or hardware, of any mobile device cannot be forensically preserved until the industry develops a method.

Privilege in Corporate Email

The issue of privilege protection for employee communications made using corporate IT assets has arisen in the past few years and grows more complicated in BYOD. Specifically, there are two cases regarding employees that communicated with their attorneys via email using company computers.

In *Alamar Ranch v. County of Boise*, the court ruled that emails exchanged between an individual and her attorney were not protected by privilege because the employer had a clearly stated policy of email monitoring (and the mails were sent



Bring Your Own Device (cont.)

using her corporate email account from a company computer). The court indicated that since there was no expectation of privacy and the emails were sent using a corporate account, privilege does not apply. The individual sent mails using her corporate email account from a company-owned computer.

In *Stengart v. Loving Care* an employee used a company computer to send emails to counsel through a Yahoo email account instead of the company's mail program. The trial court ruled the communications were not covered under privilege due to the company's policy of email monitoring. However, the appellate court reversed that ruling and indicated that privilege remained intact and the company did not have the right to review those emails. They argued that even a robust electronic resources policy does not necessarily allow carte blanche for the review of personal information stored on a company-owned computer.

Conclusion

Beyond BYOD, telecommuting, ever-more-portable digital devices, and easy Internet access have all contributed to the blurred lines between work and personal lives – many employees access their Facebook pages and send Tweets during the business day, often on devices owned (at least in part) by the company. Clearly, the issue will become much thornier when an employee sends a personal/privileged email from their BYOD device that technically doesn't belong to the company, but that is used for corporate purposes.



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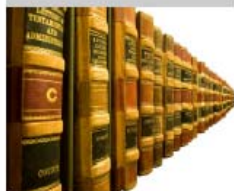
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