

# **PAPERLESS OFFICE: MYTH OR REALITY?**

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MANAGEMENT ECONOMICS AND TECHNOLOGY OF PRACTICE  
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## **MICHAEL K. KIERNAN**

Michael K. Keirnan has been a partner since 1991 in the Tampa Bay area law firm of Abbey, Adams, Byelick, Kiernan, Mueller, Marone & Samis, L.L.P. He focuses his litigation practice exclusively in the defense of insurance carriers and self-insured entities in both first and third party situations. His practice is heavily concentrated in the area of first party insurance litigation, commercial coverage litigation, extra contractual litigation as well as complicated general liability matters.

Mr. Kiernan has presented numerous seminars and has been the featured speaker on insurance matters, including property insurance, extracontractual matters, mold and windstorm coverage issues. Mr. Kiernan is a member of the Florida Bar; Iowa State Bar Association; American Bar Association; Defense Research Institute; The Florida Defense Lawyers Association; The Florida Advisory Committee on Arson Prevention; International Association of Arson Investigators; NFPA. Mr. Kiernan has been recently re-appointed to a three year term on the Civil Procedure Rules Committee of the Florida Bar. In addition, he is also a member of the Federation of Defense and Corporate Counsel, where he serves on the Property Insurance Committee and is Vice-Chair of the Premises Liability Committee.

Mr. Kiernan, who is AV rated, graduated from St. Leo College in 1980 and received his law degree from the Drake University Law School in 1983.

## **WILLIAM E. VITA**

William E. Vita is a partner in the law firm of Westerman Ball Ederer Miller & Sharfstein, LLP, in Mineola, New York. He represents clients throughout New York and nationally in complex civil litigation, including class actions, mass torts, product liability, commercial disputes and business torts. Mr. Vita is the Chair of the Federation of Defense and Corporate Counsel's Management, Economics and Technology of Practice Section. He is also a member of the Defense Research Institute's Products Liability Committee and is the Chair of the Hand and Power Tools Specialized Litigation Group. He is the co-author of *Harmonization of American and International Standards*, which was presented at the 2008 D.R.I. Product Liability Conference. Mr. Vita is a *cum laude* graduate of Boston College Law School and earned a B.A. in English from the University of Notre Dame. He served for five years as an Assistant District Attorney in Brooklyn, New York, where he prosecuted organized crime and complex fraud cases.

## **PAPERLESS OFFICE: MYTH OR REALITY?**

Law firms have traditionally generated reams of paper documents everyday. Attorneys, paralegals and secretaries continually think nothing of printing a twenty five page brief in order to make four or five minor corrections. This pronounced preference for printing is usually coupled with an unwillingness to discard paper documents when their usefulness has ended. Anyone who has gone through a file to prepare it for trial knows that it is not uncommon to find a half dozen copies of the same document located at various places in the file. If the case involves voluminous commercial documents or extensive medical records, a single case may take up a dozen Redwelds in the file room.

The cost of printing (paper, ink, printers, photocopiers, etc.) is a large and troublesome cost. And what happens when the trial ends or the deal closes? All too often, the attorneys just throw everything in the file and throw the file back on the shelf in the file room. Attorneys are busy and their time is valuable. Spending an hour or two going through a file to decide what to discard and what to keep is something that even the most disciplined attorneys rarely do.

When the file room overflows, many law firms simply rent space off-site to store the closed files. In a few years, the off-site storage location over-flows and the law firm begins to look for new storage space to rent.

From beginning to end, the entire process of generating filing and storing paper documents is inefficient and exceedingly expensive. Further, the system is the antithesis of an ecologically responsible policy.

So, how can you save money and save the world, one tree at a time? The answer is the paperless office. Or is it?

Computer software companies have viable electronic storage systems which allow easy indexing and retrieval of documents. Electronic documents can be cataloged according to the case they are generated on, the attorney who generates them, and the type of document (i.e. lease, complaint, interrogatories, etc.). Most software systems allow an attorney to do a search by key words, so that the attorney can call up useful language from a previous document and then paste it into the current document. This is particularly helpful if an attorney knows that he or she has previously worked on a similar issue but cannot remember the name of the client or the matter.

The idea behind this software technology is to create a paperless office. However, merely installing the software does not by itself actually create a paperless office. In addition to acquiring the software, the law firm must also engage in training to change the culture of the personnel involved. People must learn to edit on the compute screen rather than on paper, whenever possible. Paper documents which come in the mail from clients or adversaries must be scanned into PDF or similar form and then saved on the system. If the document is important (as an example, a date-stamped pleading which has been filed in Court or original pleadings intended to be submitted to a Judge) then a hard copy of that document may be saved in the file room. However, most documents should be discarded after they are saved in the computer system. However, this is easier said than done. Lawyers are trained, from their first day on the job, to save documents, right down to envelopes with postmarks, etc. It is very difficult to break old habits.

Corporate and real estate attorneys generally find it easier to “go paperless” because they usually only need to keep the final signed deal document. All of the edits and preliminary drafts can be quickly discarded, if they are even printed to begin with. Attorneys engaged in litigation

find it much harder to go paperless. First, any original document provided by the client cannot be discarded, at least while the case is active. Even at the end of the case, uncertainties regarding appeals prevent most attorneys from discarding documents after a trial. Medical records pose a special problem because HIPAA restrictions prohibit disclosure of such records. Therefore, medical records should be carefully shredded before they are discarded. Litigators also require written documents to bring with them to Court and/or to attach as exhibits to motions and pleadings. All of these factors make litigation departments highly resistant to the concept.

Nonetheless, litigators, along with all other attorneys, must rethink their reliance on paper. Litigators can start by evaluating each item that comes in by mail or by facsimile. Does the original really need to be kept in the file room? Or can the document be stored electronically for future use? If a hard copy of the document is really not required, then the document should be electronically stored and the original discarded. If the document is confidential, it should be shredded at that time rather than stored as paper in the file room, only to be shredded in the future.

The Federal Courts, to their credit, have largely converted to electronic docketing. Most Federal Courts have electronic case filing systems which dramatically decrease the amount of paper documents maintained at the courthouse. This system should be a model for law firms. Although most State Courts have lagged behind the Federal Courts in establishing their own electronic filing systems, it is clear that electronic filing is the system of the future. As Courts rely on and maintain less and less paper, law firms should do the same.

As law firms transition to paperless electronic storage systems, they must simultaneously work hard to dispose of the reams of paper choking their file rooms and in many cases their offices and hallways. When firms consider the physical cost of storing closed files they often

come to the conclusion that it is cost-effective to assign one file clerk to spend each day going through closed files and scanning the most important documents and discarding the rest. The file clerks should work closely with the attorneys and paralegals to establish protocols regarding what should be retained and what should be discarded. Individual questions can be addressed as they arise. When this is done, it is not unusual to take a case file that fills 12 Redwelds and shrink it down to less than a few dozen pages of paper documents. The task of clearing storage rooms, one file at a time, seems daunting when the project is begun, however, although it is time consuming, it is time well spent, as file after file is cleared, the storage facility may no longer be required, thus saving years of future rent.

Creating a paperless office is hard work. However, like most aspects of a successful business, the hard work is worth it in the end because it is good for business. As an added incentive, it is also good for the environment.

