

Paper Optional

Benefits in using electronically signed documents

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At the turn of the previous century, most light transportation was provided with horse drawn buggies and wagons. Although entire cities and industries had evolved around them, less than 50 years later they were gone – replaced by automobiles and trucks.

At the turn of the previous century, most financial transactions and communications happened with paper. Less than 100 years later, electronic financial transactions have largely replaced paper and email volumes have surpassed paper mail by many orders of magnitude.

However, most legal transactions stubbornly still involve paper. Why is there still so much paper in the legal system? The technical and legal reasons have largely fallen away over the past decade. The last remaining impediment appears to be largely horse and buggy thinking.

Why reduce paper?

Paper documents add cost and time to the legal process. Most organizations have eliminated drafting documents with typewriters because of the cost and time. However, once drafted, those same organizations reduce the efficiency of the electronic documents by turning them into paper documents. From then on, the cost of managing the document increases dramatically.

These costs are not always obvious. Moving paper around, filing it, retrieving it and storing it is very time consuming and expensive. The BC Land Titles registry went substantially paperless in 1998 and has seen registration time reduced by 90% and administrative costs reduced by over 30%. The Singapore Supreme Court went substantially paperless and reduced its civil case backlog of cases by nearly 90% and reduced the average time to resolution from 10 years to 6 months.

Reducing paper did not *cause* this kind of success. However, this kind of success would not have been possible with a paper-based system.

Recently, the Air India case in BC had a court room outfitted with technology that allows the massive volume of evidence to be recalled and displayed electronically. They concluded that the trial was not possible without the efficiency of the electronic rendering of documents and other evidence.

Substantial improvements in legal processes are possible if documents are kept in an electronic format instead of being reduced to paper.

Working with an electronic document is not difficult. It is, however, different and the breaking of old habits can be difficult. The results are nevertheless well worth it.

Sending an electronic document

Most people are now familiar with sending an electronic document as an email attachment. The risk of sending a “clear text” draft is that it can inadvertently be read by the wrong party and it can be

altered by either party after transmission. These risks can be eliminated by sending a protected attachment.

To protect a document from inadvertent disclosure or changes, the most basic thing you can do is to password protect the document. Only persons with the correct password will be able to open the document. One way to do this is to save a copy of the document with the “password” option, available on many software products.

A better option is to save a copy in the Portable Document Format (PDF) using Adobe Acrobat. The PDF format provides many useful features. One is that it accurately preserves and displays the visual format of the document no matter what type of computer is used to display the document. Even different versions of the same word processing package can make a mess of a document, which is a common problem when sending document attachments or retrieving old documents. The PDF format eliminates these problems. The client receiving a PDF document needs only to have the free Acrobat Reader software on their machine.

Incidentally, when using passwords, it is best never to send the password in the same email as the attached document. A better option is to set up a unique password or pass-phrase for each client file and to provide the password when speaking directly to the client.

A more advanced and secure way to protect a document is to encrypt it with a digital certificate. Although frequently superior to password protection, it requires both the sender and recipient to use similar software and to both have a digital certificate. This method is preferable for the most sensitive of documents requiring the most secure technology available.

Sending documents as protected email attachments can significantly reduce the time and cost of the legal processes between a lawyer, their client, the courts.

Signing an electronic document

Signing documents is an important legal step that many lawyers resist doing electronically. It signifies agreement or approval of a specific version of a document. Sometimes it must be done in the presence of a lawyer, sometimes not. Doing this with pen and paper is familiar. Doing this electronically, however, is much more efficient.

Not all documents lend themselves to the use of electronic signature, yet. If the document must be filed with the court or other registry, not all jurisdictions will accept a signed electronic document or a certified printed copy of it. Also, if the document requires the signature of a third party, the third party must be agreeable to using electronic signatures. It is best to identify any restrictions early on in a case prior to using electronic signatures.

Many legal firms manage both an unsigned electronic copy of their documents along with the signed paper copy. A basic enhancement of this practice would be to have the firm “sign” the final electronic version to confirm which version of the electronic document is the signed version that can be found in the paper file. Signing could be done by an authorized administrative staff member with very little effort or cost. The benefit of this is to enhance the reliability of the electronic representation of the case files, but more on that in the next section.

With a little imagination, however, a number of new ways to sign documents is possible if the signing parties either have or are issued electronic signature certificates.

If the presence of a lawyer is not required, a protected electronic document can be emailed to a lawyer or client for signature and sent back as a protected document. The original signed document would then be the electronic document. Paper copies in the file would not be required. Paper copies would truly be optional – a matter of convenience and not a legal requirement.

If the presence of a lawyer is required or desired, signing could still be done electronically. Signing complex sets of documents could be made simpler by signing in front of a computer screen rather than a board room full of paper stacks. An electronic document would only need to be signed once, instead of multiple times, for example. Once signed, the client can still be provided with both a professional looking paper copy along with a useful electronic copy.

To sign an electronic document requires two things – software that is capable of affixing an electronic signature to the document type you are using and an electronic certificate that contains your “electronic signature”.

An “electronic signature” is an electronic code and does not look like a handwritten signature. It acts more like a legal seal. For visual comfort, many people feel better if a picture of the handwritten signature is also visible. This can easily be done as well. This picture of the handwritten signature acts more like a signature stamp. Both can be used at the same time to provide both a legally binding electronic signature and a comforting visible signature.

If you choose to use PDF documents, an inexpensive product is available from Adobe to sign PDF documents. Other document types vary in their ability to be electronically signed or verified.

Electronic certificates vary widely in cost, compatibility and value-added features. The more expensive electronic certificates usually come from issuers that apply rigorous registration and identity management processes. The least expensive and free certificates frequently do not and often require the user to provide the registration and identity management rigor.

Juricert can be used to enhance even the least expense certificates by adding rigorous registration and identity management processes.

It is also best to beware of certificates that do not work with other programs using the X.509 certificate standard or which are not accessible from the standard Microsoft MSCAPI store. These certificates will not be useable by many commercial software programs.

Using electronic signatures need not be expensive or complex. However, it is different from paper and ink and, just like horseless carriages were different than the horse and buggy, electronic signatures will require some change in office procedures in order to see its benefit.

The benefits can include faster and more convenient signing procedures. It also includes the ability to significantly reduce the volume of paper in the paper files and archives.

Storing and retrieving electronic case files

Filing, retrieving and handling paper is slow, expensive and prone to error and loss. Important files stay stacked on desktops while in use, making them difficult to locate if the desk-owner is gone. If more than one person is working on the file, the file often goes wandering. Photocopies are often made ad-hoc. The more important the file, the more it gets handled, and the more likely it is for something to get lost, misfiled or difficult to locate.

Finding the correct document electronically is much faster than wading through paper. A person can browse on-line case folders many times faster than going through file drawers. More importantly, the electronic versions can be borrowed or re-printed many times without ever leaving the on-line file folder.

Making a back-up copy of the electronic files is as simple as copying the folders to a tape, CD or DVD which can then be safely stored in a fireproof vault. Making back-up copies of client paper files involves expensive photocopying and additional file space.

However, making the electronic case file as useful as the paper case file requires the recognition of two facts. First, the electronic case file must be complete. Although this seems obvious, many firms only store electronic copies of files that they created. If incoming correspondence and other important materials are found only in the paper files, then the electronic files will be incomplete and of limited use. Administrative processes will need to change to remedy this. Everything in the paper files should either be available or at least noted in the electronic file.

Second, electronic files can optionally be printed into paper files at anytime and for anyone that prefers working with paper. It makes no sense to force people to work with a screen if they work more effectively with paper. However, since they are only a copy, there is no harm done if they are lost or destroyed. In fact, when no longer needed, they can simply be destroyed and the paper recycled instead of being re-filed.

The advantage of using electronic case files is a dramatic reduction in the volume of paper files, storage costs, filing effort, lost files, lost documents, retrieval efforts, photocopying efforts, and they can significantly speed up legal processes.

Making the next step

Going “paper optional” is not a technical step. Yes, it will involve technology, but that should not be the focus of the change.

Going “paper-optional” is about considering what can be done to provide more convenient and expeditious legal services. It’s about refusing to accept taking weeks of elapsed time to provide mere hours of billable legal services. It is about running an office with fewer problems and more effective administration. It’s about realizing that the horse and buggy world of paper, as elegant and familiar as it can be, invokes limitations on these processes that will not allow quantum improvements.

Success depends on getting these basics right, recognizing that paper-optional is not paper-less and making it all work as reliably as possible. Juricert has been involved in many projects since its inception and can help you to achieve your plans successfully. For assistance, please contact:

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