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Technology and File Management: Best Practices For Reducing, Managing and Storing Your “Paper”

Hon. Rebecca Simmons
Assoc. General Counsel KCI, Inc.
Laura L. McClellan
Thompson & Knight LLP
Mary Brennan Stich
Rackspace, Inc.

Hon.Rebecca Simmons
Kinetic Concepts, Inc.
12930 IH 10 West
San Antonio, Texas 78249
Rebecca.Simmons@kci1.com

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Technology and File Management: Best Practices for Reducing, Managing and Storing Your “Paper”

I. ABSTRACT

The fastest way to reduce paper and move to a paperless office is to move to the cloud or employ cloud solutions in place of paper production. This Article provides a brief introduction to the area of file management focusing on cloud computing and issues encountered storing confidential client information with an online data storage services provider. Because file management is increasingly offsite and online, this Article also examines some of the ethical and practical issues that attorneys should be aware of before jumping on the cloud.

II. INTRODUCTION

Legal data storage is moving on line. Approximately 54.4% of lawyers use online services for removable or external storage.¹ Because the storage is in the “cloud” and off-site there are some ethical obligations that arise. Although most attorneys use cloud computing on a daily basis, many profess ignorance of, if not aversion to, the “cloud.” But if an attorney uses Gmail, Yahoo!, Hotmail, or AOL, she is accessing her mail in the cloud. The use of a smart phone or an iPad often involves “cloud computing” through products and services such as Google Drive, Facebook, or Dropbox. A simple way of describing cloud computing is: “a fancy way of saying stuff’s not on your computer.”² In a more technical sense: “[C]loud computing allows businesses and individuals to use the Internet to access software programs, applications, and data from computer data centers managed by providers”³ Not only are lawyers increasingly using remote storage for their data, a variety of companies, including Rocket Matter, Clio and Firm Central, now offer cloud practice management that enable management of cases, clients, contacts, calendars and document storage.⁴ While cloud computing offers reduced costs and greater efficiency, challenges relating to information security, reliability, and compliance with government regulations must

¹ *Room at the Top*, ABA Journal, November 2013 at p. 28.

² See Pa. Bar Ass’n Comm. on Legal Ethics & Prof’l Responsibility, Formal Op. 2011-200 (2011) (“Ethical Obligations for Attorneys Using Cloud Computing/Software As a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property”), 1093 PLI/Pat 325, 327 (quoting Quinn Norton, “Byte Rights,” *Maximum PC*, September 2010, at 12).

³³³ *Int’l Bus. Machs. Corp. v. Visentin*, No. 11 Civ. 399 (LAP), 2011 WL 672025, at *5 (S.D.N.Y. Feb. 16, 2011), *aff’d*, 437 Fed. App’x 53 (2d Cir.).

⁴ For a matrix of providers and features go to:

<http://www.americanbar.org/content/dam/aba/migrated/tech/ltrc/charts/pmtbchart.authcheckdam.pdf>

be overcome.⁵

The growth of cloud computing is explosive. Some estimates put the total spending for cloud computing in 2017 at \$235 billion, and projections for the next few years predict that the demand for cloud services will continue to grow at a brisk pace.⁶ A recent report from the University of California at Berkeley predicted that “Cloud computing is likely to have the same impact on software that foundries have had on the hardware industry.”⁷ Along those same lines, the Pew Research Center recently published a report that found that most people will access software applications online and share and access information through the use of remote server networks by 2020.⁸ The shift from office-based PC’s running Microsoft applications to internet-based applications such as Google Drive has started. Law firms can save money by storing data and accessing applications with third party vendors that purchase, maintain and upgrade the associated technologies. It is not a case of will lawyers move to the cloud but when. But in making that move lawyers need to be aware of both the benefits and risks of technology.

This Article is a brief attempt to bring some of the ethical issues surrounding the cloud to the practitioner’s attention. To understand the ethical implications of moving to the cloud, a review of some of the terms describing the cloud and the benefits that the cloud offers is necessary. Because security is a major concern, this Article briefly addresses some of the security issues that should be considered before moving to the cloud. Finally, the Article reviews some of the Texas Rules of Professional Conduct that may be implicated by moving data and services to the cloud.

III. DEFINING TERMS

Cloud computing is still evolving, and experts are not in agreement over the definition of “Cloud Computing.”⁹ The National Institute of Standards and Technology has defined cloud computing as “a model for enabling convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and

⁵ See J. Nicholas Hoover, *Compliance in the Ether: Cloud Computing, Data Security and Business Regulation*, 8 J. Bus. & Tech. L. 255 (2013)

⁶ See Christopher Soghoian, *Caught in the Cloud: Privacy, Encryption, and Government Back Doors in the Web 2.0 Era*, 8 J. TELECOMM. & HIGH TECH. L. 359, 424 & n.3 (2010) (citing various estimates, including Merrill Lynch’s \$160 billion estimate); C. Columbus, *Roundup of Cloud Computing Forecasts and Market Estimates, 2014* <http://www.forbes.com/sites/louiscolumbus/2014/03/14/roundup-of-cloud-computing-forecasts-and-market-estimates-2014/>

⁷ Michael Armbrust et al., *Above the Clouds: A Berkeley View of Cloud Computing*, UNIV. OF CAL. BERKELEY, TECH. REPORT NO. UCB/EECS-2009-28, 1, 2–3 (2009), available at <http://www.eecs.berkeley.edu/Pubs/TechRpts/2009/EECS-2009-28.pdf>.

⁸ Janna Quitney Anderson & Lee Rainie, *The Future of Cloud Computing*, PEW RESEARCH CTR., (2010), <http://pewresearch.org/pubs/1623/future-cloud-computing>.

⁹ Armbrust, *supra* note 5 at 3 (noting the industry-wide disagreement about the exact meaning of Cloud computing); *Cloud Computing: Clash of the Clouds*, ECONOMIST, Oct. 17, 2009 at 80, 80–82, available at <http://www.economist.com/node/14637206>.

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