

# How (Not) to Commit Malpractice With Your Computer!

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# AGENDA

- Faustian Tradeoff: Efficiency vs. Malpractice
- Fracture Points
- Opportunities To Commit Malpractice
  - Network Security
  - Computer-Assisted Drafting
  - E-mail
  - The Internet
  - Laptops, Cell Phones and PDA's
  - Other Opportunities
- Solutions



# Faustian Tradeoff

*Efficiency and Convenience vs. Malpractice*

- When computers work and are used properly, their contribution to everyday life seems limitless.
  - Information at your fingertips
  - Draft complex legal documents with lightning speed
  - Achievement of Paperless (and portable) office

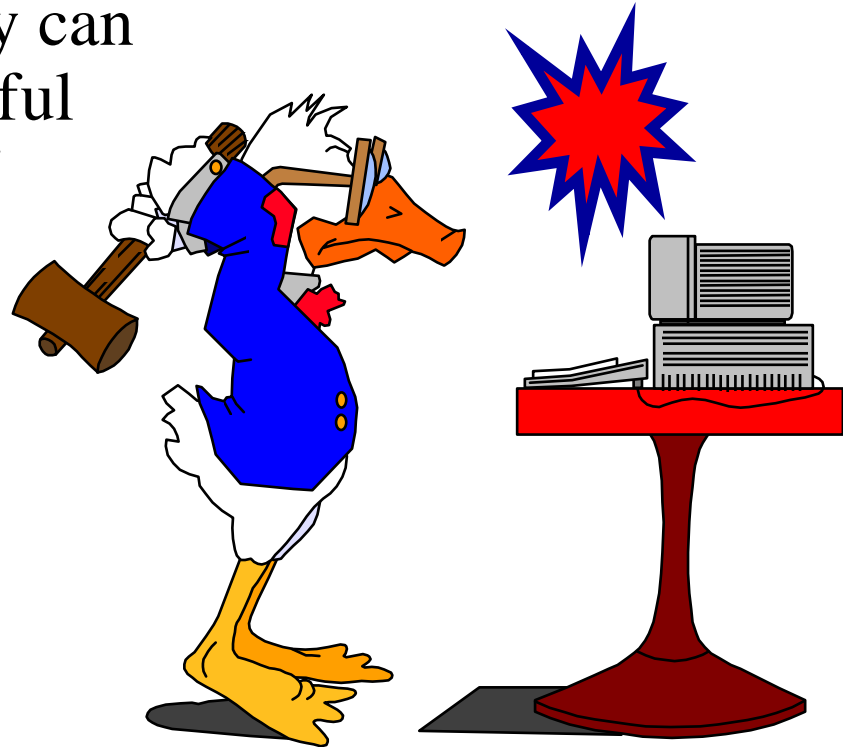




# Faustian Tradeoff

## *Efficiency and Convenience vs. Malpractice*

- When computers fail, they can propel even the most careful attorney onto the rocks of legal malpractice
  - Missed court deadlines and filing deadlines
  - Disclosures of attorney-client privileges
  - Typos and worse in contracts
  - Loss of vital client and practice data





# FRACTURE POINTS

## *Small Firm/Big Firm IT*

- Large law firms
  - Economies of scale
  - Multiple layers of supervision, review and backup
  - In-house or specially contracted outside computer service personnel
  
- Solo practitioners and small firms
  - Resources dedicated to special projects or emergencies
  - Lack dedicated personnel to maintain system, monitor, upgrade or insure quality control

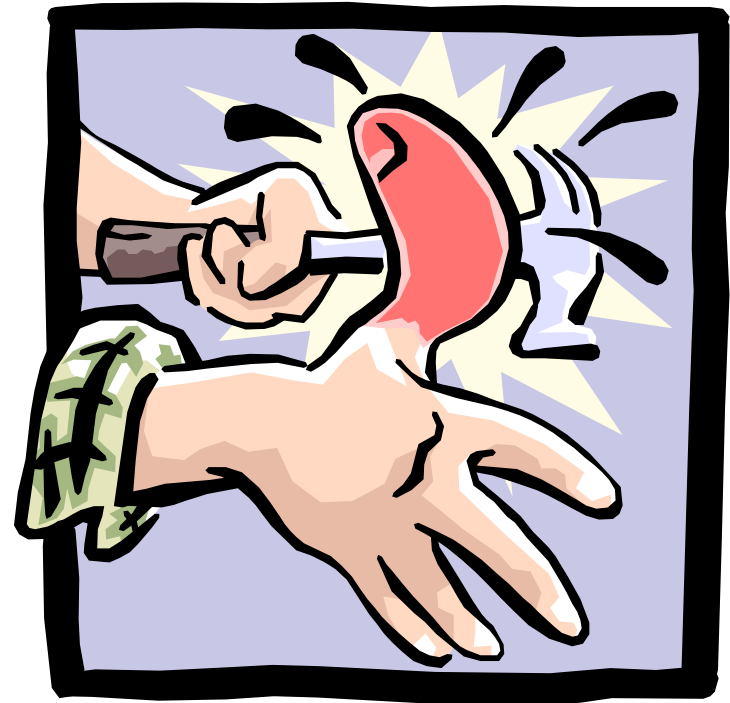




# Opportunities to Commit Malpractice

*The computer, the network, the web and other devices*

- Network Security
- Computer-Assisted Drafting
- E-mail
- The Internet
- Laptops, Cell Phones and PDA's
- Other opportunities





# Network Security

## *Passwords*

*Issue: We don't need passwords on our computers. Who cares about the data in our office?*

- Security of client confidences?
- Sharing of passwords?
- Easy to remember?
- Easy to crack?
- Taped to your computer?
- Changed periodically?
- Departing employees?





# Network Security

## *Passwords*

### *Solutions:*

- Dynamic passwords
- Credit card side password generator
- Voice and fingerprint logons







# Network Security

## *Requirement of Reliable Backup Protocols*

*Issue: WordPerfect makes an automatic backup of my all my documents. And I have a RAID-III file server. We do a tape back-up once a month of our network files. We're covered.*

- If you lose it, will you cry?
- Have you activated the automatic backup settings in WordPerfect/Word?
- Where did you put the back-up?
- Does the backup really work?
- Who knows how the backup works? Do you run “test restores” at all?
- What about all your other data?
- What about data stored in personal files on each PC?
- If the server crashes or there is a fire?





# Network Security

## *Requirement of Reliable Backup Protocols*

### *Solutions:*

- Daily backups of all data
- Off-site storage
- Virtual storage
- Archiving and data purges
- Fire drills and disaster plans
- BSA: keep original disks with serial numbers secure





# Network Security

## *Full-Time Web Connection*

*Issue: We're a law firm - who would be interested in hacking into our network! No way! It's too dull!*

- Full-time, always-on Internet connection (DSL or ISDN)
- Invitation to hackers (fun, thrills, piracy and "insider trading")
- Free-loading on blind FTP
- Web-crawlers can reach even into Home PC's searching for vulnerabilities





# Network Security

## *Full-Time Web Connection*

### *Solutions:*

- Get a firewall (both hardware and software)
- Configure the firewall
- Change the default settings on Internet Information Server





# Network Security

## *Business Software Alliance*

*Issue: I have one copy of each software program we use. We're compliant.*

- Business Software Alliance's (Microsoft's) hard-ball marketing campaign:
  - City by City Truce
  - Threats of audits and sanctions
  - Offers of Discount
- No one is in full compliance
- If you buy, you must comply!





# Network Security

## *Business Software Alliance*

### *Solutions:*

- Read the license agreements!
- Read them again
- Go to the website and read them again
- Conduct a software audit
- Keep the original disks secure (off-site)



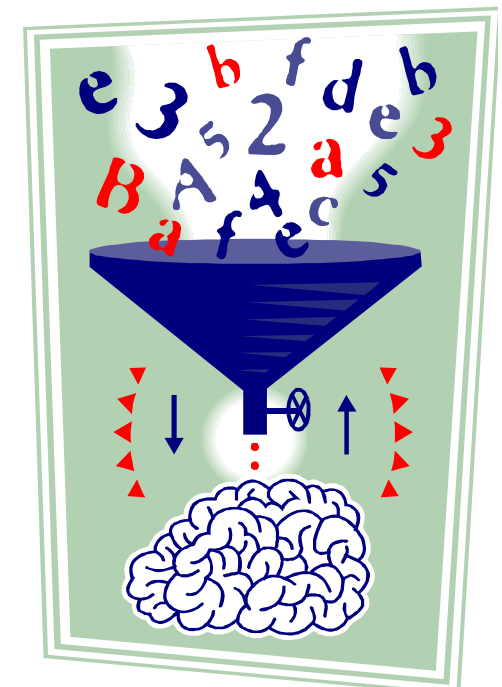


# Computer Assisted Drafting

## *Mining the Precedent File*

*Issue: I have access to every document prepared by my firm (and any document in the world via the internet). I can whip out an LLC operating agreement in minutes.*

- Have you read the document thoroughly?
- Have you replaced all references to prior clients?
- Have you updated all cross-references?
- What about special concessions in that prior document?
- What about inappropriate boilerplate language?
- What about MetaData



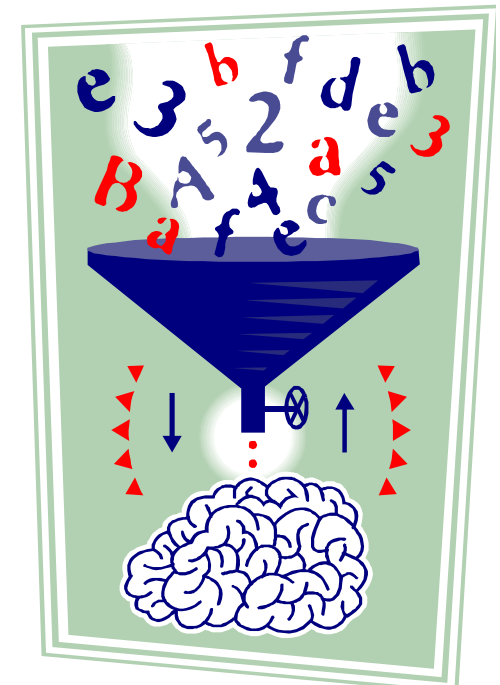


# Computer Assisted Drafting

## *Mining the Precedent File*

### *Solutions:*

- Preparation of annotated model forms with optional language
- Construction of templates in HotDocs or GhostFill 2001
- Scrubbing MetaData





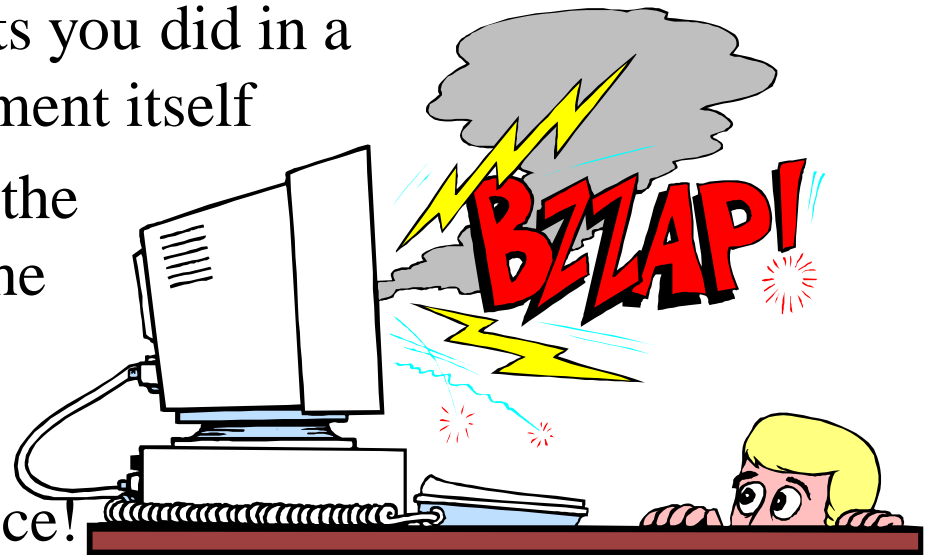


# Computer Assisted Drafting

## *MetaData" – Invisible Lurking Disaster*

*Issue: This is NOT the Kind of Surprise You Want! Hey, let's use that cool "Comment" feature in Word and the "Undo" function in WordPerfect!*

- Both great features but if you're not careful, you'll leave a history of all the prior edits you did in a document . . . in the document itself
- Send it electronically and the techno.savvy can see all the edits, comments, etc.
- Potentially embarrassing at best, possibly malpractice!





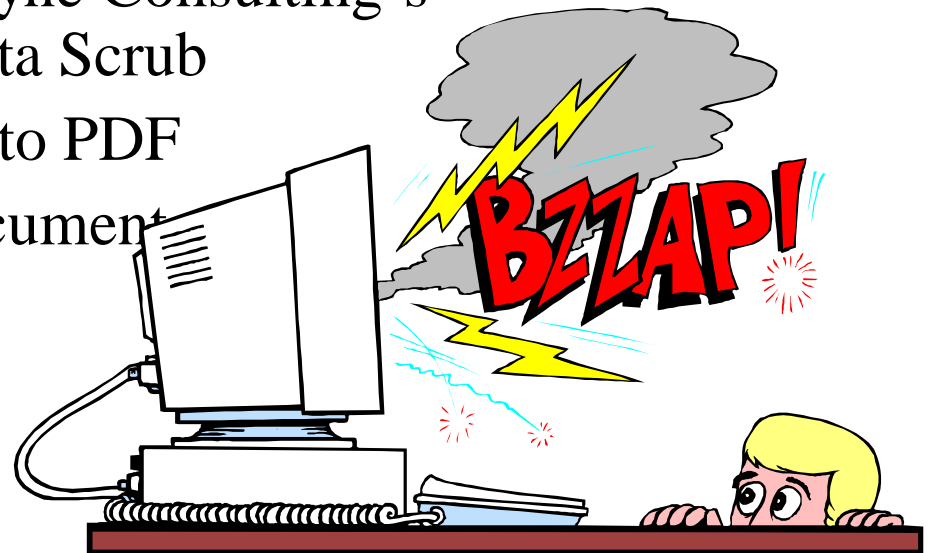
# Computer Assisted Drafting

## *MetaData" – Invisible Lurking Disaster*

### *Solutions:*

- **WordPerfect:** Don't Save Undo/Redo History With Your Document!
- **Microsoft Word:** Use Payne Consulting's MetaData Assistant or Data Scrub
- **Adobe Acrobat:** Publish to PDF
- **GhostFill 2001:** With document assembly there is no MetaData to scrub

**GhostFill** POWER GENERATION FOR DOCUMENTS





# Computer Assisted Drafting

## *Working with Automated Forms*

*Issue: I purchased the NYSBA Residential Real Estate Forms. Now I can turn my real estate closings entirely to the paralegals.*



- Have you actually read the underlying templates?
- What guidance have you given the paralegal on which forms are appropriate?
- What about your own forms?
- Is the data consistent with your case management data?



# Computer Assisted Drafting

## *Working with Automated Forms*

### *Solutions:*

- Review the forms.
- If necessary, get HotDocs Pro and revise the templates
- Create a new library of most frequently used forms
- Add your own forms to the library
- Link up with your case management system





# E-Mail

## *Integrity of Attachments*

*Issue: I attached the final contract to the E-mail message.  
Just print it, sign it, and mail the original back to me.*

- Client edits the “final” and produces her own version.
- Client has other party sign the “revised document.”



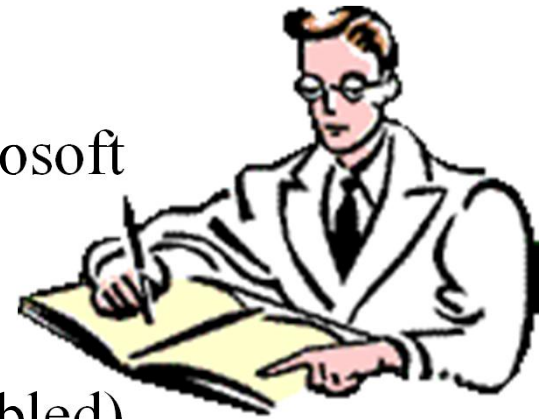


# E-Mail

## *Integrity of Attachments*

### *Solutions:*

- Digital Certificates (WordPerfect, Microsoft Word and Adobe Acrobat)
- Send documents as PDF or E-Fax
- Internet direct to Printer (if TCP/IP enabled)
- CryptonWare from Network Privacy Inc. (Beta available at is  
<ftp://dmz.networkprivacy.com/pub/cw250.zip>)
- Disappearing Email from Omniva ([www.omniva.com](http://www.omniva.com))





# E-Mail

## *Security of Communications*

*Issue: Don't worry about security when I send you this attachment - after all, who would be interested in reading legal documents?*

- Security?
- Attorney-client privilege?
- Coordinating with recipients?
- What about the ABA's statement on e-mail, security and confidentiality?
- How can I protect my e-mail?





# E-Mail

## *Security of Communications*

### *Solutions:*

- Private, disposable keys: CryptonWare from Network Privacy Inc. (Beta available at is <ftp://dmz.networkprivacy.com/pub/cw250.zip>)
- PGP and public keys (Eudora, Outlook, Notes)
- Disappearing Email from Omniva ([www.omniva.com](http://www.omniva.com))







# E-Mail

## *Business Development on ListServes*

*Issue: I offered advice to someone on a listserve.  
They know it's not really legal advice — don't they?*

- Attorney-client relationship?
- Legal advice outside your jurisdiction?
- Advice to an opposing party or counsel?





# E-Mail

## *Business Development on ListServes*

### *Solutions:*

- Caveat, caveat emptor
- Complete waiver of confidence
- Use general legal principals
- Encourage off-list dialog
- Disclaimer in signature block





# The Internet

## *Law Firm Websites*

*Issue: The Internet is unregulated.  
Legal ethics don't apply here.*

- Advertising?
- Client solicitation?
- Unauthorized practice of law?
- Misrepresentation of specialty?
- Linkage, deep-linking, framing?
- Attorney-client relationship?
- Copyright violations?





# The Internet

## *Law Firm Websites*

### *Solutions:*

- Don't cede control to "marketing"
- Periodic site and usage audits
  - Periodically run a complete audit of you site to determine ownership/license to display all material shown therein.
  - Know source of every image and article
  - Check for link framing
  - Make sure trademark ownership notices are displayed
- Secure written permission of all copyright holders and/or license to display.
  - Secure copyright permissions in writing.
  - Comply with all requirements of the copyright holder.
  - Make sure copyright permission notices are displayed.





# The Internet

*Business, Personal and Pleasure !!!*

*Issue: Everyone in the office loves the Internet. We don't restrict employee access.*



- E-mail and expectation of privacy?
- Porno and jokes?
- Derogatory e-mail and claims of harassment?
- Internet use/abuse policy?
- Loss of productive time?



# The Internet

*Business, Personal and Pleasure !!!*

## *Solutions:*

- Develop policy and educate users on appropriate use.
- Use junk-mail blockers and website filters
- Audit Trails
  - Use of log files, counters, log analyzers and tracking programs.
  - Record clicks and navigation of all users
  - Require site registration to use, and track each user. Counters, trackers and Log Analyzers.





# The Internet

*Business, Personal and Pleasure !!!*

## *Solutions (Cont):*

### ● Tools

- Access Watch – [www.netpresence.com/acceswatch](http://www.netpresence.com/acceswatch)
- Analog - [www.statslab.cam.ac.uk/~sret1/analog](http://www.statslab.cam.ac.uk/~sret1/analog)
- HitBox - [www.hitbox.com](http://www.hitbox.com)
- net.Analysis - [www.netgen.com](http://www.netgen.com)
- NetTracker - [www.sane.com](http://www.sane.com)
- Sawmill - [www.flowerfire.com/sawmill/](http://www.flowerfire.com/sawmill/)
- SiteTracker - [www.sitetracker.com](http://www.sitetracker.com)
- SuperStats - [www.superstats.com](http://www.superstats.com)
- WebTrends - [www.webtrends.com](http://www.webtrends.com)
- WinWhatWhere - [www.winwhatwhere.com](http://www.winwhatwhere.com)
- Marketwave Hit List Pro - [www.marketwave.com](http://www.marketwave.com)



### ● Limitations

- Most tools don't record the actual identity of visitor
- Snooping programs that capture actual identity are of questionable legality





# The Internet

## *Copyright & Software Licensing*

*Issue: Unless they ask for payment, all the stuff on the Internet is free to view and use, isn't it?*

- Who "owns" the clip art you "borrowed" for your website's home page?
- What about the moving gavel you took from another attorney's web site?
- What is Freeware?
- "What is Shareware?"







# The Internet

## *Copyright & Software Licensing*

### *Solutions:*

- Track down source and get written permission
- Use proper due diligence
- Register and pay for Shareware





# Cell Phones, Laptops & PDAs

## *Cell Phones: Indispensable and Unsecured*

*Issue: Of course I can discuss the details of our trial strategy on my cell phone with you! No one can listen to a cell phone call.*

- Private or public?
- Warnings?
- Are "digital" phones secure?
- What about cordless phones and the interceptability of their signals?
- Blue Tooth devices?





# Cell Phones, Laptops & PDAs

*Cell Phones: Indispensable and Unsecured*

## *Solution:*

- Use a land line / get to a pay phone
- Special secure phones
- Third party scrambling services





# Cell Phones, Laptops & PDAs

*Trusty Laptop At Your Side*

*Issue: I love my portable computer. I take it everywhere, including on trips.*

- Is it safe at the airport?
- Who else is watching your screen?
- If it is stolen or crashes, can the data be replaced?
- If it falls into the wrong hands, will you get sued?
- If it breaks on the road are you out of business?





# Cell Phones, Laptops & PDAs

*Trusty Laptop At Your Side*

## *Solution:*

- Lockdown and password the data
- Backup data to a CD and carry it separately
- Backup the data to your network and leave it home
- Dongles, call home and other devices





# Cell Phones, Laptops & PDAs

## *Home Use of Laptops*

*Issue: My kids love it when I bring the portable computer home so they can play video games.*

- Are your client confidences safe and secure?
- Are your forms going to vanish?
- What if your budding genius “tweaks” the computer?
- Will it still work on Monday morning?
- Do the kids know your passwords?





# Cell Phones, Laptops & PDAs

## *Home Use of Laptops*

### *Solution:*

- Windows supports multiple log-ons.
- Talk to your kids
- Get them their own computer (it's cheap)



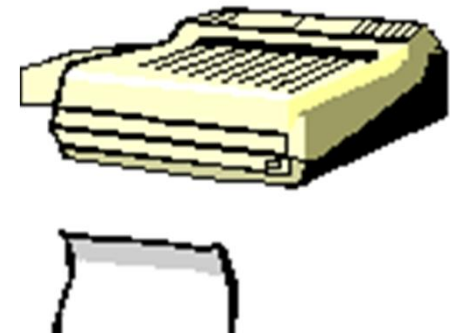


# Cell Phones, Laptops & PDAs

## *Hotel Fax Machines*

*Issue: I had the hotel concierge fax the contract revisions for the corporate merger. He's so nice.*

- Have you violated attorney-client privilege?
- Did the fax get sent to the correct individual?
- Who else read the inbound fax while in the process of delivering it to your room?
- If I receive a fax in error, should I just fax it back?





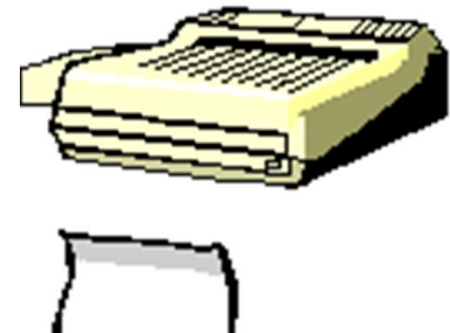


# Cell Phones, Laptops & PDAs

## *Hotel Fax Machines*

### *Solution:*

- Fax in your e-mail in-box
  - E-Fax
  - J-Fax
  - MSN-Fax





# Other Opportunities

## *Litigation and Discovery*

***Issue: I deleted the file from the computer – it's gone! No one will find out about the dirty pictures!***

- Recycle bin.
- Temporary files.
- Cache files.
- History files.
- Word processor back-up files.
- Word processor old versions of documents.
- Back-up tapes and disks.





# Other Opportunities

## *Litigation and Discovery*

### *Solution:*

- Don't create it in the first place
- Delete utilities don't delete from archival media
- Recipient still has a copy



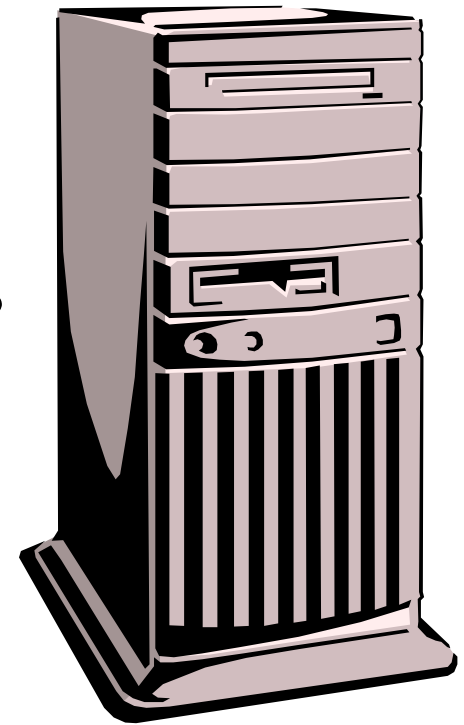


# Other Opportunities

## *Disposing of Old PC's*

*Issue: We just got new PCs - we donated the old ones to the local food bank!*

- Um . . . but what about all the confidential and sensitive client data on the hard drives?
- Again: Recycle bin - when is it really gone?
- What about old media like floppy disks and backup tapes?
- What about the software licenses?



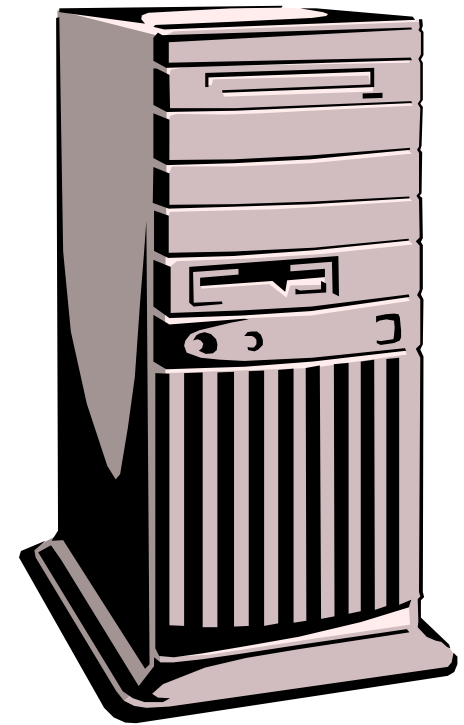


# Other Opportunities

## *Disposing of Old PC's*

### *Solution:*

- Reformat hard-drive
- Trash all old media and reformatting
- Use a “destructive” file erasure process with programs like BCWipe?
- If you can under your license, transfer the original install disks





# Where do you go for help?

*Now that you're serious*

- [phillylawyer.com/research/legal\\_ethics\\_research/legal\\_ethics\\_research.htm](http://phillylawyer.com/research/legal_ethics_research/legal_ethics_research.htm)
- [findlaw.com/01topics/14ethics/index.html](http://findlaw.com/01topics/14ethics/index.html)
- [lawyermarketing.com/artsethics.htm](http://lawyermarketing.com/artsethics.htm)
- [abanet.org/cpr.home.html](http://abanet.org/cpr.home.html)
- [legalethics.com](http://legalethics.com)
- [wisbar.org/ethop](http://wisbar.org/ethop)





# Questions





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