



Technology in the Law Office: Helping Smaller Firms Compete

Digital Strategies to Keep up with the Big Boys

An overview of the simple and cost effective ways to implement technology for more efficient use of time and resources and to make better presentations to the Court

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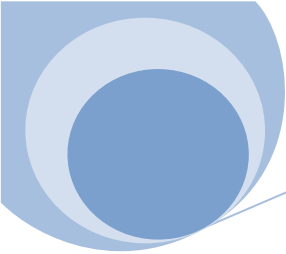


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The purpose of this article is to provide an overview of the simple and affordable ways to implement available technology into a law office and litigation practice. These ideas better allow attorneys, paralegals and support staff to serve clients, manage increasing loads of discovery, and make more effective courtroom presentations.

I. Technology & the Discovery Phase

A. Digital Discovery

Digital document production is most likely the easiest procedure for a law office to implement. Most large law firms have been handling digital document production for years, first by outsourcing and now in –house. Small firms have been the slowest and most resistant to this change. Unfortunately this only increases, rather than narrows, the litigation divide. Digital document production is one of the simplest ways to stay competitive in large litigation cases. Digital document production can be handled in two cumulative ways. First, parties can exchange digital (rather than paper) discovery. Second, a law firm can house discovery digitally (rather than paper) and collaborate upon the same through an external source using available software

Document production generally involves a generic and broad request for documents, the vast majority of which will ultimately have little to no value in the case. Compounding the problem, opposing counsel may actually overproduce records in an effort to bury damaging documents or materials. Attorneys, paralegals and staff are then left with the expense of all of the paper and the time and expense of reviewing the

same. For firms without extensive support staff, the process quickly becomes time consuming and expensive. Worse yet, the attorney may be forced into situations where the necessary review of discovery is unmanageable and, as a result, left undone.

Digital document production can solve the problem. Used most effectively, the digital production will occur on both incoming and outgoing discovery. A simple process for incoming discovery is as follows:

- 1) Discovery is received by law firm from client;
- 2) Law firm reviews materials to determine items to be produced;
- 3) Outside vendor (or internally) scans both the non-production and production items separately and returns the same to law firm with CDs containing digital images of each.
- 4) Opposing counsel is provided with a CD. In addition, the digital items (both those produced and not) are loaded onto the law firm's server and the CD is placed with the file.
- 5) The original documents are returned to the client.

On the intake side, a similar process can be put in place, with the documents being picked up from opposing counsel by the law firm or vendor, imaged and placed on a CD and the server, then returned to opposing counsel.

This simple process has accomplished much. In the first instance, the law firm has relieved itself of responsibility for the client's original documents as quickly as possible – which clients also appreciate. Secondly, the law firm has reduced the size of the file for storage purposes (whether as an active file or closed file). Thirdly, the

discovery portion of the file has now become entirely portable. By bringing a laptop and the CD, the law firm can access the CD from the courthouse at mediation or from home. With remote access to the server, the CD become unnecessary. The discovery can be reviewed by multiple people within an office, without toting the file from place to place. By using indexing and keyword search technology, the document review process can be made faster and more efficient. Finally, the discovery can be reproduced in a moment and for virtually nothing. If new counsel enters the case, if another party is added, if opposing counsel cannot find something, the law firm can either select one image from the discovery file and transmit it by email or can reburn an entire CD.

The production is less expensive for the law firm and the client. Prevailing rates for in-house copies are \$.20 – \$.25 per page, plus the hourly rate for the person standing at the copy machine. Copy machines copy at the rate of 18 – 50 pages per minute. Averaging at 34 pages per minute, a 1000 page document production would take ½ of an hour (\$45) and would cost \$200 - \$250.00. The documents, however, can be imaged, bates numbers (and even made word searchable for a small additional cost) for less than half of that fee by an outside vendor, with no upfront hardware, software, training or additional personnel costs incurred by the firm.

B. E-Discovery and Digital Media

The next frontier of civil litigation is the realm of “e-discovery” and digital media. At present, most small to medium sized law firms lack the resources (monetary or personnel) to devote significant time to e-discovery. At present, many law firms are engaging in an unspoken, but mutually agreed upon approach of “If you don’t ask, we

won't ask." For firms representing the "little guy" this approach may be severely damaging to the client's case.

Standard discovery requests include a request (in some form or fashion) for "all correspondence to or from _____ related to the [subject matter] of the instant case" or even the broad "all documents or records which evidence, reflect or relate to the [subject matter] of the instant case." However, these form requests are usually never written or drafted in such a manner as to include electronic discovery items like e-mails, text messages, and computer hard drives. In the current environment, omitting e-discovery can be fatal to the case. Most corporate correspondence is electronic, rather than printed in hard copy. Valuable data and information is often contained on hard drives which cannot be accessed without the use of e-discovery.

For a small law firm, the e-discovery process can be daunting. Once digital discovery requests are made, the opposing firm will likely counter with similar requests. The firm is then faced with the daunting task of paying for the necessary expertise to review the data from both parties. However, the process can be limited and the expense controlled.

First, the law firm should carefully tailor e-discovery requests to determine precisely what information is being sought and why. Avoid casting as wide of a net as one would cast in paper discovery. Identify key individuals (a/k/a "custodians") involved in the case and seek their hard drives and emails. Remember, an email is both sent and received. If you seek e-discovery from every employee (for example) you may receive the same piece of information dozens of times if the data isn't "de-duped."

Instead, use the key players as test probes. If something turns up, you can then find out where it leads.

Second, investigate the possibility of a mutual e-discovery manager. Rather than retaining two experts, the parties can share the expense of a single e-discovery specialist. Each party can produce digital items to the specialist who reproduces the same back to counsel.

Finally, consider the use of a special master to handle e-discovery, particularly if a fight is anticipated. Rather than engaging in lengthy and protracted discovery fights in front of a judge, the parties can submit disputes to a special master who can referee on a quicker basis and may even have greater expertise in the field. Although it might seem more expensive to pay a special master rather than use the “free” Judge assigned to the case, the special master can save the parties thousands of dollars in lost time and expense waiting on a judicial docket.

C. Public Records Inquiries

In the past decade, virtually every governmental agency at the State level and those at the County or Municipal level in mid to large size areas have gone online. The resulting benefit to law firms seeking to stay competitive in litigation is access to public records that in prior decades required thousands of dollars in man hours from a private investigator to uncover. In many cases, it was simply too expensive to check into the lives of the parties (including your own client), witnesses, jurors and even the lawyers and judges.

As these records have migrated online, various search engines can be utilized to discover hosts of information for use in case evaluation, discovery, mediation and trial. Without knowing any more than a last name, first name (even first initial) and State of residence, one can retrieve the following in two clicks of the mouse:

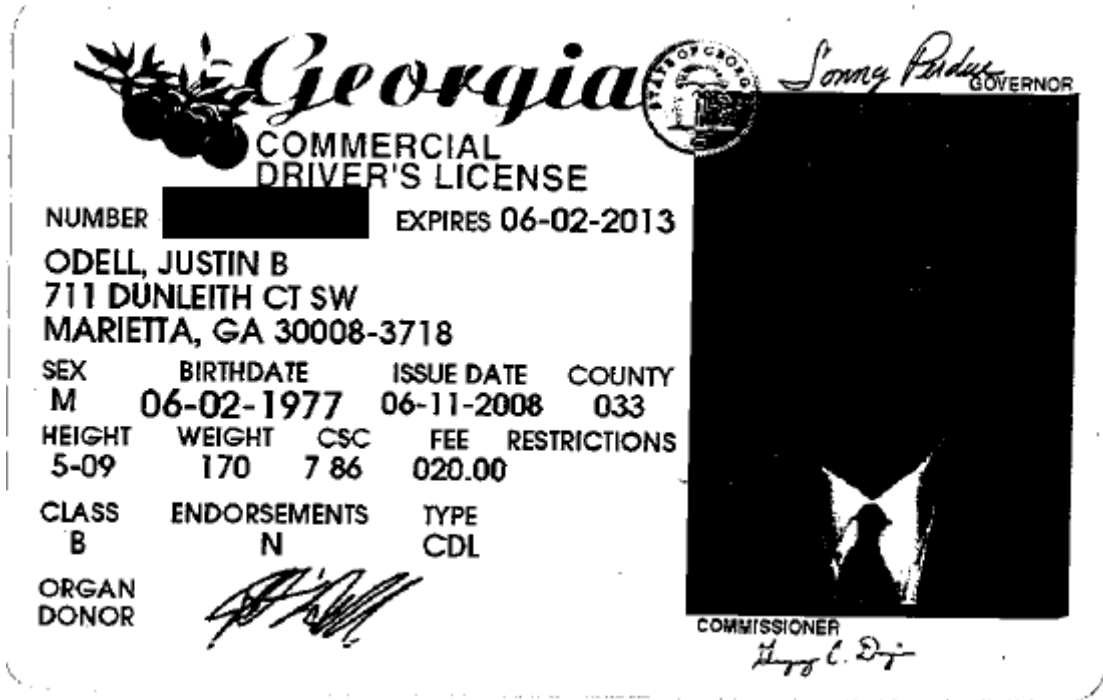
- 1) Business & Corporate records (County and Sec. of State);
- 2) Property Tax Records (Tax Commissioner & Assessor);
- 3) Property purchases and sales (Superior Court Clerk)
- 4) Liens, Judgments and Debts (Superior Court Clerk)
- 5) Prior cases & lawsuits (Clerks of Court)
- 6) Criminal History (Clerks of Court)
- 7) Credit Header;
- 8) Prior Addresses;
- 9) Vehicle ownership and registration;
- 10) Voting Registration; and
- 11) A “Google Earth” style view of the address & neighboring addresses.

This information can be rapidly translated into a myriad of discovery questions and requests, jury voir dire, case evaluation factors and more. The use and possession of this information equalizes the information playing field in evaluating cases all the way through trial. Small and medium sized law firms are better able to compete by uncovering salient public information about the trial participants without unnecessary devotion of time and expense.

E. Adobe Acrobat

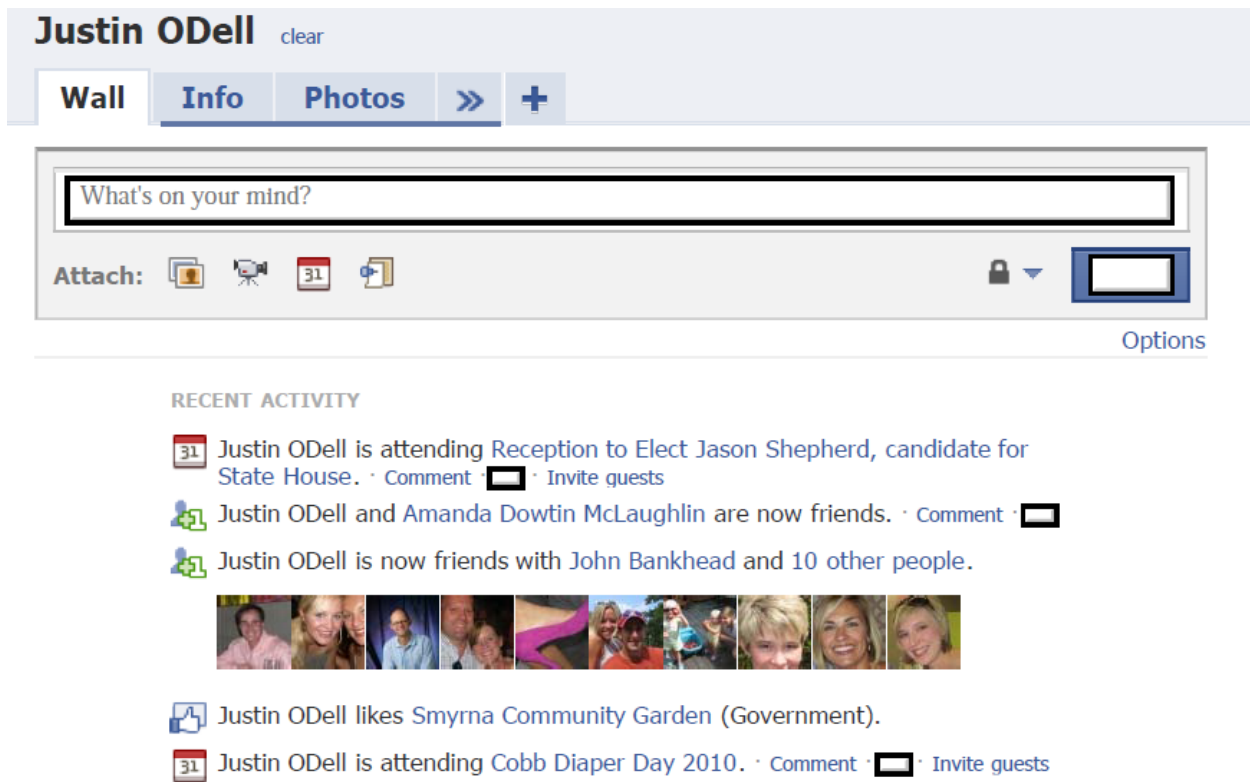
Adobe Acrobat is essential to the processes of most of the foregoing and the implementation tips discussed below. In most cases and for most uses, the “free” downloadable Adobe Reader will suffice. However, a small firm can maximize efficiency and outputs by upgrading to Adobe Acrobat Professional. The full version has more tricks and features than can be summarized in brief, however, “Redaction” and “Webcapture” are most noteworthy.

Most redaction can occur at the imaging phase through the outsourcing process. However, last minute discovery and overlooked items will always present an issue. The old way involved a sharpie marker and lots of trips through the photocopier. Adobe Acrobat makes it easier. Adobe Redaction can be used in manual or OCR format. Since the entire discovery production has now been imaged and stored digitally, the redaction process is much simpler. Using the OCR technology, Adobe Redaction will perform a search for names or numbers and automatically “black out” the desired information. Alternatively, documents can be paged manually and the user can use an online “sharpie marker” to black out text. In either event, the redacted images are then marked and selected and confirmed for redaction (Adobe asks if you are sure). Once confirmed, the documents are renamed, resaved as a new document and the information is permanently wiped.



Adobe “Webcapture” is an essential feature in the world of social media and online commerce. The first option is attached to your “Right Click” feature once you have Adobe Professional. No matter what you are doing or what program is open, you can right click on anything (a web page, word document, etc...) and choose to “Convert to a PDF”.

This is a great way to snag a single Facebook page:



Or, for more dramatic results, you can capture a whole website (subject to size restrictions). By inserting the URL into Webcapture, the software then goes to the internet and takes a digital picture of every page associated with that URL, including as many subfolders as the user directs. The web site is then converted into a PDF and preserved forever. This protects you against someone later modifying the site to take down something offensive or, better yet, damaging to their case.

II. Implementation of Technology to Get Results

Although savings of time and expense are prudent, the real advantage of technology is the effective use of technology to achieve results. Clients, Judges and Juries live in a digital world and have visual appetites. Presentations made on plain white paper no longer hold attention. Large firms made a living dazzling courtrooms with video, graphics and photography designed to grab attention. Technology allows most law firms the ability to make effective presentations without excessive expense.

A. Brief Writing

The average Superior Court Judge and/or law clerk reads (or is given to read) thousands of pages of briefs each year. If those pages are not memorable, they will be forgotten. The Judge and the law clerk have no time to wade through the exhibits or depositions to determine the validity of a citation.

A simple use of technology can avoid both problems. Many brief writers are used to seeing citations of cases, references to documents, or both presented either “in a lengthy and continuing quotation that runs on and on and on and on and on and on until the reader eventually just gives up.”

Alternatively, most folks become quite bored with the use of block quotations. In fact, most readers will simply allow their eye to move right across the quotation and on to the next paragraph, just as if the quotation never existed.

Instead, consider the following citations and examples:

The first comes in a case in which the central issue is the language of a contract:

Plaintiffs' claim is based on the provision of the Contract at paragraph 4, entitled

“Earnest Money.” This paragraph provides as follows:

4. Earnest Money. Within three (3) business days after the date of receipt by Purchaser of a Contract executed by all parties, Purchaser shall deposit with the Escrow Agent, Tom Cauthron, Cauthron and Nohr, 201 Cherokee Street, Marietta, GA 30060, the sum of fifty thousand and No/100 Dollars (\$50,000.00) hereinafter the "Earnest Money". All Earnest Money shall be applied towards the Purchase Price at the Closing. All Earnest Money shall be non-refundable; however, shall be refunded to Purchaser only upon the occurrence of one or more of the following events:

(a) The failure or refusal by Seller to close the sale contemplated by this Contract or any other default of Seller or any other reason granted to Purchaser not to close this transaction;
(b) The inability of Seller to convey good and marketable title as hereinafter defined;
(c) Purchaser's termination pursuant this Contract.

The second comes where a witness has made a key concession in a deposition:

When an executor sells items of the Estate to herself, “[i]t matters not how fair the contract may be; public policy will not uphold it.” Powell v. Thorsen, 253 Ga. 572, 322 S.E.2d 261 (1984), quoting Mayor of Macon v. Huff, 60 Ga. 221, 226 (1878). Defendants in their individual capacity then “purchased” their mother’s personal property that was being “sold”, as admitted in the deposition:

Q Did you-all purchase any of those items, you or Joy?

A Very few things, but, yes, we purchased a few things from that list.

(see Deposition, p. 362, lines 4-13).

The third comes where the Court of Appeals or Supreme Court has issued an opinion that addresses the dispute.

Georgia case law is direct in this regard. In Jarangin v. Harris, 138 Ga. App. 318 (1976), the Court of Appeals held:

371. '(T)he right of a citizen to hold office is the general rule, ineligibility the exception; and therefore a citizen may not be deprived of this right without proof of some disqualification specifically declared by law.' Patten v. Miller, 190 Ga. 123, 139, 8 S.E.2d 757, 769.

In each instance, the relevant language has been inserted digitally into the document using ADOBE PDF format. The technique eliminates any doubt as to the veracity of the citation, avoids causing the clerk to switch gears to look something up and creates a nice “set off” from the rest of the text so as to draw the eye, rather than bore it.

Going one step further, some jurisdictions will allow the litigants to present briefs on a CD wherein the PDF exhibits and citations can be [hyperlinked](#) within the brief so that the Judge or law clerk can simply click to visit the referenced document.

B. Depositions and Mediation

In addition to allowing more effective preparation for depositions and mediation in the way of research, simple technology can be deployed at deposition and mediation to advance the case. Rather than treating depositions as “discovery” and mediation as a “settlement conference”, prepare for the same as if preparing for trial. Think of

depositions and mediation as an opportunity to put on a show and demonstrate what trial might look like.

Consider the possibility of taking a deposition in a property case or car wreck case and having the witness evaluate the actual scene. By using “Google Earth” one can get such a view. During the deposition, the witness can be asked every necessary question to get the view into evidence. The witness can then be examined about the scene. If necessary, the scene can be printed and the witness can draw and mark on the printout. At mediation of an injury case, have the medical photos scanned and use a projector and screen during opening statement. The mediator (and the tortfeasor) are then forced to confront the injury in the same way the jury will likely experience it.

The overall objective should not be to merely accomplish the task, but to put on a highly effective, visual presentation. The opponent should be thinking that if the matter goes to trial, they will be facing a sophisticated and hi-tech presentation.

C. In the Courtroom (Hearings & Trial)

In the Courtroom technology makes the most dramatic impact. Since the discovery was done digitally, all of the trial exhibits have been digitized. Virtually every Court reporting service provides for an “e-transcript” in lieu of a paper copy. As a result, the lawyer preparing for Court has everything in electronic format. In order to make an effective presentation, it must be put to use.

Overhead photographs of the scene provide the simplest and easiest way to aid the Court or the jury in making a decision. In prior years, one either relied upon photographs taken from ground level or hired expensive aerial photographers to take

overhead shots. Google Earth now provides a free satellite image over virtually every location in the world. In any case in which the “scene” is going to be the subject of testimony (whether a wreck, a property dispute or even a commercial case) an overhead photograph is a must at trial.

Use of a projector for exhibits, photographs and testimony is also simple and cost effective way to make an effective trial presentation. Since all of the foregoing have been digitized, anything can be done at trial, without the need for advance preparation. All of the exhibits can be displayed to the witness, the Judge, the jury and the entire Courtroom. Advance preparation by the paralegal and trial team can ensure that the exhibits are projected seamlessly with the testimony and, even display multiple exhibits simultaneously if the facts and circumstances warrant. This is contrary to time ago wherein the lawyer paid thousands of dollars for foam-board mounted exhibits and deposition testimony which then had to be carefully stored, toted to and from the Courthouse often times to go unused.

Consider another simple example of impeachment by deposition. Paralegals and staff prepared examination and highlighted key statements by a witness or party in anticipation of trial. A trial board was created “blowing up” the deposition testimony for dramatic cross-examination. However, under the rules of evidence, if the witness testifies the same at trial as in the deposition, the deposition is never used and the trial board remains hidden. Quite often, the witness then elects to testify differently in some other area where a trial board had not been prepared. The attorney is left with the old fashioned method of confronting the witness with a copy of the deposition and asking

them to read it aloud. The witness will then invariably mumble, stutter, refuse or otherwise omit the desired testimony. By the time the Judge intervenes, the moment is lost and the jury is disinterested.

However, a well-prepared trial team can have the entire deposition electronically stored and up on the laptop. Should the witness “misremember” a detail, the paralegal can immediately jump to that portion of the deposition and project the same on the trial screen. By now, the witness no longer needs to read the deposition aloud, the jury has already done so.

Advanced courtroom systems (i.e. the State Court of Cherokee County and Fayette Superior Court) go one step further. These systems allow “touchscreen” use whereby a witness can draw, click, and point onto any image projected on the touchscreen. These systems are becoming more and more prevalent in newly constructed courthouses. A member of the trial team would be wise to inquire as to the availability of any technology in the Courtroom. More importantly, someone should pay the Courtroom a visit prior to trial and give everything a test drive.

III. Conclusion

The various areas where technology can be used to level the playing field of litigation could fill thousands of pages. The methods outlined above generally involve existing means of technology that can be obtained at little to no cost to the law firm and/or administered by outside vendors. Certainly, more sophisticated software and

devices exist. The topics selected herein represent a strong “first step” for attorneys and paralegals who wish to use technology more effectively in their cases.

