



## WHAT HAPPENS WHEN YOUR OPERATING SYSTEM OR OTHER KEY SOFTWARE BECOMES DEFUNCT?

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Ethical obligations for attorneys in the technology sphere are becoming increasingly complex. For attorneys at mid to large firms, there is a layer of technical support personnel who “have your back” when it comes to hitting this rapidly moving target. For solo and small firm lawyers, there is no such luck. Unless you have a good IT support company which works with law firms, understands your obligations and concerns, and routinely monitors and updates your technology, it falls on your shoulders.

You have obligations under Rule 1.1 (Competence), Rule 1.4 [Communications], Rule 1.6 [Confidentiality of Information], and Rules 5.2 and 5.3 [Supervision of Staff and Third Parties]. Rule 1.6 provides a bit of a safe harbor in Comment 25, which protects you provided you have made “reasonable efforts to prevent access or disclosure.” On top of that you may be subject to HIPAA if you maintain and/or transmit PHI – protected health information. You may be subject to the PA Breach of Personal Information Notification Act if you have PII – personal identified information, such as social security number, date of birth etc.

Our problem, of course, is that both the magnitude of risks and what is deemed reasonable effort, are constantly changing. As opinions are issued and court cases conclude, the landscape will continue to evolve. That is why I refer to it as shooting a moving target.

Solo and small firm lawyers continue to delude themselves that they are the least desirable targets, when in fact that is not the case at all. The most recent ABA Legal Technology Survey showed that 10% of solo firms and 27% of small firms between 2 – 9 attorneys have been attacked.

Are you surprised that 48% of law firms had their data security practices audited by at least one corporate client in the past year? I strongly suspect this intrusive inspection by clients will increase as their security concerns increase. Will you pass muster?

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Page 2 of 3

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The newest risk now on the landscape is class action malpractice claims for using outdated, unpatched software. The first such case was filed in 2016 against a Chicago law firm. At last count there are currently 15 class action lawsuits for malpractice due to poor computer security.

Remember, all software has a lifecycle. It gets developed, released, updated and eventually abandoned completely for a newer version, or just abandoned, period. There is nothing to stop you from continuing to use outdated software. However, the risk of security vulnerability increases because there are no further updates or bug fixes. Whether you use custom software or off-the-shelf, you have a responsibility to keep it current or replace it.

Microsoft Office Pro 2016 support will expire 10/13/2020. The same holds true for operating systems Windows 7 and 7 Professional. That's not far away. Have you developed a migration plan yet? And what about any other applications you're using at your office? Here are your considerations:

1. Budgeting for the expense of software and installation assistance. You will need to determine whether your current hardware can handle the new software or needs to be upgraded beforehand. That will increase your budget dramatically.
2. Budgeting for training. Trust me, nothing will feel "natural" on the new version. Training will be needed. And in some cases, some customizations. To put it into perspective, I am struggling with a new operating system. My productivity has dipped and my nerves are frayed. I am considered a "power user" by most of your standards. What does that mean to you about your upcoming upgrade and need for professional training?
3. Making sure all autocorrects, autotexts, QuickParts, macros, email signatures, templates etc are safely saved and recreated in the new version of software.
4. Picking the best time to do it. Don't wait until the month before expiration and expect anyone in the IT world, including your normal support organization if you have one, to jump right on it. And don't wait until your workload is peaking. If you are slow in summer, for example, that's the time to do it.



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Page 3 of 3

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This is not a comprehensive list. But at least it will alert you that this isn't a walk in the park. On the other hand, you can continue to use your outdated versions of software. That is, until you are audited by a client or someone gets a document from you and realizes it was produced on outdated software.

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