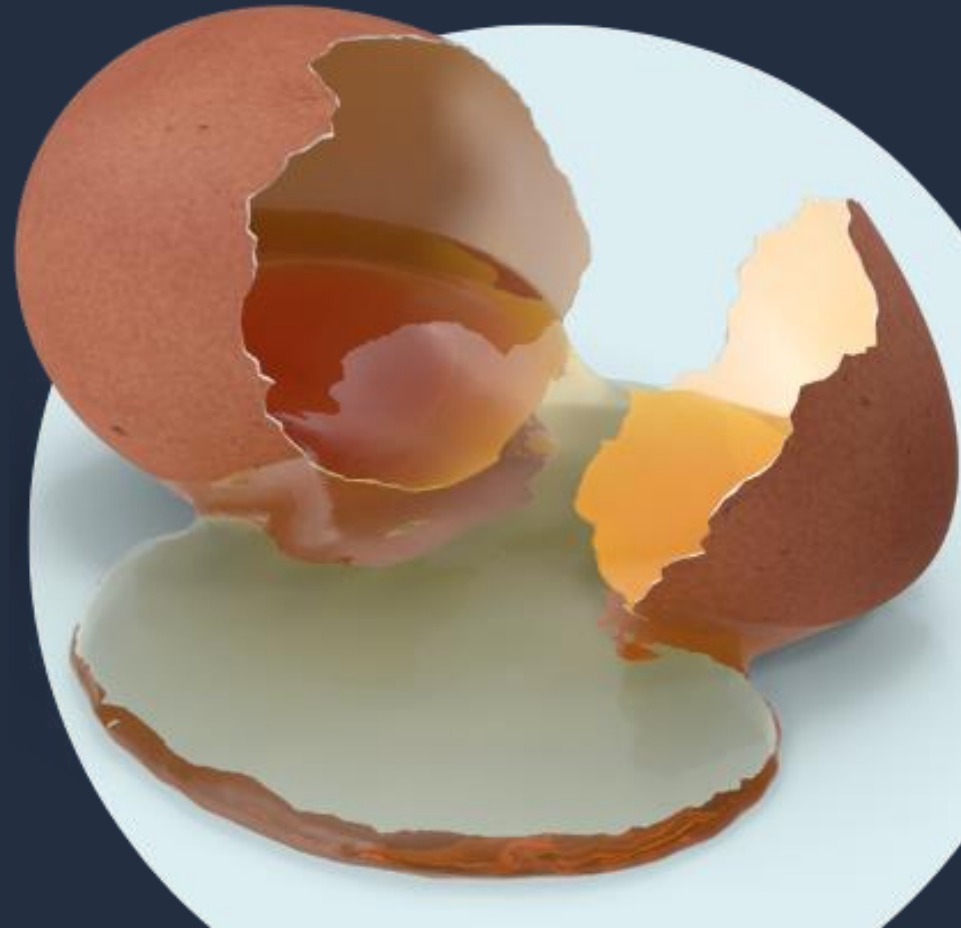


A Guide to Law Firm Succession Planning: From Emergency Plans to Exit Strategies



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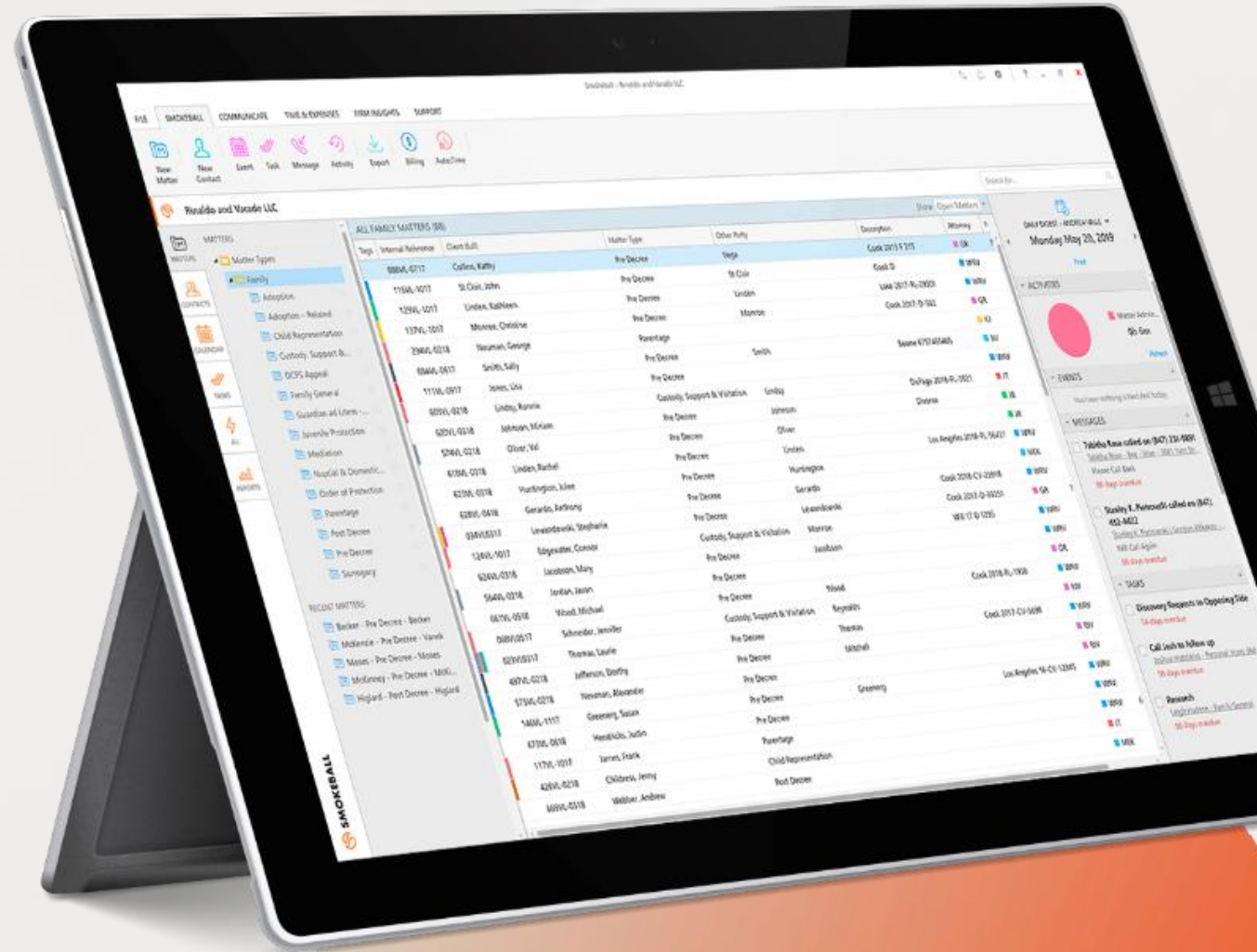
- JD, University of Arkansas School of Law
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- Practicing Family Law Attorney
- Prior to Smokeball, worked for a high-asset family law firm in Houston





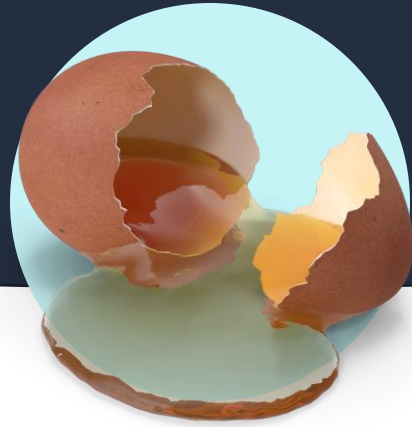
The #1 Legal Case Management Software for Law Firms

- Automatic time tracking - bill more accurately with a fraction of the effort
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AGENDA

1. **Duty to Report?**
2. **File Management and Destruction
Policies for Transitions**
3. **Planned Transitions and Exits**
4. **Unexpected Cessation of Practice**



Part 1

Duty to Report?

Impaired Lawyers – FL

Rule 4–8.3: Reporting Professional Misconduct:

(a) A lawyer who **knows** that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects **must** inform the appropriate professional authority.



Part 2

File Management and Destruction Policies for Transitions

A Journey of File Retention and Destruction

So, what happens to all that paper?

- No custodian designated
- Who can actually access the files?
- What about attorney-client privilege?



A Journey of File Retention and Destruction

What can I do to start managing my files?

- Destroy your files in according with Florida Bar rules
 - How long? **It depends**. Trust accounting records require a six-year retention. Contingent fee contracts and closing statements regarding the same are also six years. (See Rule 5-1.2(f) and 4-1.5(f)(5).
 - Best practice? Call your malpractice carrier and ask for how long you need to retain your files



A Journey of File Retention and Destruction

What Should I Do When a Matter is Concluded?

- Go through the entire file and see what needs to be returned to the client (i.e., recorded copies of deeds)
- Notify the client that the file is being closed, and for how long the firm will retain the file
- Offer to have the client come and pick up copies of their files
 - CYA and have the client sign for their copy when they come and pick it up; make sure to include specifics if sensitive docs
- Protect unique client “property”
 - Arrangements will need to be made for the client to pick up original deeds, wills, prenups, etc.
 - The longer you wait, the harder it is to do



Pertinent Duties for Client Files

Client-Lawyer Relationship

FL Rule 4-1.3: Diligence

“A lawyer shall act with **reasonable diligence** and **promptness** in representing a client.”

Comment:

“Even when the client’s interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer.”



Pertinent Duties for Client Files



Client-Lawyer Relationship

FL Rule 4-1.4: Communications

“A lawyer shall:

...

(3) Keep the client **reasonably informed** about the status of the matter;

(4) **Promptly** comply with reasonable requests for information”



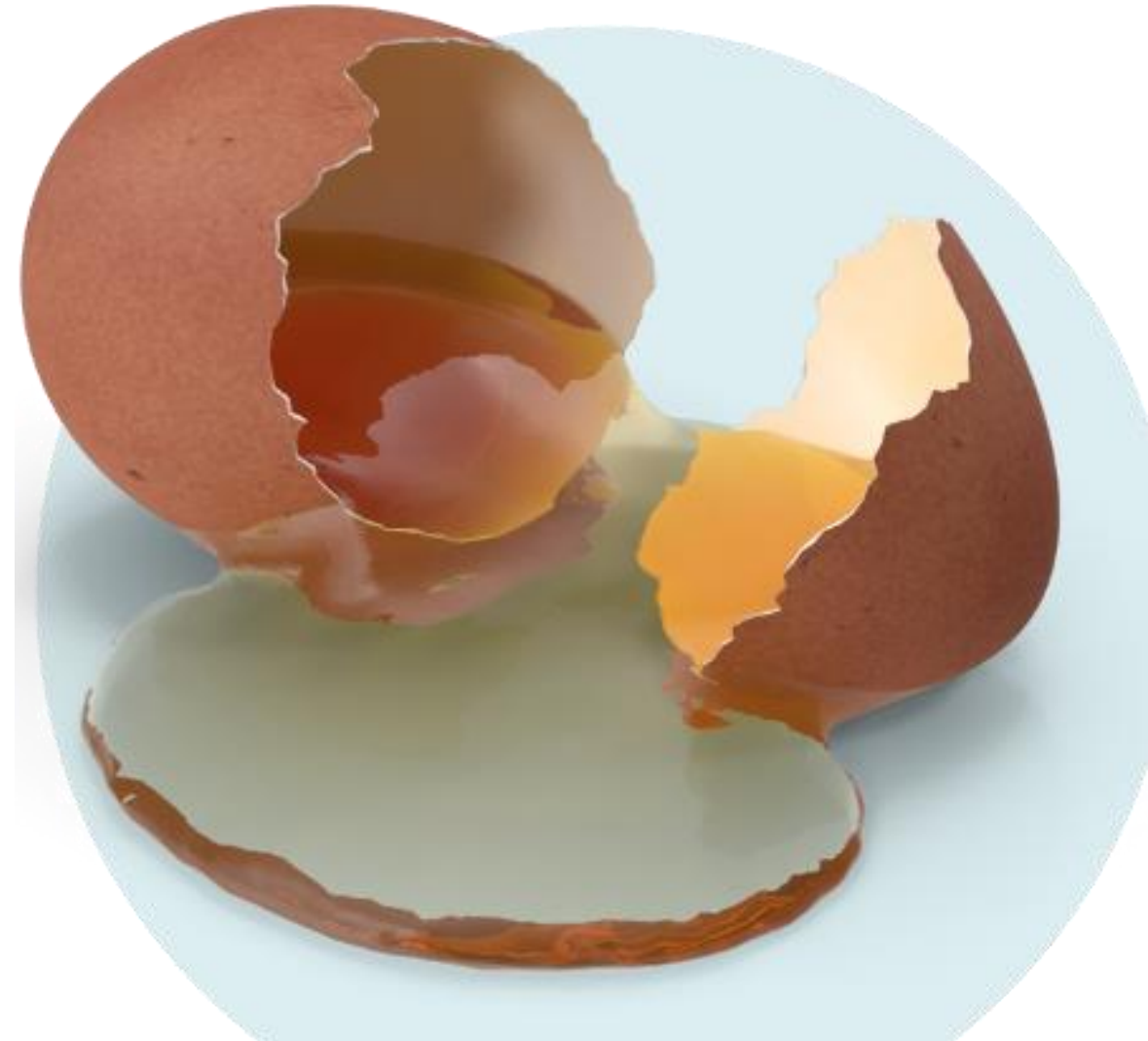
Pertinent Duties for Client Files

(Florida Rules)

Rule 4-1.6 Confidentiality of Information

(a) A lawyer must not reveal information relating to a client's representation except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

Remember that this survives the termination of the attorney-client relationship!



Destroying Files



Do NOT destroy a file before:

- All ongoing proceedings or reasonably expected claims are resolved (also consider applicable SoL periods);
- Any period during which other laws, regulations, or tribunals require it to be retained; and
- You malpractice SoL is up against the represented party!
 - Remember the **Florida** SoL for filing a legal malpractice case is generally two years from when the client knew or should have known that malpractice had been committed.
 - Again, call your malpractice carrier with questions!



The Four C's of Client Management*

- **Compliant Policies**
 - Develop a reasonably compliant file retention and destruction policy and implement it consistently
 - Put this in your fee agreement
- **Consent**
 - Use engagement letters and termination letters for every client and include advance file destruction information
 - This is the easiest time to get the client's consent!
- **Careful Review**
 - Always review files at termination (or before destruction) and automatically return all originals and client property. Also return the file, upon request
 - Determine proper destruction dates and advise client that retained files will be destroyed per the policy
- **Communicate**
 - Notify and inform the client if you can find them, about destruction of their files. Make reasonable efforts to locate client whom you cannot find





Part 3

Planned Transitions and Exits

Selling or Transitioning Your Practice

Traditional Methods of Transferring Client Matters

1. Hire a younger lawyer into the firm and transfer client matters, over time and with client consent, then arrange departure compensation for the senior lawyer at the proper time.
2. Join or merge with another firm and introduce clients to the new firm attorneys and arrange compensation according to the value of the work or “book of business” brought to the firm, and arrange origination and departure compensation accordingly.
3. Engage outside co-counsel, with client consent, and enter into a permissible fee sharing arrangement based on work performed or shared.
 - a. No confidentiality or conflict issues. Solves a lot of the problems with sale of the practice.



Florida Rule 4-1.17: Sale of Law Practice

There used to be a myth promulgated some time ago that attorneys couldn't sell their firms. This has been disproved by essentially every state bar association.

Rule 4-1.17 essentially provides a roadmap for what you need to do to stay compliant with the bar as you navigate the sale of your firm, including providing timeframes for written notices to clients, etc. Think of it like bare minimum requirements.

RULE 4-1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, provided that:

(a) Sale of Practice or Area of Practice as an Entirety. The entire practice, or the entire area of practice, is sold to 1 or more lawyers or law firms authorized to practice law in Florida.

(b) Notice to Clients. Written notice is served by certified mail, return receipt requested, on each of the seller's clients of:

- (1) the proposed sale;
- (2) the client's right to retain other counsel; and

(1) with respect to clients of the seller who were served with written notice of the proposed sale, the 30-day period referred to in subdivision (b)(3) has expired or all these clients have consented to the substitution of counsel or termination of representation; and

(2) court orders have been entered authorizing substitution of counsel for all clients who could not be served with written notice of the proposed sale and whose representations involve pending litigation; provided, in the event the court fails to grant a substitution of counsel in a matter involving pending litigation, that matter may not be included in the sale and the sale otherwise will be unaffected. Further, the matters not involving pending litigation of any client who cannot be served with written notice of the proposed sale may not be included in the sale and the sale otherwise will be unaffected.

(f) Existing Fee Contracts Controlling. The purchaser must honor the fee agreements that were entered into between the seller and the seller's clients. The fees charged clients may not be increased by reason of the sale.

Valuing Your Practice

Tips & Notes

1. It's probably not worth as much as you think – consider how you would value it in a divorce; is it predominantly personal good will? Would the clients still be there after you leave? Would your name continue to be a rainmaker for the firm? Do you have clients that will stay on for years?
2. Get a business valuation, keep immaculate records of your trust and operating accounts, and referral records
3. Know the amounts and subscription periods of all leases and/or rentals (think office space, printers, etc.)





Part 4

Unexpected Cessation of Practice

Disasters for Law Firms

- Natural disasters (hurricanes, floods, etc.)
- Manmade disasters (fires, industrial incidents, etc.)
- Health issues



The Ultimate Goal

Make sure that clients services will not be interrupted, that clients will not see any disruptions due to alternative work arrangements, and that client information will be safeguarded and accessible through the disaster



Health Issues

“A friend is currently experiencing a medical emergency (we think possibly a stroke). She does not have anyone designated to take over her firm. She is incapacitated and not able to designate anyone now or in the near future. I am helping out her husband, who is her medical PoA, but not an attorney. What should I be doing to help safeguard her firm and her clients?”



FL – Designate an Inventory Attorney:

Under Rule 1-3.8(d), attorneys in Florida **MUST** designate an inventory attorney:

<https://www.floridabar.org/member/inv-atty/>

FORM (fill in and mail to)
The Florida Bar
Department of Lawyer Regulation
651 East Jefferson Street
Tallahassee, Florida 32399-2300

DESIGNATION OF INVENTORY ATTORNEY

I hereby designate:

(print record Bar name of designated inventory attorney)

(print The Florida Bar number)

who has indicated a current willingness to serve as my inventory attorney should the need for protection of my clients' legal rights arise.

Dated this _____ day of _____, 20__

(signature)

(typed or printed name as recorded in Bar records)

_____ Florida Bar Number

Designating an Inventory Administrator

An inventory attorney is NOT required to represent your clients!

An inventory attorney is one who will be able to contact your clients, encourage them to obtain legal counsel, and see that their client files are properly returned.

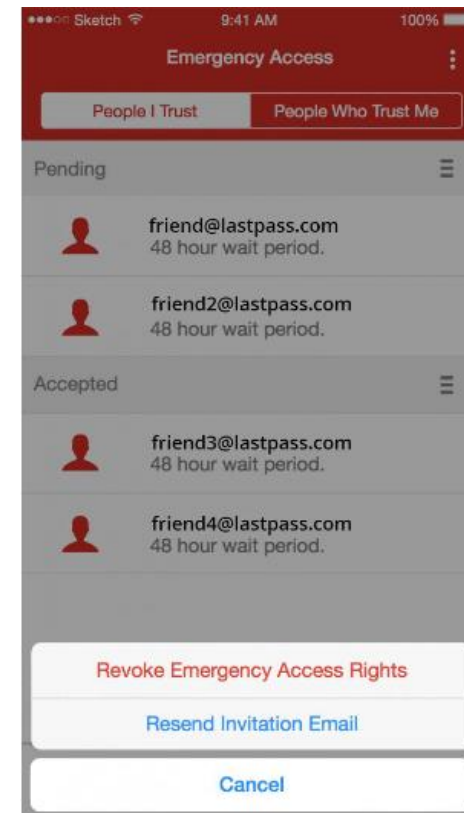
What should I do?

- Formally designate an inventory attorney (as Florida requires)
- Designate that attorney on your technology, if applicable (i.e., password management systems)



Designating Emergency Contacts in Password Managers

- LastPass allows you to designate “People I Trust” under the Emergency Access icon. Be advised they will need to make a LastPass account (LastPass will send them an invite).
- Dashlane took away the emergency contact feature, so it is a bit more cumbersome to designate someone, but you should still do it (<https://support.dashlane.com/hc/en-us/articles/4407179219986-Share-your-data-with-a-trusted-person>)



The Importance of Integrated Systems

Choose your software wisely.

If the intention is to eventually sell your practice, have that consideration in the back of your mind as you navigate legal technology purchases.

If you get into an accident and someone needs to cover for you, can they easily locate and work your active files?

Ask: Can someone just pick up immediately from where I left off and run my firm?

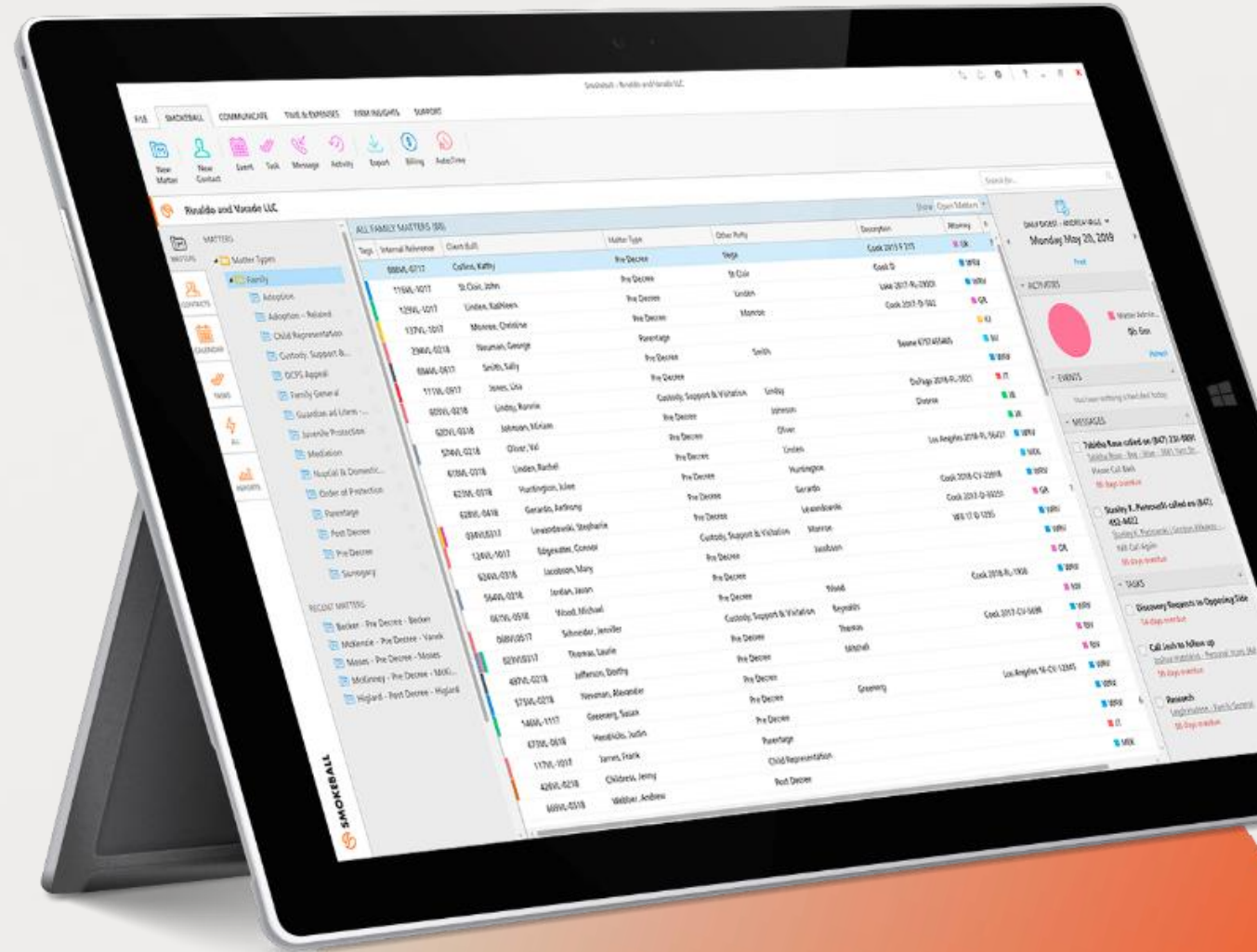


Utilize the services that your bar offers



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If **yes**, one of our law firm specialists will follow up.



**YES, I'D
LOVE TO**



**NO, NOT
AT THIS TIME**



**ALREADY WITH
SMOKEBALL**

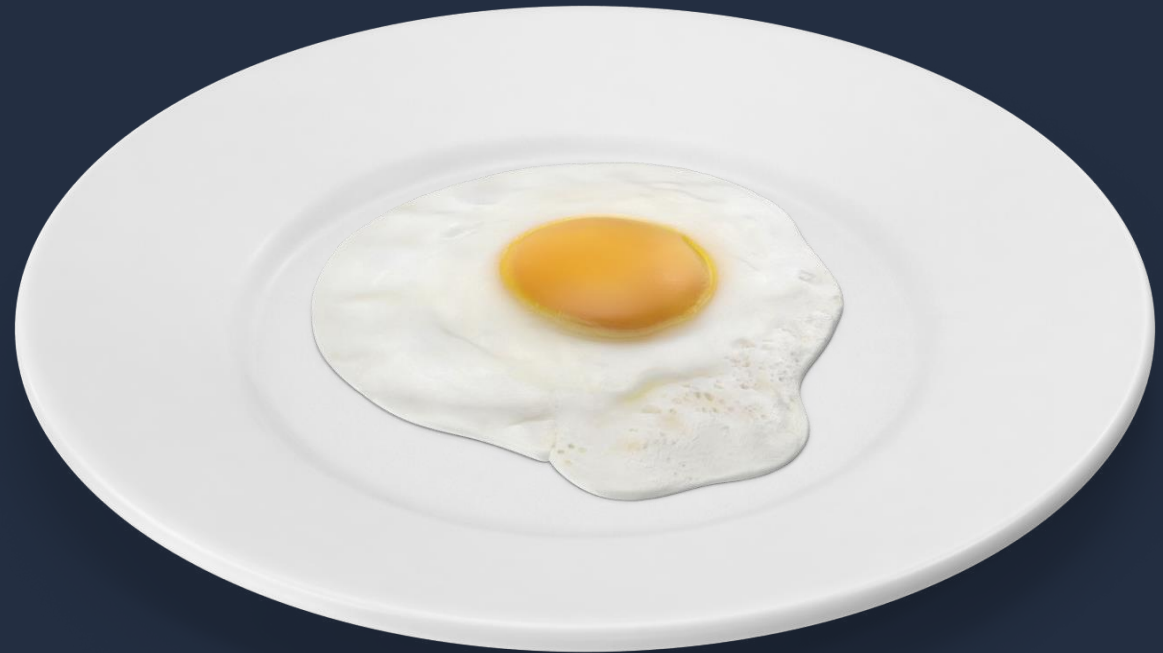


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<https://www.surveymonkey.com/r/KTRS99P>

Questions?



Florida Bar CLE Information

CLE Credits:

- General – 1.0 hour
- Ethics – 1.0 hour

Additional Information:

The course number for today's webinar is **7555**. This webinar has been approved by The Florida Bar Continuing Legal Education Department for 1.0 hour of General CLE credit, including 1.0 hour of Ethics CLE credit. Please use the course number to self-report in the member portal





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Thanks for joining!

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