Administering the Modern Law Office: How You Help Create Success

Association of Legal Administrators – July 2019
Presenter: **Claude Ducloux, Attorney at Law**
Austin, Texas

LawPay®
AN AFFINIPAY SOLUTION

Claude E. Ducloux

- 40+ year seasoned attorney
- Board Certified in Civil Trial Law and Civil Appellate Law – Texas Board of Legal Specialization
- Former President, Austin Bar Assoc.
- Received Gene Cavin Award for Lifetime Achievement in Teaching Continuing Education

What we will cover

1. **Client relations**
2. **Documenting representation**
3. **Running the office**
4. **Cyber security**

LawPay
AN AFFINIPAY SOLUTION

The top five law office problems

1. Communication: keeping in touch and responding
2. Neglect: usually results from #1
3. Mishandling the attorney-client relationship:
   - Proper contracts, disclosures, and conflicts
   - Whose file is it?
4. Attorney fees: disputes and overcharging
5. Cyber security

Part 1:
Communicate From Day One

LawPay
AN AFFINIPAY SOLUTION

Part 1

The potential client

You can’t succeed with bad clients

LawPay
AN AFFINIPAY SOLUTION

Intake:
Firm’s initial chance to bond and assess the client history

- Listen respectfully and intensely–pay full attention
- Do not allow any interruptions
- Check EARLY for conflicts
- Ask good questions
- Ask client to repeat key facts–keep good notes

LawPay
AN AFFINIPAY SOLUTION

Interview for success

Good communication starts at the first interview:

What is the goal of any client interview? Both the law firm and the client should have **reasonable expectations.**

- ✓ What firm can do
- ✓ What options exist
- ✓ Basis of firm’s fee

Interview for success

Do not overlook these important “housekeeping items”

Determine early:

- Do I have any conflicts?
- Are there any previous lawyers?
- What are the client’s goals?
- What are the client’s motivations?

LAWPAY
AN AFFINIPAY SOLUTION

Interview for success

Two critical questions to make sure you ask:

- What do you think we can do for you and is it realistic?
- What is the opposing party saying about you?

Then discuss what they can expect in accomplishing their goals.

Timeline

Cost

Alternatives

LAWPAY
AN AFFINIPAY SOLUTION

The multi-party matter

If client suggests multiple-client representation:

- Identify all entities involved
- Make sure client knows who (which entity) you will represent, and how that affects communication
- If a client is a “waivable” conflict, get it in writing

LawPay
AN AFFINIPAY SOLUTION

Before taking any matter, the firm must thoroughly consider:

- Does the firm have the necessary skills?
- Does the firm have the desire?
- Does the firm have the technology?
- Is your "little voice" warning you about the client's sanity/ability to pay?

LAWPAY
AN AFFINIPAY SOLUTION

Defining good follow-up, proactive communication

- Reply to client, court, or opposing counsel as soon as possible
- Send newsy updates even when nothing has happened
- Do your share of work
- Don’t withhold bad news or try to sugarcoat it
- Keep after someone who is not communicating with you (best protection from grievances)

LAWPAY
AN AFFINIPAY SOLUTION

Part 2:
Documenting Your Representation

LAWPAY®
AN AFFINIPAY SOLUTION

Documenting your representation

Always have a written contract, especially for **new** clients!

With old clients, at least communicate by email what you'll be doing *at their request*.

LAWPAY
AN AFFINIPAY SOLUTION

Who is paying me?

- ✓ How does this client plan to pay the firm?
- ✓ Does this client have the money?
- ✓ Don’t get started without a payment plan.
- ✓ Make it easy for this client to pay.

LawPay®
AN AFFINIPAY SOLUTION

Controlling the narrative

Protect yourself by…

always responding when the client communicates incorrect information or if they have misinterpreted what you or the attorney have said.

Fee agreement goal

Anytime you draft a fee agreement or send a bill, envision a court or fee dispute committee reviewing your contract and your bills:

- ✓ Are the firm's contracts clear?
- ✓ Are the bills comprehensible and reasonable?
- ✓ Don't use dumb billing entries!

LAWPAY®
AN AFFINIPAY SOLUTION

Documenting the fee agreement

Other issues include:

- How the client will reimburse expenses
- The client’s rights
- Privacy policy—most states have, or soon will have, a requirement for such policies
- Termination/withdrawal by firm
- Venue for disputes

The fee dispute

Big picture: no practicing lawyer or firm will escape fee disputes, but you can minimize them.

Law firm often shares fault by:

- Ignoring warning signs on intake
- Spending too much at the outset
- Improperly budgeting the matter
- Outspending projections without communicating why to the client

LAWPAY
AN AFFINIPAY SOLUTION

The truth about clients

No law firm with a vibrant practice will ever escape an occasional client who runs out of money.

Good client:

Will do their best to work something out with the firm.

Bad client:

Will make up any excuse, accusation, and complaint to avoid paying the firm.

Should the firm sue the client?

Never sue without honestly answering these questions:

1. Would we be embarrassed to have our fees reviewed?
2. What is the timing of the controversy, i.e., how far are we through the case?
3. **Most important:** Is it likely that this client will *ever* pay the firm, even with a judgement?

LawPay®
AN AFFINIPAY SOLUTION

Should I sue?

Short answer: probably not!

- Never sue unless it is an "existential threat" to your firm (i.e., How badly do you need the money?)
- If you decide to sue, remember that counterclaims are usually compulsory.
- **Preferred option:** referral to ADR Fee Dispute Committee

LawPay
AN AFFINIPAY SOLUTION

More reasons not to sue

1. You will make more money with new business
2. Overcharging a client breaches fiduciary duty
3. You risk disgorgement of some or all of your fee
   Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999)
4. Even if you win, you probably still won't get paid

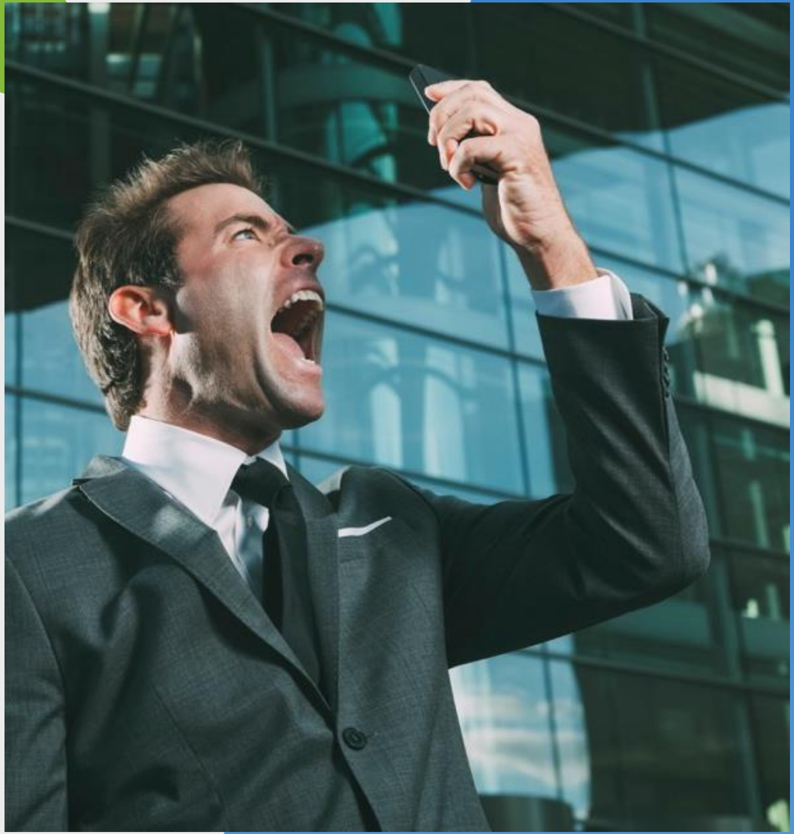
LAWPAY
AN AFFINIPAY SOLUTION

Difficult clients

Be the adult in the room!

Just because your client is unreasonably emotional does not give you the right to be the same way:

- Never allow a letter to go out that you wouldn't want seen in a presentation
- Never threaten, even passively
- Take a breath when you want to respond emotionally



LawPay
AN AFFINIPAY SOLUTION

Handling billing complaints

Best lesson:

Because we are fiduciaries, there is always a huge risk for suing for fees.

Make sure your withdrawal is ethical, regardless of what your fee agreement says!

LAWPAY®
AN AFFINIPAY SOLUTION

10 biggest mistakes

1 | Not establishing **reasonable expectations** with the client from the very beginning.

2 | Not resisting the client's invitation to "guess" or predict outcomes or costs without sufficient facts.

3 | Not keeping the client informed regularly, truthfully, and aggressively to avoid mistakes and negative inferences.

10 biggest mistakes

4 Failing to respond to client contact which changes the narrative, i.e., expression of client's mistaken interpretation of your communication, facts, or options.

5 Stupid billing—not using correct, intelligent descriptions in billing, thus raising suspicions of overbilling.

6 Writing a letter or email that you would hate to have seen by a grievance committee.

LAWPAY
AN AFFINIPAY SOLUTION

10 biggest mistakes

7 Telling a lie, or treating anyone involved in the matter with contempt or disrespect.

8 Making a threat, even passively.

9 Leading an opposing party to believe that you are neutral or “on their side.”

10 Sending a communication to anyone that will burn a bridge.

Part 3:
Running the Law Office

LawPay
AN AFFINIPAY SOLUTION

Financial control

1. How often does lawyer/administrator review statements and checks?
2. Who is allowed access to the checking accounts?
3. No secret: embezzlement in firms is a problem.

LawPay®
AN AFFINIPAY SOLUTION

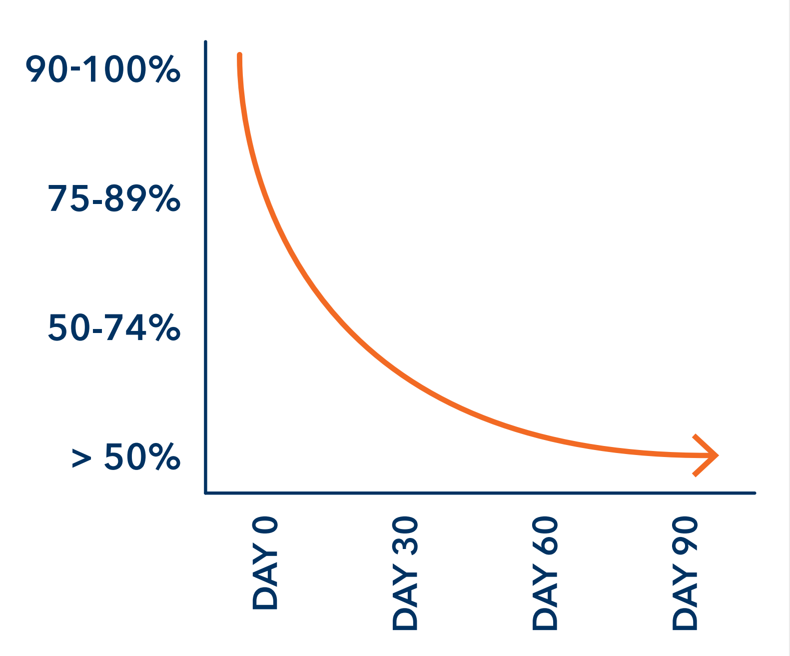
Payment systems

- How does the firm bill? How often?
- What system? Who reviews bills before leaving?
- Do your bills include “stupid stuff?”
- How difficult does the firm make it to get paid?
- Billing and collecting are, indeed, the lifeblood of the firm.

Billing and collecting

The “lifeblood” of your practice per *The Foonberg Curve*

- Record time diligently
- Send bills out on time
- Give clients payment options
- Incentivize them to pay
- Follow up on unpaid items



Billing and collecting

Strive for 90%+ collection rate

Always record your time daily. That means **every day**!
You'll forget the very next day what you did.

TIP 1: Check outgoing email

TIP 2: Don't use shorthand

TIP 3: Never reveal confidences

LAWPAY
AN AFFINIPAY SOLUTION

Psychology of billing

Throw in entries of activity at no charge

BAD BILLING HABITS:

1. Making the stapler a profit center (charging for binding, office supplies)
2. Charging a surcharge for use of credit cards
3. Charging excessively for “legal research” or using bland descriptions like “file review” or “file update”
4. Charging too much for copies/faxes

LAWPAY
AN AFFINIPAY SOLUTION

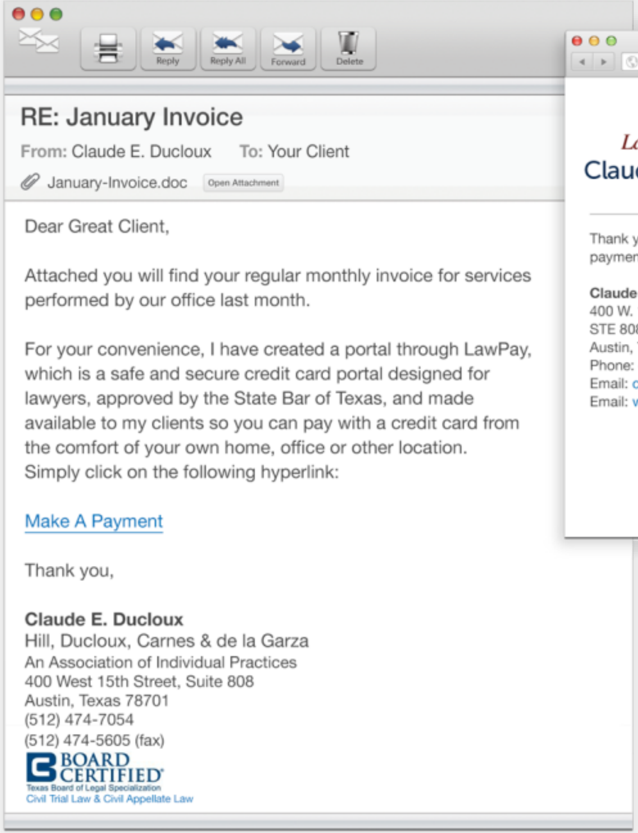
Psychology of billing

Billing habits that work: the path to success

1. Timely billing: it is a “mortal sin” not to get bills out on a set day each month
2. Remember the client satisfaction curve!
   The client satisfaction curve declines steeply after 30 days
3. Always give clients the option of emailing them their bills
   Most younger clients rarely use checks, they prefer debit/credit cards
4. Use a payment link in your email, on invoices, and attach to your website

LAWPAY
AN AFFINIPAY SOLUTION

Modern payment tools



Reply
Reply All
Forward
Delete

RE: January Invoice

From: Claude E. Ducloux   To: Your Client

January-Invoice.doc Open Attachment

Dear Great Client,

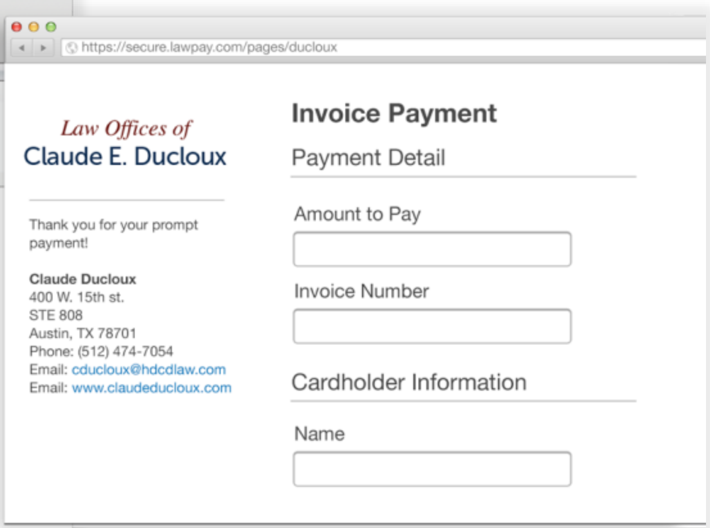
Attached you will find your regular monthly invoice for services performed by our office last month.

For your convenience, I have created a portal through LawPay, which is a safe and secure credit card portal designed for lawyers, approved by the State Bar of Texas, and made available to my clients so you can pay with a credit card from the comfort of your own home, office or other location.
Simply click on the following hyperlink:

Make A Payment

Thank you,

Claude E. Ducloux
Hill, Ducloux, Carnes & de la Garza
An Association of Individual Practices
400 West 15th Street, Suite 808
Austin, Texas 78701
(512) 474-7054
(512) 474-5605 (fax)
BOARD CERTIFIED
Texas Board of Legal Specialization
Civil Trial Law & Civil Appellate Law



https://secure.lawpay.com/pages/ducloux

Law Offices of
Claude E. Ducloux

Thank you for your prompt payment!

Claude Ducloux
400 W. 15th st.
STE 808
Austin, TX 78701
Phone: (512) 474-7054
Email: cducloux@hdcdlaw.com
Email: www.claudeducloux.com

Invoice Payment

Payment Detail

Amount to Pay

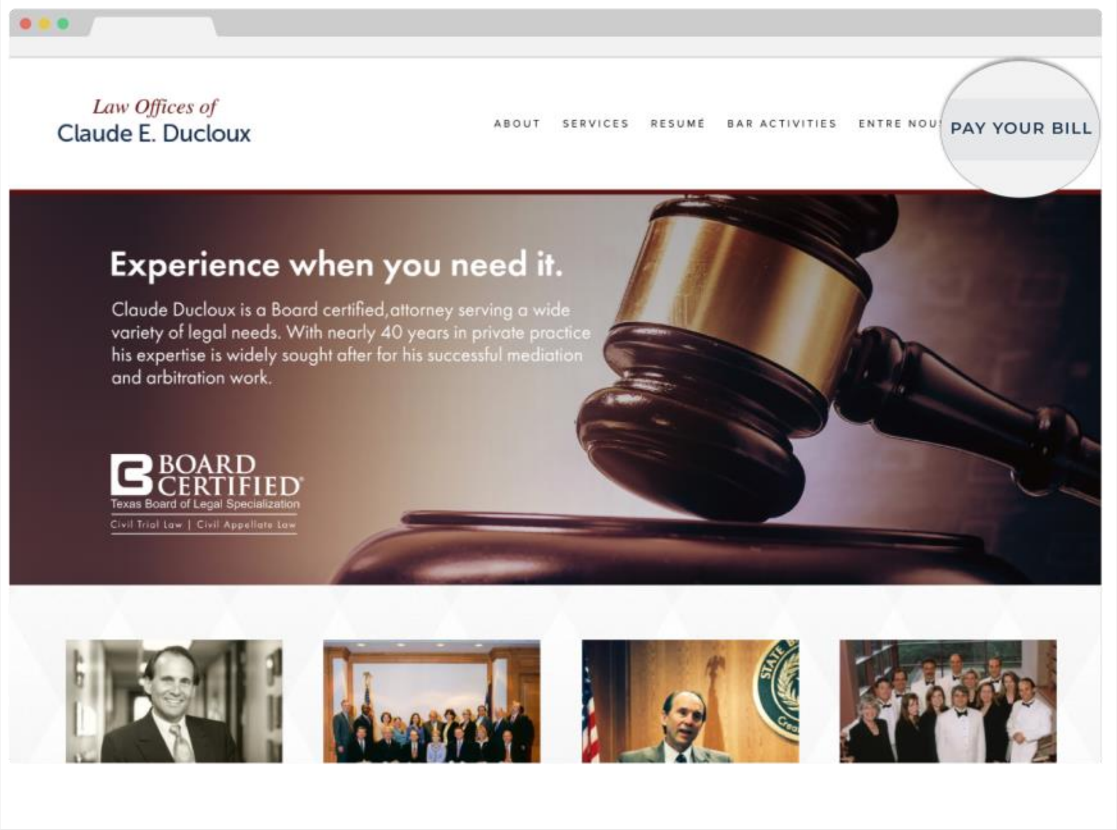
Invoice Number

Cardholder Information

Name

LAWPAY®
AN AFFINIPAY SOLUTION

Modern payment tools



Part 4:
Cyber Security in the Law Office

Malware and hacking threats

- CryptoWall ransomware is estimated to have cost users over $325 million in calendar year 2015
- Spear phishing attacks–targeted attacks used to acquire confidential information or install malware
- String of law firms breached in 2015-2016 to obtain data on mergers and acquisitions and expose client information
- Now, more than ever, you need to take steps to protect your firm and your firm's clients

LAWPAY®
AN AFFINIPAY SOLUTION

What are other types of security threats?

In-house mistakes:

- Losing or disclosing passwords, losing laptops, iPhones, etc.

In-house mischief:

- The “insider threat” is the most significant risk that companies face. Disgruntled employee alters or steals company data: 1 in 5 attacks all across the country.
- Insider threat is difficult to predict and prevent due to ease of copying files to a thumb drive, or emailing docs to a personal email account.

LAWPAY
AN AFFINIPAY SOLUTION

Cyber-asset inventory

Document the cyber-assets in the firm

- Use our template to get started
- Necessary in the event of a breach

Covers your:

- Networks
- Computers and hardware
- Software and data
- Users and accounts

IT Asset Inventory

Last Updated: 6/15/2016

Name	Make	Model	Owner	Users
Attorney Laptop	Lenovo	T430	Chris	Chris
Attorney Smart Phone	iPhone	6S	Chris	Chris
Assistant Computer	Lenovo	T430	Ericka	Ericka
Printer	Brother	MFC-L6700DW	Chris	Chris, Ericka
Backup Drive	Seagate	BackUp Plus	Chris	Chris
Wireless Router	NetGear	WNR1000	Chris	Chris, Ericka

LAWPAY®
AN AFFINIPAY SOLUTION

Check your network

- Wired? Wi-Fi?
- What is connected to which networks?
- Who configured it?
- Guest Wi-Fi?
- Who has Wi-Fi access?

Inventory: software and data

1. **What applications are you using?**
   - Critical to business or accessing confidential data
   - Do you have licenses for each copy?
2. **What is the application responsible for?**
3. **What information is managed?**
4. **Where is the information stored?**
   - Local to computer or device?
   - On your network?
   - In the cloud?
5. **Include data backups**
   - What is backed up, and where is it located?

Inventory goal: securing systems

1. **Each asset in the inventory must be strengthened**
   - Asset is secured
   - Accessible only to people or systems with need

2. **Examples of strengthening include:**
   - Replacing weak passwords
   - Updating Wi-Fi configuration and securing connections
   - Ensuring systems are up-to-date and less prone to viruses

Let’s start with passwords

Passwords are the easiest way to hack our systems. This includes passwords to:

- Networks and Wi-Fi
- Email and other accounts
- Common websites
- Clerk’s office, e-filing systems, etc.

LAWPAY
AN AFFINIPAY SOLUTION

Use a password manager application

1. Use a password manager

- Provides secure storage for all your passwords
- Depending on which you choose
  - Works on single computer only, no sharing
  - Secure shared access across computers and devices

2. What is a password manager?

- Separate application downloaded and installed on computer or device
- Easy to create a different, strong password for every site
- You only remember the passphrase for the password manager

A review of the best password manager and generators can be found at:
https://www.pcmag.com/roundup/300318/the-best-password-managers

LAWPAY®
AN AFFINIPAY SOLUTION

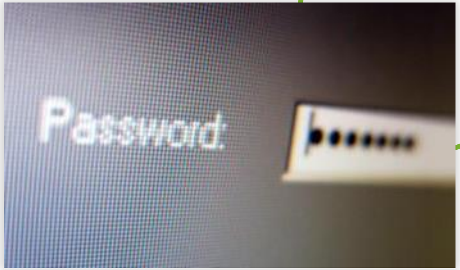
Strengthening passwords

Weak passwords are the easiest way to hack into private information

When making a password we are told to:

Avoid	Should Use
Dictionary words	12 or more characters
Foreign words	Upper and lower case
Slang or jargon	Numbers and symbols
Names associated with you	

Examples of strong passwords



Reggie Hirsch of Houston recommends:

Long phrases unique to you:

Ilovefreshshashimitunawithalittlesoyandwasabi ← that is 44 letters

He also recommends you can adapt it to multiple uses by adding the name of the usage. Thus for email you add "EMAIL".

IlovefreshshashimitunawithalittlesoyandwasabiEMAIL
or
IlovefreshshashimitunawithalittlesoyandwasabiDELTA

If you want to check the strength of your own password, do it at:
https://password.kaspersky.com/in/

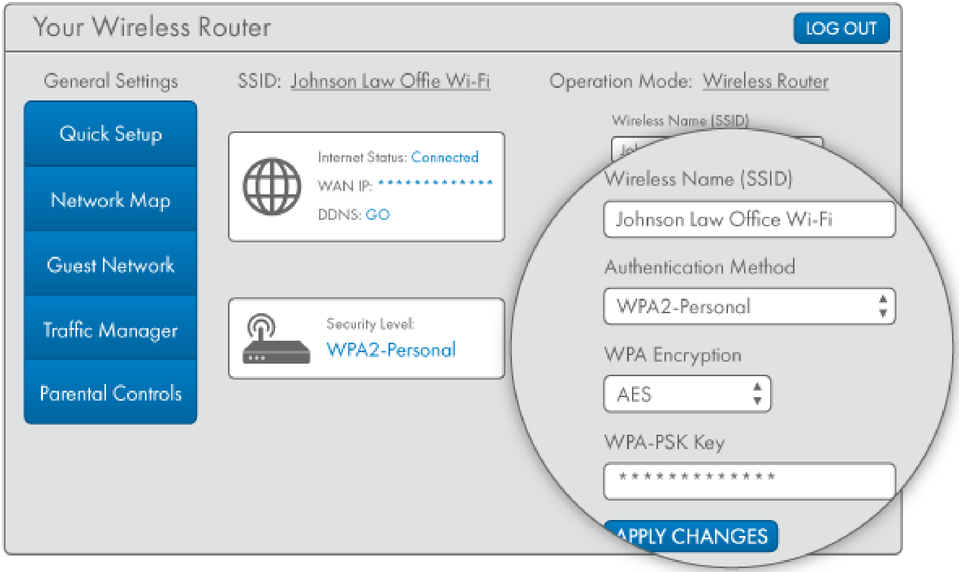
LAWPAY
AN AFFINIPAY SOLUTION

Fortify your Wi-Fi network

You can significantly reduce the risk of access through your office Wi-Fi as follows:

- Generate a strong passphrase for your Wi-Fi network
- Select WPA2-Personal (Wi-Fi Protected Access 2) for most small practices
  - May appear as WPA2-PSK or just WPA2
  - Do not use WEP or plain WPA
- Connect your office systems, printers, file servers, etc., to your private Wi-Fi network or LAN, not the guest Wi-Fi network.
- **Use a separate guest Wi-Fi network** for clients or visitors who need Internet access
  - Most Wi-Fi routers today support one or more guest networks
  - Enable WPA2-Personal authentication for your guest network as well

Wireless router settings



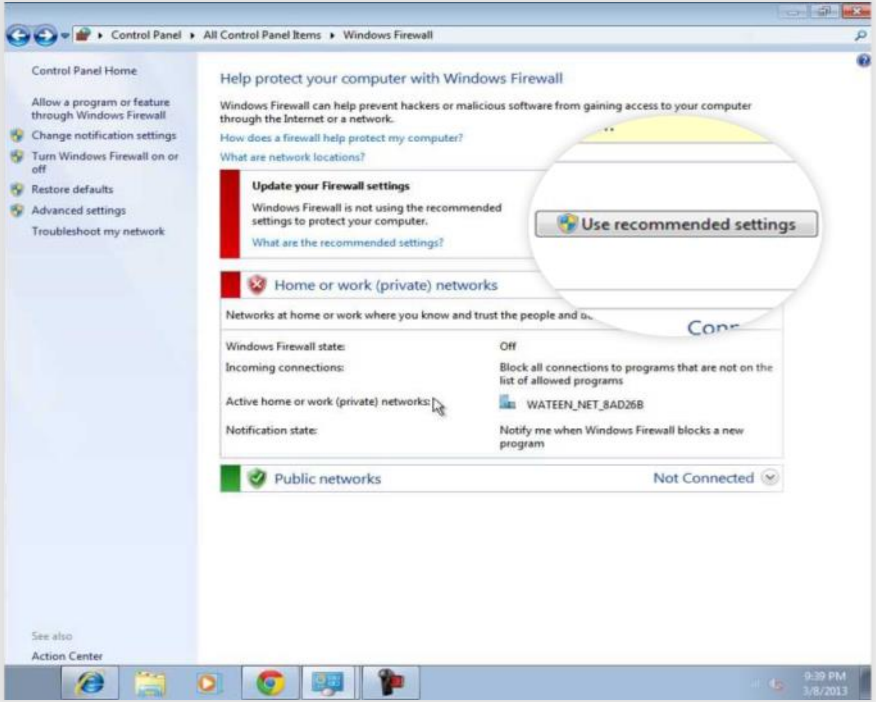
LAWPAY
AN AFFINIPAY SOLUTION

Protect office systems

- Your office computers can be a treasure trove for an attacker, and there are multiple routes in, from open network connectivity to targeted malware. Fortunately there are a few key tools at your disposal to counter these threats:
- Automatic updates
- Antivirus/Anti-Malware
- Firewall

Enable your firewall

Enable your operating system's firewall to prevent external connections. Some software applications may require specific exceptions to be configured to allow access from other computers on your network, but the vendor documentation should make this clear.



LAWPAY
AN AFFINIPAY SOLUTION

Always remember that insider threats and human error are the prime avenues of data breach and privacy loss.

Train your staff:

- Use password manager
- Never disclose passwords
  - Exception: client access to secured Guest Wi-Fi network
- Never disclose confidential information over the phone
- Immediately report any possible disclosure of confidential information

LawPay
AN AFFINIPAY SOLUTION

The client triumvirate

AKA “Claude’s 3 Rules”

1. Remember to treat that client like you are going to live next door to them.

2. Always tell the truth—there is far less paperwork when you do.

3. Never sue your client.

LAWPAY
AN AFFINIPAY SOLUTION

Civility is a process

CIVILITY

Avoid unnecessary confrontation

Respect for all

Good communication

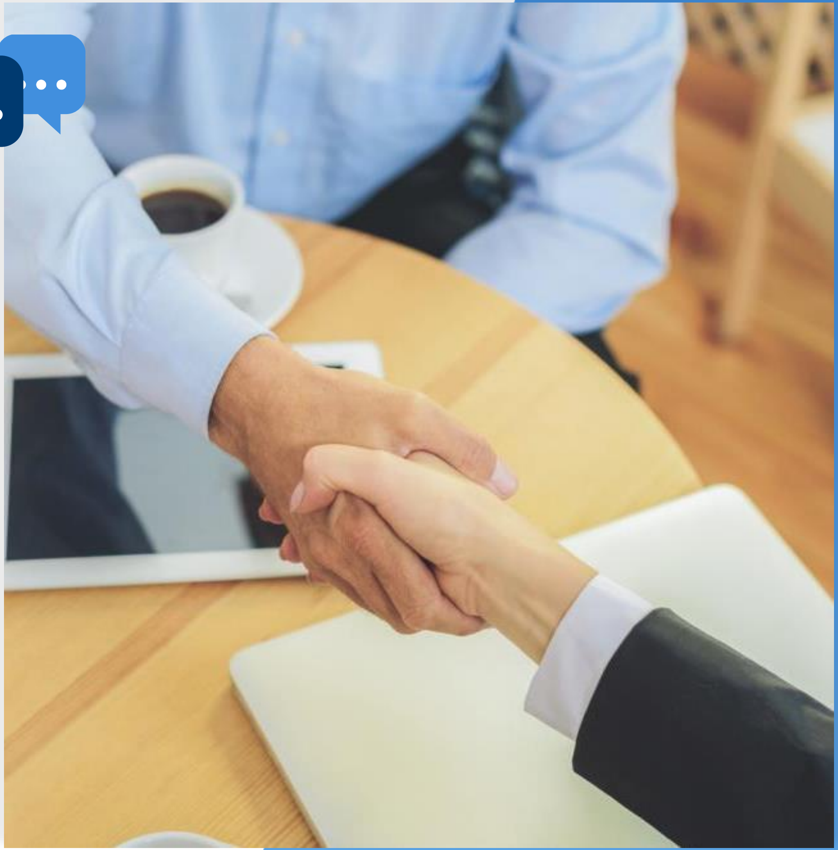
Rely on rule of law

Summary

LawPay
AN AFFINIPAY SOLUTION

Be professional!

1. Communicate proactively with clients; don’t wait for “an event.”
2. Don’t take cases the firm shouldn't handle.
3. Don’t sue clients if you get burned; it’s all part of doing business.
4. Use ADR for fee disputes when available.



LawPay
AN AFFINIPAY SOLUTION

What clients want

The Six Concepts

- Competence
- Communication
- Accessibility
- Accountability
- Collaboration
- Respect and courtesy

“Survey says…”

1. Collaboration
2. Accessibility
3. Communication
4. Accountability
5. Respect and courtesy
6. Competence

LawPay®

AN AFFINIPAY SOLUTION

Thank You!

Claude E. Ducloux
866-376-0950

LawPay®
AN AFFINIPAY SOLUTION