

SPRING 2015

Perspectives

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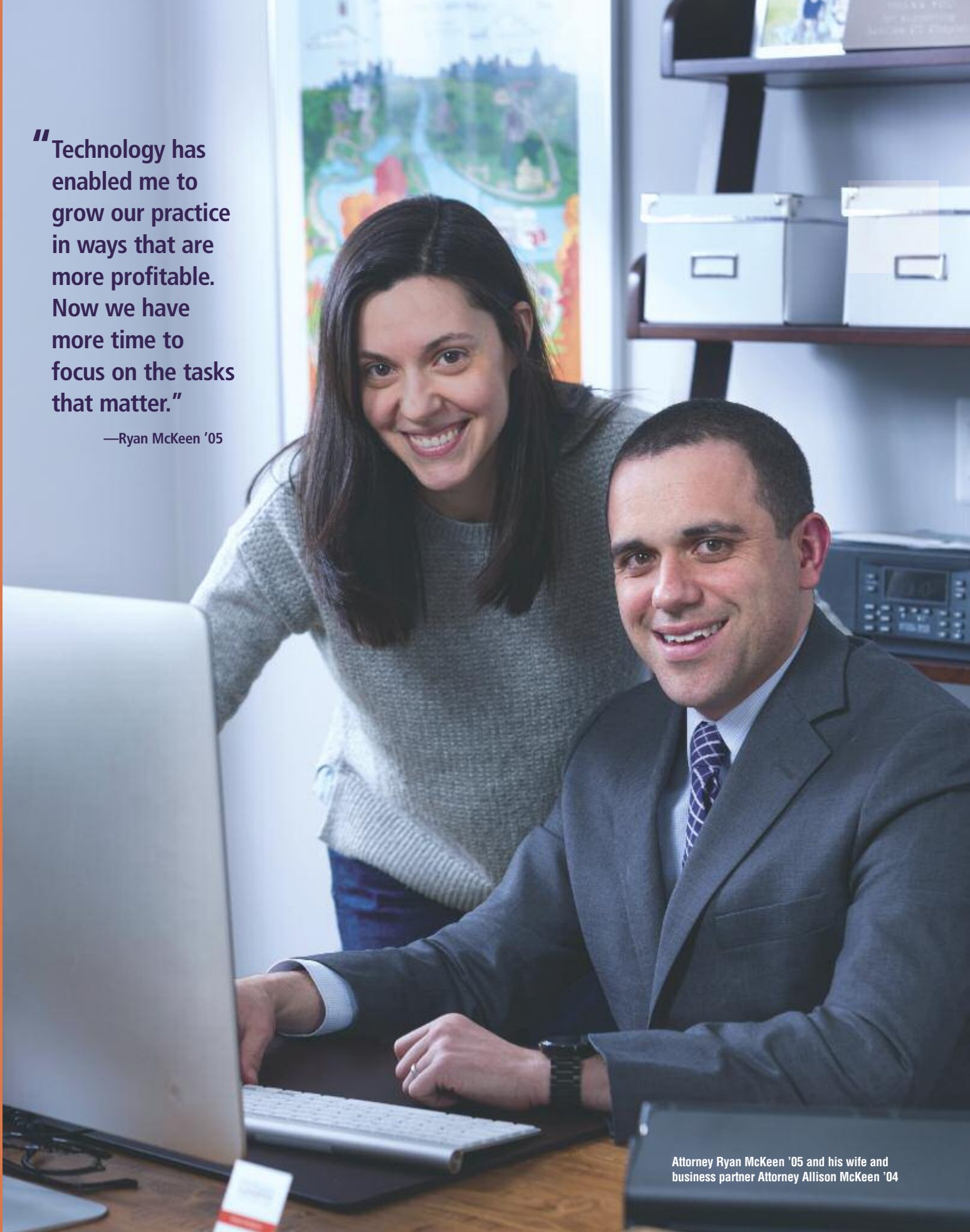
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Balancing Act: Making the Most of Law's New Digital Reality

“Technology has enabled me to grow our practice in ways that are more profitable. Now we have more time to focus on the tasks that matter.”

—Ryan McKeen '05



Attorney Ryan McKeen '05 and his wife and business partner Attorney Allison McKeen '04

Balancing Act: Making the Most of Law's New Digital Reality

Technology has been a game changer in the legal field. While it has simplified many routine tasks from timekeeping to document generation, it has also created complex new layers for safeguarding sensitive client information. Mobile devices have enabled owners of solo practices to run their offices from virtually anywhere. Yet how safe is the cloud and what new steps must firms large and small take to protect privileged data in an intentionally ambiguous, yet ever-changing regulatory landscape?

Small Practice—Smart Solutions

With an award-winning blawg and two dynamic websites under his belt, **Ryan McKeen '05**, a partner in McKeen Law Firm, LLC, is a master at leveraging the user-friendly digital technology all around us. But Ryan is the first to insist that he is no high-tech guru and has never been formally trained in website design. With just a little research into the devices he already owned, Ryan has learned to tap their capabilities through avenues many of us may never have imagined.

“Technology has enabled me to grow our practice in ways that are more profitable,” says Ryan. “Now we have more time to focus on the tasks that matter.”

Currently in practice with his wife and partner **Allison McKeen '04**, Ryan points to four devices that have given him more time to devote to his clients and their cases: his cellphone, laptop, conference room television, and camcorder, along with the resulting mobility and connectivity of all these devices. For him, moving away from the traditional Windows-based platform once standard in the legal field and into the highly intuitive Mac environment has been key to integrated media access.

Left to His Own Devices

Through the connectivity of his cellphone and laptop, Ryan has eliminated the need for an accounting firm to handle payroll, payables, and receivables. Ryan says, “There’s no filing, everything is automated; I can get more administrative tasks done in a day than I used to in a week.”

Using mobile apps, he is able to copy documents and save them automatically as PDFs, and frequently uses Adobe Echosign for client approvals. He was an early adopter of the smart watch, which he uses to alert him to priority messages. He recently started using a service to answer the firm’s phones. “It’s fantastic. Having a live person answer your phones can make the difference between being hired or losing a potential client,” he says.

Clean and sophisticated, the McKeen Law Firm URL is not your father’s law firm’s website. There are no gavels, Scales of Justice, or shelves of Rules of Civil Procedure; instead bold color and stark black and white photos help focus on a message of credibility and quality. This includes a blawg that helps to position Ryan as an expert in his field, testimonials from satisfied clients, videos, and an impressive list of results the firm has achieved for its clients in civil litigation and real estate.

Lights, Camera, Focus Group

When he wanted to test the waters on potential juror bias of a highly publicized upcoming wrongful death case, Ryan didn’t hire out a marketing firm to run focus groups. Instead, he advertised for potential focus group participants through social media and on Craigslist. He used the Apple TV in his conference room to focus test deposition testimony, exhibits, and video recorded statements of witnesses—the results of which helped develop the themes of the case and provided insight into case value for mediation.

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Techno Smarts in the Classroom

Western New England's focus on fostering practical lawyering skills includes educating students on how to integrate digital technology into their skills base.

"There has been steady commentary about the growing use of technology in law practice and the faculty and administration have all reflected on how to increase our students' exposure to this technology in the classroom," said Pat Newcombe '01, associate dean for library and information resources, "The ABA's 2012 revisions to the Model Rules of Professional Conduct added 'understanding technology' to a lawyer's general duty of competence. In practice, technology plays a role in discovery, litigation tracking, trial preparation, and day-to-day management functions. This increased use of technology comes at the same time as an increased reluctance on the part of law firms to take on new associates who are lacking in technology skills."

The Law Library has partnered with legal technology vendors to provide students with access to fully-functioning versions of commonly used software. Such products include CLIO, a practice management software; Allegory, a litigation support software; Trial Director, a trial preparation software; Timestream, a litigation support and trial presentation software; Clustify, an e-discovery software; and CaseMap, a litigation support software.

Liza Rosenof, research/emerging technologies librarian, introduces such products when offering research sessions demonstrating databases on WestlawNext and LexisAdvance. She also offers technology sessions to students in everything from using software to track billable hours to optimizing Microsoft Word's presentation capabilities.

Yet Ryan knows when to seek out the expertise of others. When recently expanding the website's real estate section, he used Google Adwords to help drive traffic, but then contracted out to a vendor with more WordPress website development skills for additional Search Engine Optimization (SEO). Such behind the scenes tweaks will help elevate the firm's site in search engines queries.

And while such tech-jargon may sound intimidating, smart technology has put learning more about it in the palm of your hand. "Everything you need is already right at your fingertips," says Ryan. "My advice to anyone who wants to do what I do is simple: use the technology you have or is readily available to you."

Safeguarding Confidentiality in the Digital Age

An intellectual property and technology partner in the Business Transactions Group at Robinson & Cole LLP in Boston, Attorney **Kathleen Porter '90** has witnessed firsthand the increasing complexity technology has placed on firms as they seek to protect client data. And she says it is only just beginning.

"As everyone knows, attorneys are subject to ethical rules in all of their jurisdictions where they are admitted to keep client materials confidential," says Kathy, a frequent lecturer and writer on cyber security. "The notion that we now need to keep client materials confidential because of privacy law I think is one that has in some sense surprised the legal community. When Gramm-Leach-Bliley was adopted in 1999, the legal community, specifically the New York Bar Association, sued to say 'this doesn't apply to law firms' and the courts agreed that it didn't. But then when the Massachusetts Data Security Regulation came out, those did apply to law firms. And law firms can be considered business associates under HIPAA. These are the beginnings of privacy laws applying to the legal community."

Putting Policies in Place

Since the introduction of HIPAA and the Massachusetts Data Security Regulation, firms have shifted from the tradition of simply keeping client information confidential to proactively creating policies and procedures to document security measures.

"Maybe the steps you've taken historically are fine, but you need to do some evaluation," says Kathy. "The Massachusetts Data Security Regulation requires that you do an assessment of your physical premises, computer systems and administrative safeguards, as well as your contracts and documentation.

"You need to do it initially, and then on an ongoing basis, annually or any time you change a vendor or even swap out a copier machine that may have stored data," she says.

Adding another layer, many regulated industries are now looking at law firms and other outside service providers or vendors. These companies assess the security of those that they hire. "Payroll providers, IT services, cleaning people, anyone who has access to a premises is being asked to provide information about their physical and/or system security," she says.

Such requests are coming largely from the financial security and insurance sectors based on their own increased regulations.

Citing the Massachusetts Data Security Regulation, which covers only a defined set of "personal information," Kathy explains, "The regulation applies to any business handling or storing personal information. But measures you need to put in place may vary depending on the size of your firm, and the nature and size of your risk. So if you're a small law firm who's client is a bank, and deal with social security numbers and bank account information all day, you need to consider adopting measures to safeguard that personal information, despite your small business size."

Increasingly, it is not just new clients looking for documentation of firm policies. Often existing clients are becoming more vigilant about the dangers of hackers who are seeking personal data such as social security numbers, and also valuable business data that they may be able to use or trade on for financial gain.

Massachusetts, where 2,500 of Western New England University law alumni are in practice, has some of the strongest regulations on personal information in the country alongside California. Kathy says firms operating here or that have clients in the Commonwealth are best served by establishing their internal policies to comply with these regulations.

Beyond being good business practice, Kathy says showing clients verification and now *certification* that you are protecting data and communications systems is fast becoming a market differentiator in a crowded legal marketplace. Citing recent articles from *The American Lawyer* to *The New York Times*, ISO 27001 has become the certification of choice of many top firms. *The American Lawyer* also reported in March that “at least five Am Law 100 and Magic Circle firms are working to form an alliance that would allow them to ultimately share information with each other about cyberthreats and vulnerability.”

Playing It Safe with BYOD

While convenient, mobile communication is a source of concern for many companies. Following suit with what has become common corporate practice, many law firms today have adopted a BYOD policy when it comes to cell phones, laptops, tablets, and other mobile devices. While attorneys may be encouraged to “Bring Your Own Device” to their workplace, such equipment is subject to the firm’s policies. Typically, it is a good practice, and even required, to encrypt any mobile device—from a cell to a flash drive—containing sensitive information.

While BYOD eliminates the inconvenience of juggling multiple devices, lost or stolen personal devices create new challenges when employees are reluctant to report them missing immediately. “It’s a big issue. People put the organization at risk because they don’t want to report their phones lost or stolen for fear of losing those baby pictures and personal items,” says Kathy. “Some firms use device management providers that can help users classify data so that only the corporate data is wiped clean in the event the device can still be recovered.”

She cautions that start-up or small firms in particular need to be vigilant when selecting vendors for cloud-based data solutions. Choosing a low cost solution can often lead to greater risk. Also, lapsed third party certifications are a red flag that vendors may be cutting corners or not paying attention.

Whether it is in the cloud or through the next big data storage solution, increasingly clients will be looking for firms to be able to show that they have taken reasonable steps to protect their information.

“The focus is really on assessing where your risks are,” says Kathy. “It is a moving target. There is definitely valuable information out there to help lawyers who are looking for assistance in responding to these issues.” ♦

“The reality is no one will find out what you haven’t done until you have a problem and then you will have a *big* problem .”

—Kathleen Porter ’90



Kathleen Porter '90 in her office overlooking Boston Harbor