



Week of **October 5, 2010**

## Do You Know If You Own What You Know?

The firm that is able to retrieve its pre-existing knowledge and use it again, a process known as knowledge management, will be more efficient, reduce its costs and provide excellent results for clients at a lower price. But this raises a question: Who owns the knowledge, who owns the forms, the precedent knowledge? Does the client who paid for it own it? Does the law firm own it? Or does the lawyer who created it own it? This becomes more important in an age of greater lateral movement.

The answers are mixed. In some instances, even if the work product was personally created by the lawyer, the copyright protection may attach to the documents and reside with the law firm, especially if the documents were created by employees (associates) as part of their jobs. This may not apply to partners, who as owners of the firm may have an asset interest in work product, depending on what the partnership agreement provides. Another concept to review is whether the copyright belongs to the client. Here, one could use the "work for hire" concept in which the person for whom the work is created is the owner of the copyright. In this instance, files and their contents always belong to the client, not the firm or an individual lawyer.

Some clients stipulate as a condition of engagement that, because they own the intellectual property, the law firm must share it with other law firms who also handle the client's affairs, though usually in a different geographic area. Such clients do not want their lawyers to reinvent the wheel, and do not want to pay for others in the firm or another firm to re-create it. Two issues must be addressed for this to work. First, lawyers cannot create work product haphazardly, wait until a matter is closed, then try to organize the information after the fact. Best practices require every firm, whether one lawyer or one thousand, to create a standard classification system for each lawyer's work. Second, lawyers cannot be



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holdouts. Some lawyers see work product classification as a threat that lets other firm members increase their compensation by using one's own hard work. Only a collective approach to compensation and client service can counteract this.

Especially thorny is when a lawyer leaves a firm and expects to continue client relationships. Although clients can request copies of their own files, the departing lawyer cannot do so when the explicit intent is to use them for taking clients from the firm. Does the lawyer intending to depart have the right to copy and take with him "precedent documents?" These are documents to be used when working on new matters of a similar nature. Who owns this work product? That is a question few lawyers consider.



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## Personal Commentary

Our personal commentary this week is written from Winslow, AZ. We're on the road in our Airstream trailer. We spent the last few days in Albuquerque, NM at the fabulous and huge Balloon Fiesta. Over 500 hot air balloons were sent up. We watched them being assembled and then fired up to fly the skies over Albuquerque. A magnificent site, indeed.

After that we proceeded to visit the Canyon De Chelley on the Navajo Nation in AZ. This visit satisfies a 35 year dream of my wife. We took a remarkable jeep ride into the depths of the canyon where Navajos still live and farm despite the rigors of the environment. While this is a different experience, some believe this is as remarkable as its neighbor, the Grand Canyon.

Our sites on this trip, like the weather patterns we've experienced, have been varied, from 100 degrees of heat a

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few days ago to cold, windy and rainy weather of today. This sounds like the varied nature of most law practices and the need to be flexible to meet the challenges of life while still enjoying it.

Best wishes,

Ed Poll

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