

WELCOME TO THE 21ST CENTURY... AND THE VIRTUAL PRACTICE OF LAW

By Ed Poll



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Few if any professions are more tradition-bound than the law. Every legal textbook and every compilation of statutes contains Latin terminology that dates back several millennia. The common law system itself has taken more than a thousand years to evolve, and every day cases turn on court precedents decided decades if not centuries ago. Without question, change comes slowly to the law and to lawyers.

The Internet Revolution

Yet today there is nothing short of a revolution going on in the way that lawyers and clients interact, one made possible by the power of the Internet. The most familiar form of this revolution is the use of the Internet for everything from Web sites and Web logs (blawgs) to client updates and virtual seminars (Webinars), all of which have become well established and will continue to grow. Consider the Internet's typical impact on one of the most fundamental of practices, that of family law:

- Web sites allow family lawyers to present credentials more completely and authoritatively to far more potential clients than advertising in the yellow pages or on television can do.
- Blawgs enable family lawyers to combine personalized observations with facts and insights in a way that potential clients can take the time to understand.
- These same tools make it far easier to research the innovations and case strategies that other family lawyers are using in their practices.
- Case research can be updated instantly, moments before going into court for a sensitive negotiation.

- Clients can be contacted instantaneously for anything from a quick question to a document review through the use of texting and (old fashioned) email.

From such innovative, free-flowing communication in the virtual world of Cyberspace, it is just a short step to the next level of transformation in 21st century legal practice: the virtual law practice, in which lawyer, staff, and clients interact primarily through the Internet. For a lawyer in a larger firm, the phenomenon is labeled telecommuting; for a sole practitioner, it involves the establishment of a virtual office. In either instance, the concept is the same: minimal expenditures on physical office space; contact with clients or professional colleagues largely by email, Internet portal or telephone; and use of online "virtual assistants" at a remote location for staff support.

The Ethical Considerations

The Model Rules of Professional Conduct contain plenty of prohibitions (particularly in Rule 7.3, "Direct Contact with Prospective Clients") about using the Internet to solicit business. However, there seems to be no formal ethical prohibition against having a virtual office. In fact, the eLawyering Task Force of the ABA's Law Practice Management Section has drafted guidelines for conducting a virtual practice. Dated October 2009, these draft guidelines primarily emphasize the need for a secure, encrypted Web site for maintaining client confidentiality in representation, in retainer agreement terms, and in online payment. (http://meetings.abanet.org/Webupload/commupload/EP024500/relatedresources/Minimum_Requirements_for_Lawyers_2009_10_24.pdf). While still in

continued on page 11

draft form, the ABA provisions are a clear indication that the virtual law practice is here to stay. What they don't provide is effective guidance on how to conduct such a practice.

Perhaps the fundamental principal to be observed is that a virtual law office or law practice is acceptable, but a virtual lawyer is not. The attractions of a virtual office must be balanced by consideration of its limitations. When it comes to a virtual practice, value is determined by the client, not the lawyer. But, it's the lawyer who must educate the client about "value." If the client does not recognize and agree to this value, the result can be misunderstanding and miscommunication, with a malpractice suit as the unfortunate result. The key to avoiding ethics problems in a successful virtual practice is to fulfill all ethical requirements while conveying the value of the arrangement to the client.

The Telecommuting Dynamic

In a firm of any size, some lawyers are typically more equal than others when it comes to a telecommuting arrangement. Senior lawyers and transactional lawyers generally get more flexibility than associates and litigators. Client reactions and client service always are voiced as primary concerns, as they should be. If an important client expects the personal touch in an office visit, no amount of time-efficiency can or should outweigh it. Personal touch matters within the firm too. Lawyers who are together physically in an office environment share a camaraderie that shapes the development of a firm culture through the exchange of ideas and the education of one lawyer by another. These are vital to a successful law firm, and to business judgment.

Some firms may view telecommuting arrangements by lawyers as a way to reduce office overhead, but telecommuting must be viewed in tandem with space expenses. Lawyers should not be entitled to work from home when physical office space is available. If office space is no longer used for at least 20% of the time, someone else must use the space while the telecommuting lawyer is absent. Otherwise, the firm will eat the expense and thus incur a greater cost for off-site operations. If a firm turns to telecommuting to reduce overhead, the office space it uses should similarly be reduced.

The Virtual Staff

Similar considerations apply to the use of virtual staff support. Digital and electronic technology makes available highly educated talent, whether halfway around the world or in a nearby city, allowing law firms to reduce by up to 80% the cost of:

- Transcription of voice files from depositions, trials and hearings
- Accounting support in the preparation of timesheets and billing materials
- Data entry for marketing, conflicts and contact management
- Litigation support graphics
- Legal research, including case citation summaries and patent searches
- Review and due diligence of business documents
- Secretarial services.

Such work may be produced remotely and delivered electronically, but as always the individual lawyer for whom it is produced bears full responsibility for quality and completeness. That is particularly true when using virtual assistants (VAs) – paralegals or other administrative specialists who work offsite and online, creating work product to the lawyer's specifications and practice needs. Like an accountant or

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other business consultant with whom the lawyer has a collaborative relationship, VAs are neither employees nor subordinates, but instead are professional service providers who should be chosen just like any other business professional. Evaluate their Web site, seek an interview in person or by phone, evaluate their business experience and professional references. Make

continued on page 12

sure they demonstrate knowledge of local rules regarding court and civil procedure, in addition to pertinent practice insights. A virtual assistant should be able to conduct any needed support activity electronically from a remote location.

The Virtual Solo Practitioner

Sole practitioners can especially benefit from a VA relationship, even if they think they don't need one. Technology has conspired with traditional attitudes to make many solo practitioners believe they truly can go it alone. The flexibility offered by voicemail, email and other electronic tools is real, but it can become dangerous when used as a replacement for staff support and particularly as that support relates to client contact. If lawyers are perceived as inaccessible, fees become an issue and client complaints are a problem. The nature of one's practice and the intention of the lawyer to be "super-connected" to respond quickly are essential to answering the visibility question. Clients may be more inclined to flexibility about *where* a solo practices if they have the assurance that they can always get in touch *when* they need to. However, remember the warning – virtual offices may be acceptable, virtual lawyers are not.

The bottom line on whether a virtual office makes sense is whether it accommodates client service and client communication. Nothing should be allowed to disrupt the means by which the lawyer learns the intent and desires and wants of the client. No matter what technology makes possible, it is not the answer if it makes life more difficult for the client.

The Virtual Impact

Telecommuting or a virtual office has more than one bottom line impact. The financial bottom line may

be improved, but the client service bottom line could be jeopardized. Lawyers always need to ensure that clients fully understand and accept the quality of service they receive. When that happens, fees are not an issue and client complaints are not a problem. A major differentiating factor for most clients is the "care and feeding" offered by lawyers.

If, however, service demands can be met, the virtual law office could ultimately be the salvation of the legal profession. Travel agents ... stock brokers ... librarians ... print journalists ... these are just a few of the once respected and efficient "middleman" professions that are increasingly endangered by recession and by customers with access to the Internet. The issue is the customer's evaluation of cost versus benefit. With incomes shrinking and access to information on the Internet expanding, the temptation is great for people to assume they cannot afford a lawyer, and that they can do just a good a job for themselves using what they find on the Web.

If lawyers themselves embody the efficiency and low cost of the Internet, and bring creativity, judgment and experience to the table, their virtual practice will be a viable one.

Ed Poll, J.D., M.B.A., CMC is a coach, consultant and author about *The Business of Law*®. Ed is a strategic planner whose ideas have helped thousands of lawyers increase their revenue, improve their profitability and enhance their satisfaction with the practice of law. Watch for his newest book to be published by West Pub. Co., *The Law Practice: Thriving in the New Economy*. His honors include being a Fellow of the College of Law Practice Management and a charter member of the Million Dollar Consultant™ Hall of Fame. Join Ed at www.lawbizforum.com, his new community for lawyers. Contact Ed at (800) 837-5880 and see more at www.lawbiz.com and www.lawbizblog.com.