

## The Potentials and Perils of a Virtual Law Practice

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The combination of cost pressures, advancing technology and lawyer “quality of life” concerns have created a growing trend toward conducting a legal practice primarily through the Internet. For a lawyer in a larger firm the phenomenon is labeled telecommuting; for a solo 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 another remote location for staff support.

### **Definitional Issues**

The Model Rules of Professional Conduct contain many prohibitions (particularly in Rule 7.3, “Direct Contact with Prospective Clients”) about using the Internet to solicit business. However, there is no formal ethical prohibition against having a virtual office. In fact the eLawyering Task Force of the ABA’s Law Practice Management Section has prepared guidelines for conducting a virtual practice. These emphasize the need for a secure, encrypted web site for maintaining client confidentiality in representation, in retainer agreement terms and in online payment. But there is far more to a virtual practice than this. As the task force says on its website (<http://apps.americanbar.org/dch/committee.cfm?com=EP024500>), “eLawyering encompasses all the ways in which lawyers can do their work using the Web and associated technologies. Think of lawyering as a “verb” - interview, investigate, counsel, draft, advocate, analyze, negotiate, manage, and there are corresponding Internet-based tools and technologies.”

Such technological tools leave a larger, fundamental principal unsaid – namely, 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 the 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 problems in a successful virtual practice is to fulfill all ethical requirements while conveying the value of the arrangement to the client.

### **Telecommuting**

Consider what could be called a quasi-virtual practice, one in which a lawyer may have a physical office space but does the majority of legal work offsite and online. 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. The development of a firm culture through the exchange of ideas and the education of one lawyer by another are vital to a successful law firm, and to business judgment. Otherwise the firm simply becomes a “hotel for lawyers.”

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 either 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.

### ***Virtual Legal Services***

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 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 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.

This form of service provision is constantly evolving. For example, it appears that outsourcing firms, the companies that in recent years sent work done by American lawyers to lower-cost countries like India, are now creating jobs for lawyers in the United States. Some of this onshored/outsourced legal work by legal temp companies pays as little as \$20 an hour for such tasks as document review. Other work involves hiring lawyers in the \$50,000 to \$80,000 range and basing them in lower-cost areas in the United States, like West Virginia and North Dakota. The lawyers receive less compensation because their work is limited to commodity work and because of the lower cost of living in the area. This extends the concept pioneered by

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such firms as Axiom and VLP (Virtual Law Partners) Group, in which lawyers work from virtual offices on an as-assigned basis, greatly reducing both overhead costs and billing rates.

## **Virtual Solo Practices**

Yet another dimension of virtual practice involves solo attorneys. 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. The nature of one's practice and the intention of the lawyer to be "super-connected" to respond quickly are essential for visibility. 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. The flexibility offered by voicemail, email and other electronic tools is real, but it can become dangerous when used as a replacement for client contact. A major differentiating factor for most clients is the "care and feeding" offered by lawyers. 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.

## **Cost Versus Benefit**

No matter what the virtual arrangement, if 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 cost pressures 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 as 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. As always, technology is only a tool; it is not the goal. Virtual practices must always strategically use technology to address the needs of their clients. In reality, though, doesn't this same principle apply to *all* lawyers?

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