Ethics and the Virtual Law Practice

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Mr. Booth is Master of the Earl O'Connor Inns of Court. A Fellow of the American Academy of Matrimonial Lawyers (AAML), and a Fellow of the International Academy of Matrimonial Lawyers (IAIML). Mr. Booth lectures nationwide to private practice attorneys as well as Military Lawyers on family law issues including property valuations, child custody, child support, litigation, and attorney ethics. Mr. Booth serves as a board member of the Washburn School of Law Children & Family Law Center and is a Dean's Advisor to WU School of Law. Mr. Booth has been a contributing author for LexisNexis®, Matthew Bender project for the Texas Family Law Handbook.

To further teach the law on support, he published "A Guide for Assisting Military Families with the Uniform Interstate Family Support Act (UIFSA)" in the Family Law Quarterly (Summer 2009).

Chad Burton, Esq.
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Chad is a former litigator who developed one of the nation’s first “new model” law firms, leveraging cloud-based technology and modern business practices to develop a lean virtual law firm. Chad has an unhealthy obsession with experimenting with the latest legal and productivity technologies. If there’s a possibility it can be leveraged to better practice and serve clients, chances are he’s tested it out and annoyed the rest of the team about it.

Chad serves on ABA Law Practice Division’s Council and as Chair of the Division’s Futures Initiative. He also serves on the Governing Board for ABA’s Center for Innovation. He regularly speaks around the country on topics related to legal technology, virtual law practice and the future of the legal profession.

Chad has been quoted and published in publications like the ABA Journal, Inc., the Atlantic, and Entrepreneur Magazine. Chad was named to the Fastcase 50 list of global legal innovators in 2014 and received an award by ALM for the Most Innovative Use of Technology for Firm in 2012.

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Nicholas has operated The Hite Law Group in New Orleans, Louisiana for 6 years. During that time, Nicholas has served over 500 clients across 10 parishes in Louisiana and continues to provide leading edge legal services for LGBTQ-identified clients, especially adult and child survivors of domestic violence and sexual assault. Nicholas also proudly serves as part of the Louisiana State Bar Association (LSBA) Diversity Committee, the LSBA LGBTQ Subcommittee, the national Transgender Legal Services Network, and the PFLAG New Orleans Board of Directors. Nicholas was an inaugural LSBA Legal Innovators For Tomorrow (LIFT) Fellow and inaugural recipient of the Community Champion award from Clio.

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Billie attended University of San Diego Law School and the University of Oregon School of Law, graduating in 2005. She worked at several firms in Eugene including the Department of Justice, Family Law Division, the non-profit A Family for Every Child and clerked at the Lane County Juvenile Court under Justice Kip Leonard. Her legal focus is on education law, including special education within schools, family law, adoption and
mediation. Billie is a skilled practitioner, national speaker, law firm business consultant and a Martindale-Hubbell honored attorney. She was granted the prestigious “Client Distinction” award based on her Communications Ability, Responsiveness, Quality of Service, and Value for Money. Fewer than 4% of attorneys nationwide have been accorded this honor of distinction.
Modern Law Firm Models and How Ethics and Tech Play a Role in Optimizing Client Service

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Overview: Ethical Compliance with Virtual Practice and the Modern Law Firm

Our premise is simple, the execution is not. Law firms are more ethically compliant when they follow modern business practices to effectively build their firm, manage the workflow of cases, communicate with clients, understand and communicate their purpose with the public, staff, and potential clients.

The foundation of your firm should be both aspirational and practical. For many lawyers, this means working as a solo attorney or in a small firm or partnership and many times this means practicing virtually. When virtual or mobile practice is incorporated, technology is required and utilized for the delivery of legal services and implicates maintaining communication, confidentiality, safekeeping clients’ property, and performing diligent and competent legal work.

According to Model Rule 1.1, comment 8, “[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” Since this concept of tech competency came into existence in 2012 thru the Model Rules, 34 states have adopted it making it no longer acceptable for lawyers to stick their heads in the sand when it comes to understanding technology.

This is not just about understanding whether the latest or greatest tech is appropriate for use, but it also includes effectively using the technology to competently deliver legal services in your law firm. In fact, law firms are more ethically compliant when they follow modern business practices to effectively manage the workflow of cases and communications with clients. This includes implementing best practices and procedures, as well as technology to enable the firm to be more efficient and effective in their client representation.
When considering modern law practice, virtual practice and the mobile nature of lawyering, we are suggesting a broader view of the application of the ethical rules to your practice. According to Model Rule 1.1, a lawyer must be competent to practice. Most lawyers are familiar with the rule, but are not applying the principles broadly enough to maximize the ethical practice of modern law practice.

Model Rule 1.1 provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Here, we want to focus on the “thoroughness and preparation reasonably necessary for the representation.” Without adequate business processes and procedures, checks and balances and tools to assist us, we may fall into the trap of being unable to practice competently. Likewise, our ability to check conflicts according to Rules 1.7 - 1.10, maintain confidentiality according to 1.6, and communicate adequately according to 1.4 will all be hindered without the tools necessary to organize, automate, and execute.

What this looks like in action.

A. The Foundation of your firm should be built on a solid foundation of values, purpose, and data.

Taking the first step to determine your practices limits and direction for representation will assist you in complying with Model Rule 7.1, which reads:

“A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.”

While 7.1 isn’t frequently discussed, many lawyers may be violating rule 7.1 on their websites or public communications by describing services in a broad, generic, and ultimately inaccurate way. For instance, when lawyers list practice areas or locations that they don’t actually practice in, or places they don’t actually spend time in, this communication may be materially false. More than being an ethics violation, it doesn’t adequately describe to the public who you are and makes it less likely for you to get hired. It is no secret that small firms are generally looking for more business and that financial struggles of a firm make ethical compliance even more difficult. By following our best practices for determining exactly who you are, why you exist and how you practice you are creating a roadmap for yourself and your firm that will provide you with the communications you need to comply with Rule 7.1, attract the right clients to your firm, and ultimately make for a more satisfying and lucrative practice.

Once you determine your purpose and hone your messaging, you need to get an accurate idea of what is happening within your firm. This is best accomplished by the collection of key pieces of data that provide you insight into what is happening in your firm. Model Rule 1.6 states that a
A lawyer may not represent a client or must withdraw if 1.16(a)(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

Many times, lawyers are unable to accurately discern their capacity for taking on new clients and many feel financial pressure to always say yes. This leads to situations where lawyers may be representing the wrong type of client, or a bad fit for the firm, or a type of case outside their scope of practice. If a lawyer already has a busy caseload it can be difficult to make time to learn the new skills needed for competent representation while also balancing the other demands of clients and business administration. The key to avoiding this issue is data. By knowing key data points like number of clients, how much money the average client pays you, how much money you can expect to come in the door in the coming months, and how many hours of legal work you can expect to work with your given caseload you can avoid taking the wrong clients, feeling overwhelmed, nearing burn out and then being required to withdraw from practice under Model Rule 1.6.

B. After your foundation is built, you determine if you have the right team.

Who is on your team?

● Virtual or not, one of the hardest parts of running a modern practice is effectively cultivating a team to provide amazing client service
● This is especially challenging when a team works remote and collaborates on cases from different geographic locations
● Supervision responsibilities (Rules 5.1-5.2) remain present regardless of business model
● Many firms use virtual services, including receptionists, intake specialists, paralegals, etc., to deliver services (Rules 5.3 - non-lawyer assistance)

Proper selection of your team, training, and management is required for the ethical practice of law and most lawyers receive little to no training with regards to how to train, manage, and oversee our team. Every one of us has a team, even if you are a true solo. Most of us work with vendors, web designers, data administrators, technology consultants, and accountants. Other attorneys are also responsible for associate attorneys, staff, and may have extensive relationships with third parties who assist you in your firm. Many times, your “team” may or may not be physically present with you. Having the right team means you have peace, smooth operations, and a healthy law practice. The wrong team, or poor management of your team can lead to terrible behavior by individuals who are not subject to the ethical rules or bar discipline. You, the attorney, are responsible to ensure that your team and your operations are ethically permissible.

Model Rule 5.1 states: (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
(c) A lawyer shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if:

1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
2. the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Model Rule 5.3: With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer;
(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and
(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

1. the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
2. the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Proper selection of your team, training, and management is required for the ethical practice of law. This will not only keep you away from bar discipline, it will also keep you sane and happy, which is crucial for the success of your firm and our profession.

C. Attracting and Securing Clients is the next layer to add on top of your team.

Getting the right clients in the door is crucial for the success of a lawyer and law firm, but this is much easier to do right when you have taken steps one and two to build your foundation of values, track invaluable data, and you have the right team in place.

Take your law firm constitution and tell your clients what you stand for and why you exist. This is the best way to maintain compliance with Rules 7.1 and 7.2.

Rule 7.1 requires: A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

When your statements and positions are the result of the process we have suggested, they will never be false or misleading, because they will be fundamentally and authentically true.
Rule 7.2 provides that a lawyer may communicate through any medium, but prohibits the exchange of referral fees outside of a co-counsel relationship. While many attorneys do enter into co-counsel agreements liberally, there is danger in doing so, especially in a family law case when you do not have direct involvement in the matter. Lawyers may fall into violation of Rule 7.2 when they are unable to secure the right clients through other means.

Tell your clients who you like to work with, and more importantly, who you don’t want to work with. It’s remarkably effective to tell the wrong clients you don’t want to work with them. We started telling people who wanted to burn their spouse and use the system to inflict pain not to hire us and we started attracting all the right clients. Clients who share your values will like you more, send more clients your way, and make your job easier and more fun.

Use your clients language and study their background. When in doubt, ask you clients what they like and what they don’t. If you are feeling stuck, check out your online reviews and read about what your clients have to say about you. What do they value? What do they like? If you use the same language of your best clients, you can attract similar clients. Ask your best clients how they chose you or found you. Study the demographics of your best clients. Start by identifying a list of the clients you enjoy working with. Cross reference that with how much revenue they generate. Find out where they live, shop, work, and play. How old are they? Do they have minor children? Consider making a mock ideal client and writing to that person.

Taking the time to go through this exercise will keep you ethically compliant and financially secure.

D. Selecting the right software, systems and processes is crucial for ethical compliance and modern day lawyering in the mobile environment.

Legal tech is all the rage when it comes to modernizing a law firm. Some profess that tech can be a silver bullet to fix problems in a firm. Tech is an important part of the process, but unless you have the other issues discussed above taken care of (i.e., figuring out your client base and firm values), technology can create more challenges than good. When implemented properly, technology improves the law firm’s ability to stay organized and effectively communicate with clients – keeping ethical in the process.

Also, if a firm spends time creating and adopting processes and procedures, technology will help keep the firm on track and accountable. A couple of examples:

Case management software helps firms not only stay organized, but also helps money get in the door. Easy-to-use time and billing software avoids delays in collecting money and invoices are a great way to communicate value to clients. This software also helps centralize client information, including contact info, notes, communications, and tasks that all team members can access. Further, leveraging the cloud allows the team to access information from anywhere on the planet.

Document storage software is also key to keeping client information at your fingertips. Firms want to be paperless, so leveraging cloud-based solutions, such as Box, Dropbox or Google Drive, allows firms to minimize paper and properly store client property.
Ethics play an important role in selecting technology. Most states have been looking at the issue of using the cloud and find that the analysis for use falls under existing rules, including maintaining confidentiality and safekeeping of client property. The ABA maintains this resource to track how states come down on using the cloud.

E. Where you work makes a difference for running a modern firm

What it means to be virtual can have a range of meaning. Some lawyers work completely remote and others maintain traditional offices but use temporary space, such as Regus, to leverage remote offices. Deciding what is the best model depends on your client base and how you (and your team) work best. If you need to have a staff onsite to handle walk-ins, you need standard space. However, not every client needs that convenience. This is especially true when you leverage tools (case management software, videoconferencing and texting, for example) to keep up communication with clients.

There are ethics implications when it comes to office space, including maintaining client confidences. You also need to think about whether your state has a ‘bona fide’ office rule (New York and New Jersey are in that camp). Some, albeit few, states require a traditional office arrangement, which can be tricky for multi-jurisdiction firms who want to serve clients in multiple states (invoking Rule 5.5).

Additional Materials

This document provides a general overview of how modern law firm models intersect with ethics considerations. The following are additional resources from the speakers that dive deeper into these topics, including how to run modern law firms and tech tips. Copies are attached.

- Scaling Your Business (Tarascio)
- Fees -- Getting Your Price Point to Play Nice (Tarascio)
- The System Nerds Secret to Intake and Consultations (Tarascio)
- Marketing Segmentation (Tarascio)
- Viva la Small Firm (Burton)
- Tools for the effective, communicating, competent virtual lawyer, as well as the rest of us (Booth)
Scaling Your Business: "Two Steps Forward, No Steps Back"

This session will discuss the framework for change management and getting your team on board for implementing new processes, procedures, and technology without resistance.

Scaling your business is a beautiful dance of getting all the critical pieces working together to allow growth without tanking any particular component like customer service or your company culture. Here are the critical components and how they must work together for growth of your firm.

1. **Vision** – The first piece is the part many firms never get right. A lack of vision is the reason many firms fail. Spend a lot of time getting your vision right. Know where you are going before you start your journey.

2. **Financials** – Money is the lifeblood of a firm. All of the authors of this book have bootstrapped their firms from the ground up. You can too. Money is the least talked about and most prevalent issue facing small and solo law firms. Watch your costs and grow your top line without growing your bottom line.

3. **Launch** - Reverse-engineer the firm you want to own. The first decisions you make about opening your firm are critical: Where will you be located? What areas will you practice?
4. **Online Marketing** – “You are who the internet says you are” is the world we live in. All of the lawyers in this book have grown their practices through smart online marketing. Learning the basics of how to hunt online will serve you well as you grow and tactics change.

5. **In-Person Marketing** – The best marketing dollars you will ever spend are investing in relationships. Online marketing can be expensive and relationships are more valuable than ever. In-person marketing can be time consuming and you need to know what works if you want to master Tiger Tactics.

6. **Intake** - Aside from lacking a defined vision, many firms fail because they don’t know how to conduct intake. Intake is the single most important process for your firm. It brings in new money, sets expectations, and puts you on the path to converting a lead to a fan.

7. **Customer Service** – You must seek to be the most client-centered firm in your market. Everything you do, from marketing to intake to resolution, needs to be built for your client. Ask yourself, “How can we make this better for the client? How can we anticipate their needs?”

8. **Hiring** – You cannot grow without leveraging the time and talents of others. Hiring is a make-or-break decision for a small law firm. You can’t afford to be wrong. Learn from our lessons – get it right.

9. **Balance** – As you become overwhelmed with a never-ending series of fires and challenges, it’s easy to push self-care to the side. Don’t do this. Before you take care of your clients, you need to take care of your mind and your body. No matter how busy you get, you must engage in self-care. Tigers are strong. Be the tiger.

10. **Words of Wisdom** – Learn from others. We have. You can’t do this alone.
When I launched Modern Law (not under that name because Arizona didn’t allow trade names) it was January of 2010. The business model looked very different from its present form. We charged $99 per hour and used contract attorneys for all different types of law. We were clear on who we were and what we were trying to accomplish. The mission was to increase access to justice. It was simple, clear, and good timing given the economic crash that had rocked Arizona and most of the country at the time. This worked for a very successful launch. We secured a lot of press and a thousand new clients in our first year! We were succeeding in our goal of increasing access to justice.

The problem was that we were not making any money. It turns out that $99 per hour for attorney time is too low to pay a good lawyer salary and benefits (at least without a much higher volume). Over time, the model evolved. We opened Access Legal, a sister company to the law firm that relied on technology to deliver legal products at low costs. We created a book, webinars, seminars, and a library of free resources for the public to satisfy our mission. Meanwhile, the mission of the law firm evolved to what it is today: Be the fastest growing and most client friendly family law firm in Phoenix by delivering outstanding services focused on our values; serving clients who share our values; and focusing on creative solutions to complicated problems.

This is not a low-cost model or an access-to-justice model, which allows me to have a law firm that runs like a healthy business, with a respectable profit margin and well-compensated attorneys. To execute the plan, we need systems that provide a pipeline of clients, a sales system to convert the leads to clients, a plan to serve those clients excellently, a plan to bill the clients and collect money paid, a plan to pay the bills and grow intentionally. The difficult part of
growing a law firm is that you can’t just increase your advertising dollars and then “grow.”

Consider the visual below:

<table>
<thead>
<tr>
<th>Advertising</th>
<th>Sales</th>
<th>Hiring</th>
<th>Training</th>
<th>Client Services/Operations</th>
<th>Technology</th>
<th>Billing/Collections</th>
</tr>
</thead>
</table>

Each of these seven columns must grow together. Somehow as owners we must match our capacity and timing of all seven areas. If you have a plan that increases the leads or potential clients calling the firm, then you must have the ability to answer the phone every time those potential clients call. The person answering the phone must be present, and trained and must have systems to set appointments with those clients. Then you must have enough attorneys to handle the consultations that will increase due to the advertising and dedicated phone personnel. Then you need the ability to bill your clients, collect your bills, and pay your outstanding obligations.

Most of the time, when firms and people focus on growth, they focus on increasing the number of clients. But there are other options. You could raise your prices and immediately “grow” your revenue. Or you could expand your product offerings—do more work for the clients you already have. No matter what you decide to try, you are embarking on an experimentation.

**There is no modern business model for law firms.**

Our industry is in a state of disruption. Lawyers are generally miserable and underpaid.\(^1\) The vast majority of the public is not using lawyers to solve their legal problems.\(^2\) Law firm

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\(^1\) [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4736291/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4736291/)

operations have remained very similar over the last fifty years. The rest of the business world has
gone through massive changes based on a changed culture, the internet and its fallout, and new
information that we have regarding best practices for business and behavioral sciences. This
information didn’t exist thirty years ago. Our mentor lawyers, while they can teach legal writing
and brilliant legal analysis, cannot offer you advice on running a law firm, because when they
operated their law firms, it was under a completely different set of conditions. That leaves us
without a working model. It must be developed. We are a disjointed profession that would
benefit from collaboration on the creation of modern law firm models incorporating best
practices into all aspects of our firm.

Each of us comes to the practice of law as a curious business owner on a quest for the
new best practices. Our perspectives and lessons are as diverse as our law firms and our
personalities. The best practice for a small PI firm (Ryan’s) are not the same as those for a large
and established criminal firm (Jay’s), and both will be different from mine, Bill’s and Teresa’s.
Our various lessons and perspectives are also influenced by geographical diversity, from Phoenix
to the South to New England. We are each in a different laboratory.

This concept is incredibly valuable and freeing. You are not failing, you are learning and
experimenting. This concept also happens to be the best practice for both established and
emerging business. You may have heard of:

• Lean Management
• Six Sigma
• Agile
• Scrum
• Kanban

These new and emergent theories are based on the following principles:
<table>
<thead>
<tr>
<th>Eliminate waste</th>
<th>Deliver Fast</th>
</tr>
</thead>
<tbody>
<tr>
<td>Build quality in</td>
<td>Respect People</td>
</tr>
<tr>
<td>Create knowledge</td>
<td>Optimize the Whole</td>
</tr>
<tr>
<td>Defer commitment</td>
<td>Simplicity</td>
</tr>
<tr>
<td>Make customer satisfaction the highest priority</td>
<td>Progress measured by working software</td>
</tr>
<tr>
<td>Welcome changing requirements</td>
<td>Sustainable development pace</td>
</tr>
<tr>
<td>Deliver software frequently</td>
<td>Continuous attention to technical excellence</td>
</tr>
<tr>
<td>Build projects around motivated people</td>
<td>Self-organizing teams</td>
</tr>
<tr>
<td>Talk face-to-face whenever possible</td>
<td>Regular reflection &amp; adaptation</td>
</tr>
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</table>

There are some takeaways I think we can apply to our firms. First, you will notice that these principles feel a lot like values; they are. They are also methodologies that support improvement and a curious, scientific approach to improvement. One of my favorites is “Defer commitment.”

Alternative billing is all the rage. You will find proponents of flat fees or other alternative billing arrangements who are religious in their commitment. People either believe that alternative billing is the only option or see it as an evil that must never be considered. I fell victim to the
thinking that hourly billing was terrible and that flat fees would be a much fairer, more lucrative system. Then we tried it.

As applied, it simply didn’t work. We tried flat fees for divorce and family law cases in a variety of ways. We tested the profitability, client satisfaction, and employee satisfaction under this model. After about eighteen months, it was clearly not working. Our employees were frustrated, the expectations of the clients were unclear, and our profitability wasn’t there. Had I approached this change with less conviction and more curiosity, it wouldn’t have taken me eighteen months to figure out that this was, as implemented, a bad idea for my practice. You will see even now that I will not commit to hourly billing as superior to flat fees, I’m still experimenting. Flat fees are very difficult for litigation and there will be different challenges depending on your jurisdiction, but we are not done experimenting and the latest experiment is using predictable pricing per project as part of uniform pricing. I need to remind myself to defer commitment and instead test and measure everything.

To execute the plan, you must first have a mission. Depending on your mission, you will create specific goals, and once they are defined, you can choose tactics to test. You are not alone, our industry is stronger together. Seek out others who have experimented so that we can move our industry forward. It is the measurement of your tactics that will determine your launch and help you to successfully execute your plan.
Fees: Getting the Price Point to Play Nice

The efficiency conundrum and the costs of hourly billing. How to get pricing that matches value is an ongoing issue that firms have been grappling with all over the country. This session will focus on pricing options, how to implement these options and how to measure success. The written materials are from the “customer service” section of the TigerTacticsBook.com.

*Tiger tactic: Know who your ideal customers are and how to provide them the highest level of service possible.*

We recognize that lawyers aren’t known for their stellar customer service, but nevertheless customer service is where you forge your reputation. As Bill asks, how do you want to be known to your former clients? When those clients encounter a friend with a legal problem, what do you want them to say about you? Think of this, and let that guide your actions.

Young, fresh-out-of-law-school associates may view clients as an interesting legal question or a series of problems to be solved. In doing so, they are acting as lawyers in the strictest sense. But now that you’re operating a legal business, you’re more than a lawyer. You’re a person who delivers legal services. As Jay notes, “Whenever anyone needs a lawyer, it’s never a good thing.” Therefore, if you want to deliver exceptional service, you must see your clients as whole human beings in need of empathy and understanding, first and foremost. This is the right way to treat
the people who trust you with their worst problems, and it’s good to be known as an attorney who treats people the right way.

Once again, vision is important because you need to understand what market you are serving before you can serve it well. Are you running a technologically forward firm like Billie or Ryan? In that case, you might have difficulty delivering excellent services to a client who will not use email or texting, and that client may be better served by a different law firm. More fundamentally, if your client has a legal problem with which you are not familiar, excellent customer service may include referral to a trusted colleague.

If you have landed a client in your target market, what does that client need? A sympathetic ear? Directions to the courthouse with instructions on where to park? Anticipating needs is part of your business. Bill says, “Do not ever forget that the client comes first and you will remain focused on your practice while making a fantastic living!”

Billie:

This might be the second-most important chapter in the book. We all know that law is a “service” business. We are not in retail, manufacturing, or agriculture, we are in the business of professional services.

Let’s break this down: We are in the business of serving legal consumers. This is how we earn our living. Perhaps if you are an associate at a firm where you are handed work and expected to perform that work, you are in the business of practicing law. But if you are working for yourself, you are not in the business of practicing law, you are in the business of serving legal consumers.

If this is the starting point, then the first thing to really ponder is the perspectives, needs, wants, and desires of the legal consumer. Depending on the area of law and your specific
customers, this could be very different from practice to practice. By focusing on your customers, you can determine who you want to be your customer and which customers you do not want to work with.

Truly climbing into the brain of your consumers is an exercise that will yield great fruit and can influence all your decisions about how you operate, what and how you communicate, the delivery models and methods of your services etc. As an example, we are a technologically savvy firm. We communicate via email and text. When we have a client who doesn’t use email, we give them two options: we would be happy to set email up for them, or they can find another lawyer. We know ourselves and our ideal clients/consumers. We are not set up to mail out correspondence or minute entries. When opposing counsel insists, we mail paper, my staff grumbles. It’s inefficient and wasteful, and it costs clients' money for something that doesn’t benefit our case. Our customers want and deserve efficiency at every single step. Because we know that, we know that clients who want us to mail items are not the best fit.

Taking the example further, because we know our clients/customers, the decision to incorporate texting was a no-brainer for us. Likewise, we can happily kill the fax machine, understanding that our clients do not fax. Our consumers love visuals. They want information in an easy-to-digest, simple format at their fingertips. Most of all, they want access to lawyers and staff when they need information, not when we are available to get back to them. Obviously, this presents some challenges/opportunities, because we cannot be at each client’s beck and call each day.

**Technology can replace much of what we value as lawyers.** Technology can draft documents and answer questions, and very soon, it will be able to provide legal analysis. Technology is already beginning to predict legal outcomes in cases based on assigned judges,
and tech is conducting legal research. However, I’ve got good news! Technology cannot offer empathy or customer service. Customer service, empathy, and emotion are what will protect lawyers from becoming obsolete in the invasion of technological superintelligence.

Many of us went to law school based on widely shared assumptions: Lawyers make good money. Lawyers are well respected. Lawyers have the ability to do many things and can have great flexibility and autonomy. Lawyers make a difference in the world and can help people and make a great impact on society. Being a lawyer means I can leave a legacy to my children and grandchildren. I can build a life of comfort, prosperity, and meaning. I can travel, send my kids to private school, and feel good at the end of the day with the work I have done.

Unfortunately, that’s simply not the reality that most attorneys are experiencing. Many of us have seen the numbers. According to Payscale, the average graduate has a starting wage of just over $55,000 a year and is $84K in debt¹. About half of all lawyers are solo attorneys,² and we know from the Clio legal trends report that solos collect roughly 1.4 hours per day at $200 per hour or $70,000 per year – before taking out expenses.³ Incomes seem to have fallen.

For years we have been wondering what happened. Is the falling income due to competition from non-lawyers? Is it our failure to integrate technology or to practice law efficiently? Perhaps it’s our pricing strategy or the supply and globalization of attorneys?

I don’t know. But I do know that lawyers are still very valuable in our society.

² https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2013.authcheckdam.pdf
I use lawyers. You probably do too. I don’t go to lawyers for information. Information is free and easily accessible due to the internet. I go to lawyers for their experience, counsel, contacts, and reputation. I go to attorneys when I have a problem I can’t solve on my own or I want the insulation that comes from handing my problem off to someone else. I go to lawyers for peace of mind and protection from myself when making decisions.

Technology cannot give people experience, contacts, counsel, or a reputation. Technology cannot offer peace of mind. Technology can only take information and package it. A basic, and often unmet, human need is the need to be understood. Some psychologists are writing that the need to be understood may be even greater than the need to be loved, and it can be the root of depression, isolation, and loneliness. Technology cannot make someone feel understood. But you can. Regardless of who your customer is or what area of law you practice, with a few tips and a lot of practice, you can ensure that your customers feel understood. If you can master this, you have mastered customer service. You can use the information your customers give you to design an unstoppable practice.

Ensuring that your clients feel understood starts with listening and asking the right questions. First, you must give your clients undivided attention. This is so hard. Put away the computer, put away the phone, try to refrain from taking notes (check out the new technology that will listen to your meetings and turn it into notes). You cannot be truly present while perusing email or monitoring your texts or Instagram notifications.

Next, remove judgment and legal analysis. When listening to your clients, try to turn off your lawyer brain and all that training we spent good money for. Our clients are telling us what

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4 https://www.researchgate.net/publication/259486826_The_neural_bases_of_feeling_understood_and_not_understood
is important to them. It may not fit into a nice box of a well-defined legal issue, but it is important to them. Not only will removing judgment help you to better understand your clients, you may also pick up tidbits of information that can help you solve their problem in creative, outside-the-box ways. Do not minimalize your clients’ feelings or judge their actions. I’m not suggesting that you support all their decisions, but refrain from expressing judgment. It’s not our place. It’s not our role. They are not our friends or our children.

Additionally, pay attention to the emotions behind the words. Most communication is non-verbal, so study the body language and facial expressions of your clients. Try to do so with a neutral face. You are interested, not in support or opposition to what they are telling you.

Another tip is to use silence to your advantage. Take time to think about your response. Do not feel you need to respond immediately to their statements. Ask clarifying questions. Make sure that you have understood your clients thoroughly before you offer any legal analysis or suggest a path ahead. Wait until you hear the words “exactly” or “that is just how I felt” or, for the younger crowd, “totally.”

Then, after you have ensured you understand your clients’ perspective, you will have built a massive amount of goodwill and trust. Once I feel fully understood, then I trust the response and analysis you provide will be based on what I have told you. If you understand the dynamic between the parties, you can better craft a solution or suggestion that meets their needs. You will not be limited to the toolbox within the legal system.

These techniques are extremely powerful in a negotiation. Taking the time to understand the opposing party’s position and perspective will allow you to build trust and goodwill with the opposing party, better enabling you to craft solutions likely to work.
The other thing is that if you truly understand your clients, you can craft pricing models based on what is important to them. This so-called “value pricing” ensures that you are selling what they want to buy and not what you think they want to buy.

Customer service is our competitive advantage over our attorney competitors, technology, and online legal service providers like Avvo and LegalZoom. Customer service is the lowest hanging fruit that will allow you to differentiate yourself. I would encourage you to dive into customer service with all the energy you can. Then, when you have more money in the bank than you know what to do with, move on to finance.
The System Nerd's Secrets To Intake And Consultation

This session will provide training and insight based on human psychology, high stakes negotiations training, and the best modern sales techniques have to offer. Learn how to couple data collection, key performance indicators and application of the techniques above to improve your bottom line, client satisfaction, and more.

*Tiger Tactic: Intake is an extension of your greater vision. How you handle your intake process sets the tone for your relationship with your clients.*

You have a vision and you’ve done some marketing, and all that hard work has paid off because someone has called your office seeking legal advice. Hooray! But wait…this person is not a client yet. How do you convince them that you are the perfect attorney to handle their problem? In a word: intake.

The intake process is the convergence of all your efforts. This is the place where customer service meets marketing meets vision meets hiring. However, intake is definitely its own beast, and that’s why we give it its own chapter. Getting leads is one part of the job, but turning leads to clients is something else.

In this area, there are no easy answers other than to treat this part of your business very seriously. Give real thought to who is picking up the phone and how they are treating potential clients. Decide how you are going to collect data in order to determine whether your intake
process needs improvement. Just as importantly, consider how you will screen clients to determine whether a case meets your criteria.

Disclaimer: This chapter is metric dense and feels a little geeky. However, changes to your intake process will make a larger impact on your business than anything else. If you change one thing and only one thing, make this the chapter you implement.

In 2014, the firm was more or less floundering. This was during those years where we lacked vision and the mission was “in transition.” Business could best be described as fair. I had three attorneys who worked for me and three additional full-time staff. I was splitting my time between Modern Law and the software project “Access Legal.” Everyone was paid low to middle salaries, and we didn’t have a robust benefit plan. We had a steady stream of clients, but our pricing was wrong. Worst of all, we had no way of “seeing” where we were and no map to know where we were going. We only knew we weren’t short on was work.

This is when I was first introduced to the concept of KPIs and a KPI dashboard. KPIs are “key performance indicators,” they are the data set and the numbers that you have determined you want to measure. Measuring changes behavior. The best example is the scale. When we weigh ourselves we receive informational feedback. In fact, one study found simply weighing yourself every day and changing nothing else will yield a 13-pound weight loss!\(^1\) Data provides non-judgmental, objective feedback to how we are performing and measuring data changed everything.

We built and started using a “KPI Dashboard.” This Excel spreadsheet contains all our key performance indicators for the business and the employees in the firm. The data in this

\(^1\) https://www.ncbi.nlm.nih.gov/pubmed/25683820
workbook is the real story of how we were doing and a glimpse into our future. Our “business” tab shows our

- monthly income,
- expenses,
- payroll expenses,
- profit or loss,
- number of potential client intakes,
- number of new clients, and
- our conversion of potential clients who attended a consultation into clients.

This made our work more purposeful than it had ever been, and it gave me information I needed in order to make decisions at a glance. We finished 2014 stronger than ever and headed into 2015 excited about the future. I was especially excited about the number of intakes we were doing as a firm. At that time, our initial intakes were free phone consultations. We wanted to talk to as many people as possible and tried to give people as many options and free resources as possible. We had a robust intake campaign in Infusionsoft dedicated to helping us close business even after the intake was over. We did not mention or even think about our free phone consultations in terms of “sales.”

January and February 2015 were off to an amazing start. We were very busy. Everyone felt the hum of full calendars and a lot of intakes. February in particular felt crazy busy. I couldn’t wait to see what our KPI dashboard showed in terms of intakes, new clients, and revenue! March came, and my office manager delivered the populated dashboard.

We had given away a total of 103 free phone consultations in the month of February.

The other two statistics I was interested in—revenue and new clients—were not nearly as impressive. We had signed up 7 new clients and our revenue was just under $50,000.
Even now, looking at these numbers is jarringly painful. Those 103 free phone consultations at thirty minutes each amounted to over fifty hours of attorney time—time attorneys are not billing, time that they are not spending with their current clients, time that I am paying them to be in the office. A quick calculation told me that our conversion rate was 6.7 percent. I had no idea what conversion for a law firm should be, but I knew that 6.7 percent could not possibly be a reasonable or acceptable conversion rate. I was strangely elated. When we see a glaring problem, we have an amazing opportunity. As I went back to look at my conversion rate for the previous months and years, I saw that it was usually around 10 percent. Next, I reached out to Lee Rosen and the Rainmaker Institute for help. Both responded very quickly. I described my problem and we talked extensively about best practices within the industry and what might be a reasonable conversion rate. It was then that I realized most law firms are not tracking these numbers or talking about these issues. We law firm owners should know what a good conversion rate is! Industry averages and benchmarks should exist. A lot has changed since 2015 and now we certainly have benchmarks.

One thing I learned very quickly was that intake is sales. I understand that “sales” is a dirty word and one lawyers loathe, but we cannot help anyone who doesn’t hire us. Our job during intake is to determine whether the person we are talking to is a good fit for the firm and, if so, to show them we can help. We cannot depend on our follow-up campaigns to convert for us, and if we are trying to grow our business, we must create a sense of urgency.

I knew immediately that we would no longer offer free phone consultations. That left several options: paid phone consultations, in-person free consultations, or paid in-person consultations. We started off with free in-person consultations. Our conversion rate improved. In March, conversion was 14 percent. I decided to try paid in-person consultations, and by August,
conversion was 87 percent and revenue was $115,000. This marked the most important change I have ever made in my law firm. No other change has ever created such dramatic and immediate results. This is not to say that everyone needs to offer paid in-person consultations; every firm and every model is different. The moral of the story is to measure, test, and act.

Our next change to intake was hiring a dedicated intake person. After I listened to calls between our current legal assistant and potential clients, it was clear she was distracted and busy. She sounded interrupted by the prospect on the phone. I could understand where she was coming from. It’s difficult to turn off distractions when you have a motion you are working on in front of you or your email inbox is blowing up. A dedicated intake person’s only job should be to answer the phone when a potential client calls, to form a bond by listening attentively, to capture their information, and to get them scheduled for a consultation. The money from the paid consultations easily covered her costs, and she freed up the paralegals and legal assistants for all the new clients and work the firm had. Our intake person was incredible—personable, competitive, smart. She had previously worked as a car salesperson and she took great pride in her work. She worked from home and managed her kiddos and work at the same time. Things were great.

Until they were not.

Every month we looked at the number of people who called, how many scheduled, and the number of people who showed up or canceled. After about fifteen months, the cancellation rate started to rise. We listened to calls, and our magic intake person had begun to lose her magic. She was burning out. I had been warned this might happen.

As we started to think back, we realized all the other people who had performed the intake role had burned out as well. We just hadn’t been aware of the pattern. Why was our intake
person consistently burning out? The intake person spends all day listening to people’s problems. At a family law firm, they hear tragic scenarios play out over and over. At a certain point, the empathy train leaves the station. We ask our intake person to be present and to practice active listening, and you can only do that so long before burning out. The next time we hired, we told the candidates the position would be temporary. Our intake position would be a one-year post, give or take.

**Initial Consultations**

As we focused on intake and converting our potential clients into paid consultations, we also focused on converting those who came in to meet with us into paying clients. Between the time when a person scheduled their consultation and their actual appointment, they receive a series of emails. The emails confirm their appointment date, time, and location. Another email sends them a blog post of things to consider before their consultation. Another covers frequently asked questions. On the day of the consultation, they receive another reminder email. All the emails are designed to reduce the unknowns so that people know exactly what to expect when they come into the office. We include a diagram of how to find our suite and a picture of what our office looks like.

When someone arrives, the staff is trained to greet them by name and offer coffee, tea, or water and snacks. Then they check the client in by taking payment. We do not require clients to fill out paperwork. The intake person has gathered any information that we need at this stage, and we want this process to be easy and smooth. Our front office makes friendly small talk and offers a card of affirmation. Our yoga instructor gave them to us and they are funny, positive, uplifting cards. We want the clients to be comfortable. Nothing about the process should be scary
or intimidating. People are already nervous about coming to a lawyer for a divorce. We want them to feel like we are relaxed professionals ready to take on their problem.

The attorney is trained to promptly take the person to the conference room or office and begin the consultation. We set aside sixty minutes. During the consultation, the primary goal is to continue the relationship that has begun to form with the law firm. The lawyer brings with them a folder of information and handouts, including a visual of the divorce process and a copy of my book, *Decode Your Divorce*, which is all about Arizona divorce. Then we ask the potential client what is going on.

This is their turn to talk. They get to talk about whatever they want. They can tell us how they met their spouse, or how they knew it was doomed from the beginning. They can tell us the moment they knew it was over. They can talk about how their adult children are taking the news. It doesn’t need to be relevant to me; what matters is that I learn what is relevant to them. I can’t come up with creative solutions to their problems if I don’t understand what their problems are. My job is to ask follow-up questions and to understand this client. I need to know if his primary motivation is to punish his wife at all costs for cheating, or if he is just looking for a fair outcome. I need to know what his pain points are so I can determine whether I can truly help.

After forty-five minutes or so, it’s time to get to business. At that point, I create the client agreement, walk through the handouts, and explain a bit of the process. I tell them what we are going to do to solve their problem based on what I have heard and outline the financial terms. I ask if they are ready to move forward. It’s time to close the deal. They feel well taken care of. They know we understand the problem. They have invested a lot of time and some money with our firm. In our marketing, we are really clear about who we are. Nothing is a surprise. Our processes are deliberate, systematized, and consistent.
The funny thing is, back in 2014 they were also deliberate, systematized, and consistent. The problem we can run into is thinking that just because we have a process, it is a good process. So how do you know? You look at the results. If the systems are producing the results you want, carry on! If you want different results, tweak, measure, and test.

**Post-Consultation**

After the consultation one of two things will happen: the client will hire you or they won’t. If they want to hire you, the first question is whether or not you want to work with this client. We have all experienced bad clients, and most of us knew the first time we met the client that we shouldn’t work with them. As humans we are very good at spotting bad fits, and by now you likely know that whatever they are offering is almost never worth it. Saying no is a beautiful thing. Practice it. Know your script. Sometimes people are angry that you’re unwilling to take their case. Some lawyers just quote a ridiculously high retainer and pray the potential problem client doesn’t pay it.

We have three post-consultation email series. One is “long-term nurture.” This campaign is for those we don’t want to work with or who are unlikely to hire us. They go into a newsletter sequence and continue to get occasional emails. We also have an advanced-fee campaign for people who have received a retainer agreement but haven’t yet executed it. This sequence asks whether they have questions or whether they need more time. Many times, people respond and let us know their plans. The third sequence is for those clients who want to use Access Legal. The campaign is designed to explain what a legal document preparer can do and what to expect when working with Access Legal.

**Other Opportunities**
Your intake system provides other opportunities you can’t find anywhere else in your firm. If you want to measure the results of your marketing, you must ask potential clients how they found you. This is crucial information to evaluate our marketing efforts and identify who is referring us business. We need to identify and thank these people for referring us business. Additionally, there are always people calling us who we cannot help. That means that at least sometimes, potential clients are looking for us to send them somewhere else for help. Lawyers pay a lot of money for leads. You now have leads to give. Some attorneys enter into fee-sharing arrangements, while others just want to pass along the goodwill. This is also an opportunity to show your work. Let’s say you get a call for a criminal case and you are a divorce firm. You see that Ryan Smith sent business a couple months ago. You can give the potential client Ryan Smith’s name, but also have your intake person email Ryan Smith to say hello and let him know you made the referral. In essence, intake becomes powerful marketing.

WARNING: If you follow these suggestions, you will likely have other problems—more work than you know what to do with.
Marketing Segmentation
Billie Tarascio

Marketing segmentation is the process of taking a large market (in this case legal consumers) and breaking it down into smaller groups with similar needs, characteristics, and demographics. Since none of our law firms serve all legal consumers, we must segment our services to those who want what we offer. In general, the more targeted you can be, the more successful your marketing and advertising efforts are likely to be. We know we need to be laser focused to compete in this competitive marketplace, but how?

Figuring out where and how-to market is at the crux of many of the decisions we are asked to make as law firm owners. There is no shortage of options. You can spend money on online directories, website design, pay per click, social media, networking, writing a book, the list is literally endless and there are vendors calling every day with “new opportunities in your area.” Once you decide where you want to spend your advertising dollars, then you have to decide what to say. Do you change your message depending on where you are advertising?

Define Who You Are.

The first step in market segmentation is vision. Who are you? Who are you today and who do you want to be tomorrow, or in five years? What are you trying to accomplish with your company and as a lawyer? These questions are not easy. They take time and discovery. But the answers to these questions will make it so much easier to decide where to advertise and what to say. Once you discover who you are and what you are trying to accomplish on a broad level, you can write your law firm constitution, or define your vision and values. This exercise will help clarify your audience, your purpose and set your goals. Without taking the time for this step, you will do what most of us do, spend a little money in a lot of places and have no idea whether any of it is working.

Communicate Who You Are, Specifically.

Take your law firm constitution and tell your clients what you stand for and why you exist. Tell your clients who you like to work with, and more importantly, who you don’t want to work with. It’s remarkably effective to tell the wrong clients you don’t want to work with them. We started telling people who wanted to burn their spouse and use the system to inflict pain not to hire us and we started attracting all the right clients. Clients who share your values will like you more, send more clients your way, and make your job easier and more fun.

Use Your Clients Language and Study Their Background

When in doubt, ask your clients what they like and what they don’t. If you are feeling stuck, check out your online reviews and read about what your clients have to say about you. What do they value? What do they like? If you use the same language of your best clients, you can attract similar clients. Ask your best clients how they chose you or found you. Study the demographics of your best clients. Start by identifying a list of the clients you enjoy working with. Cross reference that with how much revenue they generate. Find out where they live, shop, work, and
play. How old are they? Do they have minor children? Consider making a mock ideal client and writing to that person.

**Start with Why**

Simon Sinek’s best-selling book “Start with Why” explains that starting why instead of what or who is the best way to gather a tribe and attract people to you. I’m advocating the same approach. Figure out your why. Take ample time and energy to figure it out, define it and write it. It will become your foundation for marketing segmentation, hiring and more.
Viva la Small Firm!

Modernizing the law firm business model

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Overview

Solo and small firms are poised for a significant opportunity to help more consumers get access to legal services by changing how these services are delivered. The solo and small firm demographic of lawyers is entrepreneurial and is typically nimble and quick to try new ways to better serve clients. I know some folks will disagree with this concept. So, let’s dive in.

The narrative that lawyers are “slow to evolve” is getting stale. It seems as if those who still use it are scared of change or are pushing a product or otherwise want lawyers to buy into something by using fear as a tactic. I believe most lawyers are evolving. Of course, some are moving faster than others, but most are moving in the right direction. Even self-labeled “mature” lawyers who have established practices are moving the needle.

If we are being real, we must admit that lawyers who complain how technology is too difficult to deal with are just whining. There are so many practice management resources out there, legal professionals need to take the time to learn or adopt a new model. In other words, running a small business (the average law firm) is hard—but doable. Still, if you don’t put in the effort, you won’t succeed.
With that, the following encapsulates how we need to push for change to solve the access-to-legal-services gap, as well as how solos and small firm lawyers can and should play a role in this process—and, quite frankly, how they would benefit from a business perspective. I will hit on two solutions and then some practical ways these lawyers can make an impact on advancing the law firm business model to get more consumers access to legal services.

The Big Vision

Prediction: If we (the royal “we”—not just lawyers) fix the law firm business model, then we also solve the access-to-justice gap. Ok, maybe not the entire access gap, but a large chunk of it.

This is a big statement, I know. Let’s back up a minute and tie this to the solo and small firm world.

Think about recent articles/tweets/rants you have read about the business of law: Robots are taking lawyers’ jobs, artificial intelligence is coming for us, lawyers should learn to code, lawyers should know how to use Excel better, LinkedIn is cool (even if it is not), lawyers should know about blockchain, etc., etc.

Now, think about recent access-to-justice stuff you have read: Legal Services Corporation (LSC) needs more money (it does), the access gap is growing, we need more pro bono from lawyers, we should use tech to connect consumers to services, etc., etc.

All these discussions are important and needed. But most of the time the discussions about the business of law and access to justice tend to exist in their own vacuums. I would like to see the conversation shift so that the overlap between the two is constant.

What if we could perfect the law firm business model so that lawyers truly focus on practicing law and less on the nuts and bolts of getting clients in the door and operating the firm? What if perfecting that model allowed lawyers to do as much of the public good work as they want to do and not have to worry about billing enough time to keep the lights on? Or at least be able to take on more work where the client cannot pay what is currently considered market rate?
Sounds Pollyanna-ish, huh? It is not. We just have to try harder. To achieve this, it is not good enough for lawyers to “use the cloud,” adopt Kanban, get a chatbot, track time more easily, or get more involved in bar association(s) to serve as a baseline for a modern practice. None of these things is bad, but none is good enough on its own. We need to fundamentally change how lawyers operate a law firm and deliver legal services.

How do we get there? There are two options.

Modernize the Rules

My opinion (which is shared by many others who care about the future): The rules governing the legal profession need to evolve if we are going to allow lawyers to provide consumers with more meaningful access to legal services. Of course, every time we raise the concept of altering the ethics rules related to outside (non-lawyer) ownership and fee splitting, many folks act as if it is the third rail of bar association work (overly charged and politically deadly).

However, this is not a new issue. Everyone should read (or re-read) the ABA’s 2016 Report on the Future of Legal Services in the United States (abafuturesreport.com) to take a look at the data that is out there from other jurisdictions related to alternative business structure models. These models are working in other jurisdictions (outside the United States), and they can work here. The Report really is an overview for evolving the law firm model while getting consumers better access to legal services.

Despite this, states are actively working against modernizing legal services. For example, in states such as Ohio and New York, ethics advisory opinions have been published to prevent companies (e.g., Avvo) from helping consumers connect to lawyers. Under these ethics opinions, the position has been that if an Avvo-like company refers a case to a lawyer, then the lawyer cannot pay a marketing fee for that case (even though that same lawyer may be paying through the nose for Google AdWords for a similar result).
In other words, there are consumers who want to be connected with lawyers, there are companies that can help connect those consumers to lawyers, there are lawyers who want that work and are willing to pay a reasonable marketing fee to get that work, but states are prohibiting these results.

Quite frankly, I am surprised that there has not been a solo/small firm insurrection in the various states blocking these efforts because, if nothing else, lawyers are losing opportunities for revenue. Paging the William Wallace of the solo/small firm world.

ABA Model Rule of Professional Conduct 5.4 needs to evolve. As the Report indicates, we need to gather data to inform states on these forward-looking business models so that they will be permitted. This is not an easy task, but it needs to be done. Otherwise, law firms will be stuck in their existing ways until a radical shift can occur, changing the way lawyers interact with consumers of legal services.

In the Alternative: A Standardized Approach

While rule changes are being discussed and debated, we need action in the interim. It is possible to work within the rules to create new models of law firms that are more focused on client service. This really applies to the solo/small firm world (the vast majority of active lawyers). One way to do this is to standardize the model of what it means to be a solo or small law firm—including characteristic technology offerings, processes, and procedures—and how law firms can get work in the door (i.e., find better ways for consumers to get access to more traditional legal services).

The firms who have positioned themselves to standardize and run lean, consumer-focused practices will also be better positioned once the rules discussed above evolve and firms have fewer barriers to capital and clients.

Although the evidence is anecdotal, I have not talked to one single lawyer in the United States who indicated that they would be averse to splitting profits with an outside non-lawyer-owned company if that company could provide capital to run their firm both operationally and to grow
their client base. Lawyers know that there are roadblocks in place, but they are open to change.
They want to be able to focus on practicing law and not worry about the business aspects as much as they do now.

We can solve these problems. It is a big conversation well beyond the space allocated for this article, and it needs to continue.

If we can modernize the way lawyers function, then more consumers get help. Let’s make sure that any conversation related to how lawyers practice is married with getting consumers access to legal services. That’s where the magic will happen to meaningfully address the access gap.

Good Stuff, Huh? Let’s Do something!

Now, some of you are all fired up ready to shake things up. Others are probably thinking: I get it, but what can I do to move these issues along or play a role, regardless of the size of my contribution?

Here are some ways to roll up your sleeves to modernize the business of law:

1. I repeat, read the Report on the Future of Legal Services in the United States. Really, all of you. Again, it can be accessed at abafuturesreport.com. Not hard to remember. Why should you read it? It is the road map to the future of the profession as it comes to getting more Americans access to legal services. It calls for modernizing law firm models, advancing legal tech, and focusing on gathering data to explore issues such as outside ownership of law firms and the regulation of non-lawyer-owned legal service providers.

2. Speaking of data . . . you need to focus on data in your practice. Choose key performance indicators (KPIs) that you religiously monitor to make sure you are running a profitable, healthy practice. Every firm will put different weight on different KPIs. Examples include hours billed/collected per month/year, number of new clients per month, conversion rate for new clients, average spend per client, etc. You get the point. You can measure all kinds of KPIs to track the progress of your firm. This is important because once you have a grasp on the
performance of your firm, you can experiment more. Also, when regulations evolve and you can consider things such as taking outside investment capital to fund your firm, you already will have your head around your business model to understand what resources you need grow.

3. **How do you get the data?** Adopt more technology and/or use it better. You probably have some tech in your firm beyond email and Microsoft Word (at least I hope so). Adopting practice management, customer relationship management, and accounting software will give you a treasure trove of data if you use it to its full potential. All of us have implemented some software in our business and then used 10 percent of its potential. This is not ideal. Get to know the software or find someone who can help you. Uniform and complete use of software is critical to measures KPIs.

4. **Raise some hell.** I am serious. It is troublesome that regulators are blocking the ability of consumers to hire solo and small firm lawyers through private referral services that charge a marketing fee (a la Avvo’s old model). Above, I mentioned that small firms need a William Wallace. That is a little dramatic, but only a little. Change is going to happen. If we don’t do it, other governing bodies will force it—courts, legislatures, robots that are taking over the world through AI. Look at the ruling in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. ___ (2015), and hold your breath. Often when futures committees or ethics groups raise the idea or modernizing rules to allow outside (non-lawyer) ownership, we go into self-preservation mode. If people want to change the rules (or vise versa), ask for data on how it will affect your clients. Ask, will it harm them? If not, why not try new rule structures? If data shows that more people can get help, why not go for it? What are we frightened of?

5. **If nothing else, intentionally focus on running a strong law practice.** There are so many changes you can make to help you play even the smallest role in the ideas described above. Attend ABA TECHSHOW to learn about and implement the latest and greatest in legal tech. Use ABA Blueprint (abablueprint.com) to find solutions to run a more efficient firm. The point is: act. Complacency will get you left behind.
Do some or all of this, and you will be contributing to modernizing the delivery model. The more intentional we are about pushing for regulatory or practical evolution for delivering legal services, the quicker we will see it happen. Be a part of that evolution.
Tools for the effective, communicating, competent virtual lawyer, as well as the rest of us.

By Joseph W. Booth

Purpose and scope

The purpose of this article is to discuss new changes in technology that make the concept of operating in a virtual law practice more accessible, more secure, less expensive, and more effective. The core responsibilities of communicating with clients, competent practice, and safekeeping of a client’s information can be enhanced with a techno-tune-up. The same information is any less pertinent to any practice, but the guerilla warfare approach mandated by the virtual office makes useful technology all the more critical.

This article is not intended to be a survey of all software for lawyers. For example, we are not doing a review of practice management software, most of which is online or cloud-based as well; however, the features are not very new.

TOOLS FOR THE EFFECTIVE, COMMUNICATING, COMPETENT VIRTUAL LAWYER, AS WELL AS THE REST OF US. .................................................................

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1 Joe often speaks on law and tech issues. He recently published a sidebar in the Advocate: Winter 2019 Vol. 4. No.3 Technology for Lawyers: Managing Electronic Evidence. He is currently the Co-chair of the ABAFLS Publications Board and sits on counsel. Joe is a fellow of the AAML and the FIAML. He is rated as a SuperLawyer in the NE Kansas area, and has a practice in general family law, ART, and appellate practice.
The disappearing desktop.

The only advantage desktop computer over a laptop is the opportunity to have large screens easily, and that too has disappeared. You can easily connect additional monitors, keyboards, and mouse to notebooks. But both the format of laptop and desktop computers are quickly merging with portable devices such as the iPad. Apple touts that its new 2018 iPad Pro is an effective replacement for a laptop computer.

The answer to that is yes, it is for most things. You can now connect a separate monitor, the processing speed and the software available all work extraordinarily well for practicing law. I know lawyers who this is the only computer they use for most tasks.

The iPad has several advantages; you can use a Bluetooth keyboard or the accessory model that attaches magnetically. The iOS models can use the cellular network. The iOS will predict words as you type, making it faster for some typists to insert text, and Siri has improved on the iOS, working better than on the desktop—if you have an internet connection active. Siri will work on a laptop if not connected to the net. And, of course, they have a touch screen, portable, with the computer and its charger being less than about any laptop.

The iOS devices come with the ability to find them when connected to the net, lock them, erase them remotely, and the newer models have facial recognition. They simply do a better job at securing your client’s data.
The software and the data backup automatically to the iCloud. Recently, an opposing attorney claimed his computer was stolen on a trip out of state. He claimed he could not proceed with the trial scheduled for that day, the court granted a continuance. In contrast, few days later my new 2018 iPad arrived from Apple, I was able to have all of my notes, the software, etc. installed from the cloud in about 10 min of effort, and another ½ hour of download time. (Those movies take time!)

Over the next few years, Apple is going to start into connecting the software so that iOS users can use the same software on the desktop and vice versa. The two operating systems will remain separated for the time being, but many software designers for iOS software are not putting resources towards making a macOS version because they are banking on the idea that the MacOS will be able to run the application directly. Apple announced it is expecting to begin that process for developers to write applications around 2020. One early debut was adding the recorder app to the Mojave MacOS.

**Word-processing and spreadsheets.**

*Word* and *Excel* set the standard. There are a few reasons for that. The first is that they are the longest-standing and most established pieces of software that evolved through the years. The second is that their virtual omnipresence effectively guarantees that if one wants to play well with others, these common platforms and file types are the way to go. (However, about every other word-processor will open and save in the Microsoft’s formats.) Third, they are more feature packed than virtually any of the other competition. Fourth, their longevity in the marketplace effectively guarantees their familiarity, leading people who don't like to change to stick with them by default.
With WordPerfect losing market share rapidly it still appears to be the #2 word-processing software.

Change comes slow to the big software companies, and often the improvements are released incrementally. For example, the Microsoft line of products over the past few years have changed into fundamentally essential ways. The first being that their marketing philosophy changed from a licensed version of the product with limited updates to a subscription base. The subscription-based marketing system guarantees them continuing income, but it also commits them to continuous updates to subscribers at no additional cost. Along with the subscription services there are many other products, most of which Lawyers don’t know much about and don’t care, but the OneDrive product is their cloud-based offering in competition with services like Dropbox.

Their competitors include Google. Their G-suite Line of products are much less expensive, and the full range of professional level software for word-processing, spreadsheets, and presentation software similar to PowerPoint. Google was arguably the first to break into the new field of collaborative writing in a user friendly format. By collaborative writing we mean, the ability to have multiple users simultaneously work on the same document without having to share versions, as well as generally the ability to have sideline discussions and comments alongside the document, and other handy features. All of the communication between the authors can take place within the material. Being a web-based product, the software works with virtually any browser on any model of computer. And they are ideally suited for Google’s Chromebook which is a stripped-down version of a laptop, markedly less expensive. These Google products are not as feature packed as the Microsoft line of products, but that diminished set of features also comes with the advantage that they are more straightforward to use. While many of the more obscure word-processing teachers are absent from these products, they do offer unique features such as voice recognition built-in.
Operating more like a hardware company than as a software company, Apple offers its word-processing, Pages, spreadsheet, Numbers, and presentation software, Keynote. Well again removing the more complex features found in Word and Excel, Apple approached the drafting of this software with a dedication to ease of use, and impressive capabilities. The Apple suite of products is quite remarkable and a serious contender for professional work. This product line is free of charge and is as part of what those of us who use apple all the time lovingly refer to as Appletopia. The software works in very similar ways across all Apple platforms. They offer an online editor for those who do not have Apple products enabling them to collaborate with virtually anyone. They use collaboration features that are updated and allow users to simultaneously work on any of the the full line of products, edit, and create documents simultaneously. To use this feature, the material must be saved to iCloud.

In many ways of the product that is most similar to Word and Excel is called Open Office. It is part of a group of software known as open source software it's free, and while it does not offer the glamorous look that accompanies the Microsoft line of products, the open source aspect means that it's continuously updated and provides almost all the same features.

**The importance of collaboration.**

As mentioned above, collaboration is one of the newer software features to come on the marketplace. While its roots reach back for several years, it is now becoming useful. And again, collaboration is the ability to work simultaneously on the same document. I work for a lot of lawyers as co-counsel or as clients. So, it's not uncommon that they want to have a hand in the process of drafting things like appellate briefs. I am principally responsible for those briefs. Just as in a virtual law office, we are never in the same location as we work. The best example of this has all the attorneys involved to be able to work simultaneously, along
with their support staff. Collaboration simplifies the process and eliminates the need to email versions of the software back and run the risk that each working on the project ends up out of sync. The rate at which work done is increased because as the work is shared, one does not have to wait for the feedback. A junior lawyer or a paralegal can be doing citation checking and copy editing, while others are continuing to research and write.

There are drawbacks to the online collaboration process. First, it demands a significant level of trust between the participants. While features like tracking changes are beneficial in noticing what each has done to contribute to the process, or impede it, there still is the risk that small changes to a document could make a tremendous difference and go unnoticed. All of the better online collaboration tools have version history so one can backtrack to the most desirable version and restore the document. Even then it’s wise to have an occasional copy saved during the process and away from the collaborating team, just in case.

Online collaboration does usually require the file to be stored on the cloud, with the cloud sharing product from the same manufacturer. For example, if you’re using Microsoft Word you need to use OneDrive; if you’re using the Apple Pages product, you need to use iCloud. While not a significant impediment, if you traditionally are using online service, such as Dropbox, you now have two places where files and resources are stored, increasing the risks of information loss and disorganization.

**Working with subcontractors.**

At the ABA midyear meeting, the lanyard sponsor was a service called LawClerk.legal. LawClerk have attorneys who work for a flat rate, based upon bids set by the lawyer asking for services on the secure website. Attorneys bid for the work, and you can review their resume’, writing sample, and other material as you choose. The attorneys come from all
walks of legal life, from new graduates to seasoned veterans. Tasks include research, writing, document review, other tasks. Their website has a significant amount of information relating to the ethics, including the ability to have others do some of the work you’re signing off on, and the propriety to charge your market rates for the work done by others.

After trying the service, the results were unexpectedly good. Here are a few examples: For an appellate brief I needed a 50-state survey related the question under home state, how long can you be away and it be a temporary absence was in the appellate courts? My had client moved from the marital residence to Kansas but returned to the marital residence in another state for about a month during the six months preceding the filing of the action. This cumbersome task was bid out for $400, and what returned was well written, well-researched, and ultimately was a large segment of the brief that could have been used as delivered by the law clerk. So for about the same as an hourly charge, I could direct my attention to other issues. In that situation, I utilized the service for a few reasons: One was to try to keep the cost for the client down; the other, I had numerous appeals going simultaneously; finally, I wanted current data and did not want to trust secondary sources. The second use was in researching an article for publication in a midwifery journal, I was able to find someone with a health-law background and also familiar with advanced practice nursing to update a previously published article that I had written on vicarious liability. It too was wonderful.

The drawbacks are like any other delegated task; we have the ethical responsibility to review and double check the work. We can't just literally depend upon their work. As an experienced researcher and writer, the individual task is often faster to do yourself. It takes time for those individuals to do their job and they tend not to report back until they’ve got a working draft. There's a lot of trust required if you're facing a deadline. I would be loath to ask for an extension in time because I trusted the wrong person to do my work for me.
Finally, some portions may need to be rewritten to have continuity in the writing style throughout the document.

**Text capturing applications.**

There are many applications designed to take advantage of smartwatches, phones, and tablet computers. One example would be **Drafts**. Drafts is a text capturing application that allows you to make notes of any size, including this entire article was first dictated into Drafts, and the components of your writing can either be broken up into separate smaller files and then combined later, or in one long continuous file. Drafts is quite proud that the default feature is that you can start the app with a fresh screen each time, this makes the workflow much cleaner. Unlike the word processing applications, these types of applications write in software called Markdown, Markdown is designed to be readily converted to web applications and is a favorite with bloggers. The fact that it writes in markdown makes very little difference to the non-sophisticated user, like me.

The interface is starkly simple and allows one to stay focused just on the words. They have a beta version for the Apple desktop, and the best my knowledge it does not work on the platforms outside of Apple.

All of the files are stored on iCloud, and the transition between devices is seamless, the interrelationships between the device and iCloud are effectively invisible with no noticeable time lag.

I've only recently started using Drafts, the devotees to the software use it as the entry point in the processing in most any kind of text. Built into the product are shortcuts that allow you to complete a series of tasks. Such as using the software to draft an email, when drafted press
one button then it opens the email editor and inserts the first line of your note as the subject, you place the addresses you want to use on the email, it sends the email and then stores the draft in an appropriate file. Each of these individual notes can be tagged, archived, or trashed. (Many writers have commented they approach sending out e-mails and texts this way to avoid the distractions created by opening the e-mail client.)

What is likely one of the most useful features of this product is its voice recognition. It utilizes Siri's software. Drafts has an ingenious way of allowing you to speak continuously and avoid those pauses that are a part of what living with Siri is all about. The software then goes back as your dictating and re-edits until the dictation is turned off. So even if there are gaps in your phrasing, it attempts to get the context of the whole dictated section of text as a way to increase accuracy. Even Dragon products don’t have that ability.

For years I had used the Dragon software for dictation. I always suffered from periods in which the software worked very poorly, and recently there was an error in their system, and it wouldn't let me access my subscription on portable devices. When I engaged in the hunt for a replacement, drafts turned out to be a better product for several reasons.

On the Apple Watch, I can make a quick note from an icon on the screen of my watch; it will hear it, transcribe it, then file it to be used across the platforms for editing later. You can use Siri commands as well, “Hey Siri, make a note in drafts.” That is nice on the Apple CarPlay.

At my desk, if I want to dictate a quick note, I use my phone and then it links immediately to the beta version of the desktop app.
One drawback to Drafts is that it's text only. While you can paste a hyperlink into it, you can't put images into the notes. I often will take a screenshot and save it, Drafts does not support that.

Another is that while you have a clean text writing service, it is not "what you see is what you get." So you have to move to a word processor or other text management system to see the formatting.

Other applications convert text to voice; I haven't found one that has these organization, or workflow features.

**JustPressRecord** Is an iOS app that does an excellent job of transcribing audio, it keeps the audio file for later use but uses Siri to make a first attempt at converting it to text. The biggest impediment to the accuracy would be the background noise in the proximity of the microphone to the speaker.

**Otter** Is designed to record and transcribe conversations, and then share them with the group. It does an excellent job of recording and transcribing the text, again if you have a quiet environment and the microphone is close to each speaker, as text is gathered it separated with an attempt to identify each speaker. It can be quite useful for capturing the summary of the meeting even when that summarization is in dialogue. You can start using Otter for free, and for more features, there is a small fee.

**Trint.com** Is an online service will you take a recording and upload it and it will transcribe the recording, then return to you the recording synchronized to the draft text. There's a fee per month for the service.
**Apple Notes.** While not a new application, the updates to it make it an *Evernote* competitor, combined with Siri, it is quick and easy to make notes, they can be filed, organized, searched, and shared collaboratively with other Notes users. It is free software, and secure. Built into the Notes app is a document scanner.

**Document scanners:**

I still feel my *Fujitsu ScanSnap* scanners are essential. But the phones and tablets make excellent scanners too. For the virtual practice, ScanSnap has models like the iX100 and S1300i that are small and can be powered by the laptop. The combined effectiveness of the hardware and the included software makes ScanSnap the leader in my book.

For those who don’t like the baggage: As mentioned above, the Apple Notes application will allow you to scan documents directly into it. *Dropbox* contains an excellent scanner application will enable you to store the scanned document in its appropriate file. A convenient feature.

*Adobe* has its standalone scanning app and is offered at no cost.

Whatever the software, they all use the camera built into the device to capture the image and convert it to PDF. There are several useful applications on the market; many will automatically find the edges of the document and adjust the image so that the scanned document contains no other background.

**Error-checking software.**
There's nothing that says a virtual law practice is a one-person practice. But you certainly don't have the proximity of working with someone such as a paralegal in the same office. This means that one has to adopt other ways in which they can edit and review work on time. Microsoft Word has done an excellent job in its updates in improving what is used to be a spellchecker and now is appropriately critical of grammar.

Grammarly, an online service, as well as a keyboard for the phone and iPad, there's a far more intensive review of text well you type it in a web browser, or by uploading the document and having it reviewed. It's in an excellent last step in the review process and while it uploads the document, suggests changes both for spelling and grammar as well as word usage, it does not harm the formatting. I used it here, how did it do?

Westlaw has the citation checking feature Drafting Assistant drafting.westlaw.com it will look up, check the cites and assure you that they are still good law. LexisNexis has a similar tool.