



TECHSHOW2018

Lawyer Dodge: Understanding Self-Help Legal Technologies

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Lawyer Dodge: Understanding Self-Help Legal Technologies

Services like LegalZoom and apps created in hackathons are helping to address an underserved population: the self-help client. Rather than give in to self-help services, why not join them? In this session you'll learn about the tools that are steering clients past attorneys, and whether you can leverage these tools – or create your own – to provide better service to and retain clients.

1. What's the Appeal?

In 2012 the venerable and trusted *Consumer Reports* [evaluated LegalZoom, Nolo and Rocket Lawyer](#) to see if they really could save consumer a visit to a lawyer. They used the services to create a will, a bill of sale for a car, a home lease and a promissory note. Then they asked three law professors to review the results in a blind test. The verdict? Using any of the three services is generally better than drafting the documents with no legal training but unless the needs are simple none of the will writing products is likely to meet the needs of the user and the other documents weren't specific enough or contain language that could lead to “an unintended result”. The bottom line is the [many consumers are better off consulting a lawyer](#), which is why most of these services let you search for one, or offer subscription legal services.

[Other searches](#) reveal that these services show complaints with the Better Business Bureau, Yelp and other review sites. [Lawyers who have tested the services](#) find them lacking, including a will generated by Legal Zoom that evidently disinherited the reviewer's oldest son. Yet, the DIY legal services sector continues to apparently survive and thrive. If consumers are being harmed or not served effectively why do they persist on using these services, or at least trying them out? Because they are “easy”, fast, and affordable. They empower the user to self-help and self-study. The services are online making them available 24/7/365. Fees and cost are a known factor. A recent study by the UK Legal Services Consumer Panel revealed that [only 6% of consumers could find pricing on law firm websites](#). Many of these services take advantage of the fears of consumers and small businesses regarding unknown fees by using phrases in their advertising like “Create Legal Documents On Your Own and Save Money” and “You can create a complete estate plan quickly, easily and without a costly attorney.” However, (somewhat ironically) many of these services will also offer to connect you with a lawyer, because many people will have complex situations that a DIY form simply will not cover.

2. Meet the Competition

There has been a lot of discussion about artificial intelligence taking lawyer's jobs. And in some cases that may be the case, especially for document review, contract generation and legal research. Artificial intelligence may also [predict outcomes better than lawyers](#). However, much of the “competition” for the consumer market is not super sophisticated and expensive artificial intelligence. The services are based on tools that lawyers can easily adopt - automation, document assembly, decision trees, and expert systems - and ok, maybe a little AI! Let's look at a sampling of popular lawyer-free DIY legal services focused on consumer legal problems (corporate law firms [have their own set of competitors](#)):



2.1 Chatbots

[DoNotPay](#)

This chatbot dubbed “robot lawyer” started out as a way for consumers in the US and the UK to get out of paying parking tickets. It was created by non-lawyer Josh Browder two years ago. In July of 2017 Browder announces that he was [pushing out 1,000s new bots](#) to help with transactional legal problems. Simply go to the site and ask a legal question or describe a legal problem and you will be directed to the correct bot, which asks a series of questions and then generates a document and send the users a file. What types of issues can DoNotPay help with? Landlord-tenant, disputing credit card charges, workplace discrimination, terms of service, flight refunds, immigration issues, etc. Discrete issues that people sometimes have a hard time solving for themselves.

[Robot Lawyer Lisa](#)

The website starts with this assertion: “If you need to create your very own confidentiality agreement or NDA, without the need for expensive human lawyers, LISA can help...”. The LISA bot is designed to represent both sides, and her machine impartiality “means she can save both sides time and money”. The end result of LISA’s negotiation is to generate a legally binding NDA. The site lists Monsanto and Navada as “clients”. This project is the combined efforts of the AI platform of Neota Logic, Adam Duthie of Duthie & Co LLP, and Chrissie Lightfoot, of AI Tech Support Ltd.

There are [many more legal chatbots](#) emerging across the globe.

2.2 Document Generation “Self Help”

[Legal Zoom](#)

LegalZoom is one of the most recognizable brand names in DIY legal. Their early ads featured Robert Shapiro, celebrity lawyer and spokesperson, reminding us that “we’ll put the law on your side”. LegalZoom offers flat fee online document generation services covering business formation, estate planning, and IP. They have added some immigration, disability and DUI. Most of these services rely on the “client” answering a series of questions resulting in a document or set of documents when payment is rendered. More recently they have added the LegalZoom Lifeplan, a pre-paid legal plan for employers. They also sell subscription services, for “year round” attorney help at a flat fee per month. While the disclaimers on the lawyer network state the page is a legal directory, the information leading up to it suggests that the attorneys are vetted and carefully selected. Of course, any attorney who meets eligibility requirements, (equating to no more than any state sponsored lawyer referral service requires), [can apply to get referrals from LegalZoom](#). However, there are very few attorneys listed in their network.



[RocketLawyer](#)

Similar to LegalZoom, RocketLawyer offers fixed fee document generation services for personal and small business needs. They too are offering legal benefits to employers (it isn't legal insurance, their website says so). And they too offer to connect consumers with attorneys for help. Attorneys can [sign up to be part of the referral network](#) and help answer questions from Rocket Lawyer members at a pre-negotiated Rocket Lawyer On Call price.

[Avvo Legal Services](#)

Most attorneys know Avvo from their legal directory which rates and lists attorneys in many states based on the attorney registration list. Disciplinary action, when available, is also displayed on the attorney's profile listing. As an attorney you may "claim" your profile to improve your rating and add additional information. What is not as well know is the Avvo Legal Services, which competes with the lawyer referral services from Avvo and RocketLawyer. The site states: "Get all the help you need, at a fixed price, no hidden fees or long-term commitment". [For participating lawyers](#) instead of a [lead generation model](#) like RocketLawyer, LegalZoom and NOLO, Avvo Legal Services connects the client to the attorney who agrees on a fixed fee. The client pays Avvo Legal Services and that money is passed to the attorney. In a separate transaction the attorney pays a per-service marketing fee for the completed paid service. This model, though it means that the consumer gets direct legal assistance and opportunity for additional help from the attorney if the limited scope service is not sufficient to solve the legal need, is causing some ethics concerns because of perceived "fee splitting".

[Nolo](#)

Nolo has been publishing consumer focused legal guides since 1971. They have now expanded to selling DIY software (e.g. WillMaker Plus 2018, America's #1 Estate Planning Software), books and online form subscriptions. They do not offer to match a customer with legal assistance for the forms and software, however they do offer a legal directory. Once a person chooses a practice area in the legal directory then a series of questions regarding the issues and then choice of jurisdiction appears and the person can choose to have their matter sent to the attorneys for review. Lawyers can [participate in the Nolo Network](#) and get "leads" both in the network of attorney and direct from consumers. There are other aspects of participating in the directory, such as article publishing and premium positioning. The parent company of Nolo, Internet Brands, [recently purchased Avvo](#). It will be interesting to see if any cross-pollination occurs.

[LawDepot](#)

This site provide free legal documents, forms and contracts. A consumer or small business owner can go to the site, choose the area of interest, answer a series of questions and get a document to download - without even creating an account. No lawyers or legal help here - just legal document generation with a lot of disclaimers. While the site suggests the document



generation is free, there is no free lunch. A free week-long trial requires a credit card and auto-renews at \$33 a month. A 1 year Pro subscription, prepaid for 1 year is \$8/month (that is \$100) For five years access to the single document that was created is \$29.

There are hundreds, if not thousands, of these [non-lawyer legal services](#) entering the market solving every problem from contract review, protection of intellectual property, estate planning, bankruptcy, immigration, and [business law](#). Meanwhile, [Bob Ambrogi notes](#) that his most popular article in the last few years with his lawyer readers has been about a new keyboard for lawyers.

3. If You Can't Beat 'Em, Bite 'Em

Why are more lawyers not taking advantage of working with some of the legal DIY services who are also paving the way for lawyers to get work? It may be a lack of knowledge that the opportunity exists. It may be an inherent mistrust of models like limited scope representation. It may be that they do not fully understand how it works.

In a [two part series](#) for *Above the Law* Bob Ambrogi recently wrote about why the justice system has failed to keep pace with technology. It is most certainly worth reading but some of the [highlighted reasons](#) for this failure to embrace technology include: 1.) Lawyers fear technology 2.) Lawyers lack competence in technology 3.) The legal profession is a protectionist guild that sees innovation as a threat 4.) The law firm profit model favors inefficiency 5.) Courts are stuck in a vicious circle that blocks change.

To illustrate the point about the protectionist guild, [Fixed](#) - a smartphone application that helps individuals fight tickets - has been acquired by a law firm, [Lawgix](#). The founder of Fixed David Hegarty had mixed feelings about selling the technology but said in an [interview with the ABA Journal](#) "we started rubbing up against the existing attorneys in that system, and they would file complaints to the [California] Bar Association about us," Hegarty said. "We had worked with an ethics attorney in L.A. to stay in compliance with all these rules and regulations, but it just became really hard. It was another stranglehold on the business."

In another interesting example of the friction caused by self-help legal technologies, Raj Abhyanker is suing six companies, including LegalZoom, FileMy LLC, and Trademarks 411 for the Unauthorized Practice of Law. He believes these legal technology companies are practicing law without a license. The novel part of his argument is that he states his business is suffering because he has to carry malpractice insurance, attend CLEs and absorb other overhead costs that the companies he is filing lawsuits against do not, thus giving them an unfair advantage. Abhyanker further suggests that the state bars are not doing enough to regulate these new legal service providers.

Despite the suggestion to the contrary by Mr. Abhyanker, [many suits](#) have been filed by state bars and courts against legal technology companies for [UPL](#), [starting early with LegalZoom](#). To this writer's knowledge, no jurisdiction has "won" a UPL case against LegalZoom, though many have brought suit and settled. In fact, in the protracted battle of UPL suit and counter anti-trust suit between [North Carolina and Legal Zoom](#) a settlement via consent decree allows [LegalZoom to offer legal services in North Carolina](#), including online document services and prepaid legal services plans with some oversight.



Another example of rules that stifle innovation in delivery of legal services is the persistent refusal to consider [multidisciplinary practice](#) in most jurisdictions. [Ambrogio writes](#) “lawyers, alone, can never close the justice gap. We have to open the system to other and more innovative ways of delivering legal services.” Josh Browder, non-lawyer creator of DoNotPay states: “lawyers are confined by their law degrees but a chatbot doesn’t have to stop between industries. They can diagnose medical or psychological illnesses and also help users get legal help.” Despite not being able to further the conversation regarding lawyers working with non-lawyer companies, [PricewaterhouseCoopers](#) is opening a law firm in DC, [ILC Legal](#), one of the very few jurisdictions where this is allowed. The District of Columbia, in a very limited way, [permits nonlawyers to join law partnerships](#) and share in their fees. But, according to Rule 5.4 of the D.C. Rules of Professional Conduct, the law firm must be engaged solely in the practice of law, with non lawyer partners allowed to perform professional services only to assist the firm in the representation of its clients. The continued roadblock to allow multidisciplinary practice only defeats lawyers, as other companies will seize opportunities to provide needed services and find ways around restrictions placed on lawyers.

Avvo Legal Services has a model that uses technology to reduce barriers to getting legal help by pairing consumers with an attorney who offers flat fee, limited scope legal assistance. Avvo collects the fee and pays it directly to the lawyer. For the participating attorneys that means the fee will be paid and the client may become a source of further work and referrals. Yet, [New York](#) and [New Jersey](#) (and [three other](#) jurisdictions including South Carolina, Ohio, Pennsylvania) have issued opinions warning attorneys not to participate in Avvo Legal Services because the marketing fee paid to Avvo by the attorney is considered an [impermissible referral fee](#) under the Rules of Professional conduct. However, in North Carolina not only is a subcommittee of the state bar considering favoring the Avvo Legal Services business model, they are also considering amending [Rule 5.4](#). Similarly the [Chicago Bar Foundation](#) Board has approved proposed changes to the IL Rules of Professional Conduct 5.4 and 7.2 and will seek approval from the Chicago Bar Association and on to the Supreme Court of Illinois for consideration. See *Appendix A*. Virginia has amended the advertising rules to omit 7.2 and Washington state is seeking the same. Oregon has revised 7.2. If some of the ethics rules and opinions have a chilling effect on how lawyers can innovate and participate in new models of online legal service delivery that can help bridge the justice gap why do many regulatory agencies persist in enforcing them? What will it take to see real change?

4. What Can a Lawyer Do?

If seeking referrals through some of these flat fee and DIY services isn’t appealing what can your firm do In order to keep compete? Consider productizing your services! What does productization mean? As a lawyer, you are in the business of providing services. Other businesses are designed to sell products (i.e, Target, grocery stores, digital products). Productization is turning your services into product offering.

Some background into the various levels of services provided by lawyers, courtesy of Richard Susskind:

- Bespoke - Tailor made, customized legal work - from scratch (e.g., drafting of an entirely new type of contract for a new industry)



- Standardized - development of checklists and producers, templates for repeat work.
- Systematized - automation of checklists and workflows for high-volume tasks & activists my many people , e.g. document assembly
- Packaged - Packaging of legal content and expertise made available online on a licensing basis
- Commoditized - legal work so commonplace and routine that it becomes free.

The work that falls towards the bottom of this list are the efforts that can be productized. How do you approach productization? You're not creating something out of nothing — you're converting your services into something else. That "something else" may be free, maybe not. You will also need to think differently about pricing, with flat fee and predictable pricing structures such as [subscriptions](#) to match the discrete products.

Some examples:

- White papers
- Training videos
- Books/e-books
- Online tools
- Websites
- Apps

4.1.1 Products As Marketing Tools

You can productize your services and give those products away as a means to either increase loyalty with existing customers, or as a way to generate leads for your firms.

The following are some examples of firms who have used this model:

- **Founders Workbench**

<https://www.foundersworkbench.com/>

This site is maintained by Goodwin Proctor and helps startups with content and tools that are all free to use.

- **CooleyGo**

<https://www.cooleygo.com/>

This is a very similar effort by Cooley as Founder's Workbench.

- **Wilmer Hale Launch**

<https://launch.wilmerhale.com/>

Another very similar concept.

- **My Modern Law**

<https://mymodernlaw.com/>

This is a good example from a smaller firm -- an Arizona divorce law firm. This site offers a number of free tools to the public, including a child support calculator and a spousal maintenance estimator.



- **Rosen Law Firm**

<https://www.rosen.com/>

A North Carolina family law firm, this site is rich with content, forms, tools, and more related to a broad range of family law issues

- **Chi City Legal**

<https://chicitylegal.com/forms/>

Chi City Legal is a Chicago firm that represents landlords. The site offers a number of free forms that landlords can use, such as free eviction notice. Their use of automation tools, [including Zapier](#), help streamline tasks to make them more efficient.

- **Palace Law**

<https://www.palacelaw.com/>

Palace Law is a worker's compensation firms in Washington State. They offer a large volume of [free PDF forms](#) on their site for free use.

4.1.2 Products as Revenue Generators

How can productizing help you generate revenue? As a service business, your gross margins max out at around 40%, and you are typically limited by the number of hours you and/or the employees you hire can work. For product businesses, gross margins can be in the 60-90% range! You don't need to run a product business, though, to use productization to generate additional revenue for your firm and to compete with Legal Zoom, Rocket Lawyer, and the like.

Here are some examples of law firms that have used productization as a way to generate revenue:

- **Rosen Law Firm - DIY Divorce**

<https://www.rosen.com/online/>

While many of the forms and tools on Rosen's site are free for use, the firm also offers a DIY divorce product for just \$199.

- **Counsel for Creators**

<https://counselforcreators.com/>

This California firm is focused on providing business services to companies in the creative economy. The firm has a [subscription plan for businesses](#).

- **Littler's CaseSmart & Compliance HR**

<https://www.littler.com/service-solutions/compliancehr>

Compliance software licensed to Littler's clients for a fee. They also offer some free tools, particularly one in response to the travel ban.



- **Horty Springer's LegalSifter**

<https://www.hortyspringer.com/HSM/News-Release-LegalSifter-Jan2018-Final.pdf>

In what is said to be a [first for a U.S. law firm](#), a Pennsylvania law firm will sell artificial intelligence software directly to its clients in the healthcare industry to enable them to better review, analyze and negotiate contracts.

- **Norton Rose Fulbright's ContractorCheck**

<http://www.nortonrosefulbright.com/knowledge/online-services-resources-and-tools/contractorcheck/>

Similar to Little's Compliance HR, this tool lets companies automatically assess whether a position qualifies as a employee or independent contractor. Not offered in the US.

- **It's Over Easy**

<https://www.itsovereasy.com/>

[Attorney Laura Wasser](#) designed this product to allow couples in New York County in New York City and throughout California to handle their divorces and child custody arrangements online.

Most of these products have three things in common:

- Fixed price
- Well-defined Scope
- Neatly Packaged Solution

5. How to Get Started

If you're interested in productizing your firm's services, first consider which of your services can be packaged. There is probably a lot of low value work you spend your day on that you can either give away or package up and sell at a fixed cost.

Next, consider what you reasonably can maintain. Custom technology is very expensive and content-rich offers require a lot of time and updating. Weigh what resources you can bring to bear on a solution like this.

Finally, consider your client base and potential for scale versus the cost of the solution. You want to make sure you're going to be building something that your clients really want for a price that makes sense.

6. How to create self-help tools

The way you build self-help tools really depends on what you're building. You will want to consider custom development if you are building something that has high potential for ROI, either because you're selling it for a profit or because client have a substantially high lifetime value. You always want to try to buy a solution before you build one from scratch. Here are some options that might help:



6.1 Chatbots

- Motion.ai

<https://www.motion.ai/>

According to their website: “we’re bringing chatbots to the masses and enabling businesses to better engage, convert, close and delight their customers across every channel at scale.” Motion.ai’s recent acquisition by Hubspot indicates that this idea has potential.

- Chatfuel

<https://chatfuel.com/>

Their tagline: “Build a Facebook bot with no coding.” Law firms have built bots to correspond with clients [via Facebook messenger](#), which gets the conversation started even when a human is not available.

- Docubot

<http://aux.ai/>

With example bots for legal intake, expungement and legal wellness, 1Law’s Docubot wants to help lawyers tap the estimated \$45 billion dollar legal services market for “people who have too much for pro bono work, but can’t afford private legal services”.

- Form.one

<http://form.one/>

Form.one is a collaborative platform to build, deploy, and monitor intelligent bots for your business.

6.2 DIY Document creation/Forms

- Doc Assemble

<https://docassemble.org/>

A free, open-source expert system for guided interviews and document assembly. In addition to the web interface it allows for interviews via SMS (text messages). Also collect documents, get signatures and much more.

- Gravity Forms

<https://www.gravityforms.com/> and Gravity Wiz/Perks <https://gravitywiz.com/>

Gravity Forms is a WordPress plugin that lets someone with no coding skills develop a custom contact form - but it doesn’t have to stop there. What questions do you need to ask a client? Ask them through Gravity Forms. Then leverage the myriad of integrations with tools like Zapier, MailChimp, Trello and many more to make the information you gathered actionable.

- Typeform

<https://www.typeform.com/>

Typeform’s website says: “engage your audience with conversational forms & surveys — and get more data.”



- DraftOnce

<http://draftonce.com/>

DraftOnce lets users take their own documents, in any format, upload them to the DraftOnce engine and convert them to form templates. Users can then invite clients to provide information in a easy online interview format with contextual help to generate a document the attorney can review, finalize and return to the client.

- HotDocs Cloud Services

<https://www.hotdocs.com/products/cloud-services>

You are probably familiar with HotDocs, but did you know they have added a client facing service? HotDocs Cloud Services enables you to embed HotDocs interviews (wizard-like sequences of data-gathering forms) in your own web pages or business applications and to generate virtually error-free, transactional documents (contracts, agreements, wills, trusts, etc.) on a subscription basis.

7. Conclusion

Law firms can learn from non-lawyer online legal services providers to provide online legal services to fit the needs of consumers and businesses that are looking for ease of use, 24/7/365 availability and self-help empowerment that have made the online services so appealing. It is up to you to examine your practice, your client's wants and needs and determine how to move forward.





Proposal to Amend Illinois Rules Relating to Marketing and Communications to Improve Access to Justice

(January, 2018)

Many thousands of Illinoisans who need or would benefit from legal assistance and can afford to pay something for it are not getting help from lawyers. Many people don't even recognize their problem as a legal one, and when they do, they too often don't know where to go to find quality legal help or whether it would be an affordable and cost-effective solution for them. There increasingly is a perception that lawyers only represent wealthy individual or corporations. And one of the most noticeable and problematic consequences of this dynamic is the rising tide of Illinoisans with matters before the courts who believe they have no option but to represent themselves, even though most would prefer to have a lawyer.

At the same time, we have more lawyers than ever before, most of whom have capacity and interest in helping more paying clients but increasingly are focusing on the already crowded market for corporate work. Solo and small firm lawyers willing and able to serve the market for individuals increasingly report economic challenges in their practices.

In short, this represents a market failure, and at its core it is an access to justice problem. And the problem is compounded by our current Rules of Professional Conduct governing marketing and communications and related issues, which are antiquated and unnecessarily stifling innovation that could better connect Illinois lawyers with clients who need their legal services.

In the rest of the business and professional world, an untapped market like this is met with sophisticated marketing and advertising campaigns to educate and attract consumers. Lawyers, however, face a far more difficult challenge in doing this under the current Rules of Professional Conduct, which have the effect of unnecessarily restraining market forces from addressing this growing gap. And it is people in need of legal help who ultimately suffer most.

Rather than tinkering around the edges of the existing rules, we need to take a step back and fully reconsider these rules governing marketing and communications about legal services through the lens of who it is we are trying to protect and what we are

actually trying to protect them from. We also need to reevaluate existing rules in the context of the prevalence of online and digital communication, which play such a pivotal role in our society. Three overarching principles should guide that review: (1) Protecting the Public; (2) Protecting the Professional Independence of Judgment of Lawyers; and (3) Promoting Access to Justice.

To that end, we are proposing amendments to the existing Rules that are intended to start a conversation on a better way forward. The amendments we propose promote all the three of the above goals while providing clarity and flexibility to lawyers to help them use new approaches to better connect to potential clients and meet the growing unmet legal needs in communities throughout the state. By streamlining confusing and antiquated rules for marketing legal services and providing a responsible way for innovative “legal matching” entities to do business in Illinois, our profession will be much better positioned to meet the legal needs of this unserved population.

Our Illinois Supreme Court has been a nationwide leader in addressing access to justice issues. By adopting this forward-looking approach to tackle the present market failure, Illinois would once again lead the way by modernizing our regulatory structure to make our profession more innovative, responsive and accessible to the people who need legal services.

The Urgent Imperative for a New Look at the Rules Governing Marketing and Communications

The case for a new approach to these rules is driven by a series of related problems that are stifling innovation and access to justice.

People with legal needs increasingly are not using lawyers

Studies consistently show that the great majority of people with legal problems are not using lawyers, for two overarching reasons.

First, people don't seek legal advice because they fail to recognize their problem as a legal one. This most commonly occurs when people experience consumer, housing and employment problems. A recent American Bar Foundation study by Rebecca Sandefur highlighted the depth of this issue:

http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf. Other legal needs studies in Illinois and elsewhere have made similar findings.

Second, for people who do recognize they need legal help and can afford to pay something for it, the market failure referenced above is even more striking. This segment of the population has trouble finding affordable and cost-effective options for legal assistance in the current market. That trend is apparent in the American Bar

Foundation study and is plainly illustrated by the statistics showing exploding numbers of pro se litigants in state courts.

The National Center on State Courts recently found that for civil cases, at least one party was unrepresented in an astounding 74% of cases: <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>. While the Administrative Office of the Illinois Courts only recently has begun collecting formal statistics on pro se litigants in Illinois, early returns suggest similarly huge percentages of people are unrepresented in the courts here.

There is no doubt that low-income or poor Illinoisans (who represent roughly 25% of the state's population) make up a significant share of the pro se population due to the shortage of pro bono and legal aid services. However, the statistics showing that people are going unrepresented in three out of four civil cases make it clear that a large share of the pro se population have higher incomes. And studies suggest most of them would much prefer to have a lawyer, but they struggle to connect with affordable and accessible options in the current market. (See, e.g., <http://iaals.du.edu/honoring-families/publications/cases-without-counsel-research-experiences-self-representation-us> and <https://representingyourselfcanada.files.wordpress.com/2014/05/nsrlp-srl-research-study-final-report.pdf>).

Lawyers increasingly are struggling and/or moving away from the market for individual legal services

Despite this huge untapped market for individual legal services, solo and small firm lawyers increasingly are gearing their practices towards the already crowded market for corporate services. A big driver of this trend is the increasing economic challenges lawyers who otherwise would be willing and able to serve the consumer market have found in those practices.

A recent article on trends in the legal profession by Bill Henderson highlights this growing divide: <https://www.legalevolution.org/2017/11/decline-peoplelaw-sector-037/>.

Other legal providers are recognizing this market gap and moving in

At the same time that lawyers increasingly are failing to effectively meet the legal needs of individuals, a growing number of other well capitalized, for-profit companies like Legal Zoom and Avvo are sensing a major market opportunity and offering new kinds of online service options. These companies are proving that they have the expertise, financial resources, and scale to better connect people who need legal help with lawyers and other forms of legal assistance.

Avvo, Legal Zoom and other similar entities see both the huge latent market of people who do not recognize their problems as legal in nature as well as the substantial market

for people who recognize they need legal help, but are unable to find it. And these companies are finding new ways to market to these people and connect them with legal services.

This is an access to justice problem, and the existing rules are holding lawyers back from innovating and competing

The bottom line is the current system is leaving most people who need legal help on the outside looking in, while at the same time solo and small firm lawyers trying to serve the individual market for legal services increasingly are reporting economic challenges.

For the huge latent market of people who don't recognize they have a legal problem and could benefit from a lawyer's services, more sophisticated marketing and advertising campaigns can help educate and attract potential clients. The same is true for the market of people who recognize a legal problem but don't know where to turn to find affordable and accessible options that offer commensurate value.

Entities like Avvo and Legal Zoom have the financing, expertise, and technological capability to attack this problem at the necessary scale that solo and small firm lawyers, and to a lesser extent, bar associations, lack. We believe there is great potential for lawyers to partner with these types of entities to close the gap between people who need and have the ability to pay a reasonable amount for legal services.

This is fundamentally an access to justice problem, and we should be doing everything we can to help Illinois lawyers connect to the people who need or could benefit from their services. Rather than tinker around the edges of the rules when we know the current system is not working well for our profession or the public, we propose to take a step back and look at new options that open the door to more innovation while meeting the three overarching goals all agree upon: (1) Protecting the Public; (2) Protecting the Professional Independence of Judgment of Lawyers; and (3) Promoting Access to Justice.

Bringing for-profit partners like Avvo and Legal Zoom into the system in a responsible fashion, and streamlining the rules on marketing and communications, will advance all of these goals while opening up new market opportunities for Illinois lawyers to better serve the public.

Proposed Amendments

(Additions in Green underscore, Deletions in Red Strikethrough)

Rule 5.4

The amendments to Rule 5.4 are intended to give lawyers the ability to use modern marketing services, including online services and regional or national lawyer networks, to better promote the value of their legal services and connect with clients who need their help.

The proposed new subsection (6) of this Rule uses an analogous approach to Rule 1.115(h)(1) for financial institutions holding IOLTA accounts, and draws in part from the ABA Model Supreme Court Rules for Lawyer Referral Services (https://www.americanbar.org/groups/lawyer_referral/policy.html).

Proposed Amendment

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

.....
NEW

(5) A lawyer or law firm may pay a portion of a legal fee to an entity that connects potential clients with lawyers if:

- (a) There is no interference with the lawyer's professional independence of judgment or with the lawyer-client relationship;
- (b) The total fee charged to the client would not be an excessive fee pursuant to Rule 1.5 if it were solely a fee for legal services;
- (c) No services provided by the entity involve the practice of law;
- (d) The relationship between the entity and the lawyer or law firm is transparent to the client; and

Absent actual knowledge to the contrary, a lawyer may presume that an entity registered under Rule 5.4(a)(6) meets the requirements of Rule 5.4(a)(5).

New Comment (3): A lawyer or law firm who engages the services of an entity that connects potential clients with lawyers has a duty to use due diligence to ensure that the entity complies with this Rule 5.4(a)(5) and all of its subparts, is committed to protecting the public, and is financially responsible.

NEW

(6) The Illinois Attorney Disciplinary and Registration Commission shall maintain a list of entities connecting potential clients with lawyers or law firms that have agreed to comply with this Rule and have registered with the Commission. In addition to compliance with

all administrative requirements of the Commission, entities registering with the Commission under this Rule must meet the following requirements:

(a) That the entity operates in a manner that enables participating lawyers to comply with the Rules of Professional Conduct at all times;

(b) That the entity discloses to the Commission, all participating lawyers, and the public all standards or requirements for participation, and specifically discloses whether participating lawyers are required to carry malpractice insurance, do in fact carry malpractice insurance, meet minimum experience requirements, and meet any other ongoing requirements to maintain their participation with the entity;

(c) That the entity discloses to the public that the entity has a business relationship with the lawyer or law firm and, where applicable, that a portion of a client's fee will be paid to the entity;

(d) That the entity has a transparent process to receive and address all complaints from customers of the entity that involve services provided by participating lawyers;

(e) That the lawyer's participation in the service is open to all Illinois lawyers who are in good standing and meet the minimum eligibility requirements of the entity to participate;

(f) That the entity has written procedures for the admission, suspension or removal of a lawyer from participation with the entity; and

(f) That the entity complies with all applicable governmental consumer protection rules and meets basic standards of financial responsibility for the size and scope of its business.

New Comment (4): Rather than regulating the lawyer's participation with entities directly, Rule 5(a)(6) establishes minimum standards that, when met, provide lawyers with a safe harbor for complying with Rule 5.5(a)(5). Lawyers may still pay an entity that connects potential clients with lawyers when that entity is not registered with the Commission, but the lawyer must use due diligence to evaluate whether participation with that entity complies with the requirements of this Rule.

Rules 7.1 through 7.4

Rules 7.1 and 7.3 (a) and (b) define the core principles for lawyers and the marketing of legal services: i.e., lawyers should refrain from making any false, misleading, coercive or harassing communications. Other than some clarifying amendments to Rule 7.3 (a) and (b), these parts of the Rules should remain intact and stand alone as the guiding principles for lawyers on these issues.

Rule 7.2, Rule 7.3 (c) and (d), and Rule 7.4 are confusing, unnecessary, duplicative, and/or overly prescriptive and have a chilling effect on lawyers using both innovative and proven means to market their services to potential clients. As a result, other for-profit legal providers increasingly are attracting customers who would be better served by a lawyer representing them, but are not connecting to lawyers due to obstacles created by the current rules.

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

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.

NO CHANGE IN RULE; SUGGESTED UPDATES TO COMMENTS BELOW

Comment

[1] This Rule governs all commercial communications about a lawyer's services, ~~including advertising permitted by Rule 7.2~~. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if (a) it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading; ~~(b).—A truthful statement is also misleading~~ if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation; or (c) it is presented in a way that leads a reasonable person to believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] A commercial communication ~~n-advertisement~~ that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison

of the lawyer's or law firm's services or fees with the services or fees of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

~~[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.~~

RULE 7.2: ADVERTISING

DELETE ENTIRELY

~~(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.~~

~~(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may~~

~~— (1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~

~~— (2) pay the usual charges of a legal service plan or a not-for-profit lawyer-referral service;~~

~~— (3) pay for a law practice in accordance with Rule 1.17; and~~

~~— (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if~~

~~— (i) the reciprocal referral agreement is not exclusive, and~~

~~— (ii) the client is informed of the existence and nature of the agreement.~~

~~(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.~~

RULE 7.3: SOLICITATION OF CLIENTS

~~(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment if when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:~~

~~(1) is a lawyer; or~~

~~(2) has a family, close personal, or prior professional relationship with the lawyer.~~

~~(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:~~

~~(1a) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or~~

~~(2b) the solicitation involves coercion, duress or harassment; or~~

(c) the lawyer knows or reasonably should know the person's circumstances could make the solicitation coercive.

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).~~

~~—(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~

Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication **typically** does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct ~~in-person, live telephone or~~ real-time ~~electronic~~ contact by a lawyer with someone known to need legal services when a significant motive for doing so is the lawyer's or law firm's pecuniary gain. These forms of contact have the potential to subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching. As a result, in addition to other prohibitions outlined in sections (a) and (b) of this Rule, the lawyer is prohibited from soliciting a person for legal services when the lawyer knows or reasonably should know that the person's circumstances could make the solicitation coercive.

~~[3] This potential for abuse inherent in direct in-person, live telephone or real time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm a person's judgment.~~

~~— [4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.~~

~~— [5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.~~

~~[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).~~

~~— [7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of~~

~~communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.~~

~~— [8] The requirement in Rule 7.3(c) that certain communications be marked “Advertising Material” does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

~~— [9] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).~~

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

DELETE ENTIRELY

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.~~

~~(b) The Supreme Court of Illinois does not recognize certifications of specialties in the practice of law, nor does it recognize certifications of expertise in any phase of the practice of law by any agency, governmental or private, or by any group, organization or association. A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation.~~

~~(c) Except when identifying certificates, awards or recognitions issued to him or her by an agency or organization, a lawyer may not use the terms "certified," "specialist," "expert," or any other, similar terms to describe his qualifications as a lawyer or his qualifications in any subspecialty of the law. If such terms are used to identify any certificates, awards or recognitions issued by any agency, governmental or private, or by any group, organization or association, the reference must meet the following requirements:~~

~~(1) the reference must be truthful and verifiable and may not be misleading in violation of Rule 7.1;~~

~~(2) the reference must state that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and that the certificate, award or recognition is not a requirement to practice law in Illinois.~~