New Math, New Money

A LAWYER'S GUIDE TO THE CHANGING BUSINESS OF LAW

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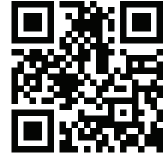

This event sells out every year.

David Lat
Founder and Managing Editor, Above the Law

Bill Marler
Managing Partner, Marler Clark, The Food Safety Law Firm

Niki Black
Director of Business, Development, MyCase

Matthew Dolan
SMB Expert, Google

Everybody's Talking

"Large law firm partners tend to be skeptical that new entrants with new models pose a legitimate threat to their firms. But the threat is already here, and it's taking shape in the form of well-financed, legitimate companies with professional management teams."

–William D. Henderson, "More Complex than Greed," The American Lawyer, May 2012

"Permira Advisers has taken a $200 million controlling stake in the online legal services business LegalZoom. ... LegalZoom has withdrawn plans for an IPO and instead the company now says the Permira backing will strengthen its ability 'to move forward with its significant growth plans, which include potential acquisitions in both the US and abroad.' Permira already owns Acromas, the UK holding company for the AA and Saga, which both have ABS licences."

– Legal IT Insider, January 2014

"Nearly 80 percent of the work done by Novus Law attorneys is work large law firms would otherwise do, according to co-founders Ray Bayley and Lois Haubold. It reviews, manages and analyzes documents for large-scale litigation, and is poised to focus its technology and resources on drafting briefs and motions. ... One should note that neither is a lawyer. Bayley served as managing partner of PricewaterhouseCoopers' North American business process outsourcing organization. ... Haubold also was a PwC senior executive. Together they've launched and run several different entrepreneurial ventures and professional service firms. They are efficient and accurate masters of process."

– "Who's Eating Law Firms' Lunch," ABA Journal, October 2013

EDITOR'S NOTE

The New Math

The change the legal profession has both ballyhooed and rebuffed for so very long? It's arrived. And at this point, you're either on the bus or behind it. So if you're feeling a little panicky, or need a nudge in the right direction, we've gathered for you here some wit and wisdom on this new legal marketplace.

- Jordan Furlong lays out some options.
- Thought leaders give us a reality check: What are they excited about? And, yes, what is of concern?
- Catherine Moynihan reports on ACC Value Challenge outcomes. (This will blow you away.)
- Mark Robertson helps you have the fee conversation with clients.
- Megan Zavieh and Josh King explain some ethical parameters for virtual practices and packaged legal services.
- Plus advice on flat and fixed fees from Pat Lamb and Andy Daws, a virtual practice profile by Jared Correia, insights into the LLLT and more.
- What's a lawyer to do with all this? We'll finish up with really good advice from top career advisors.

"Existence is all mathematics, and I see it as me listening to the math that is right in front of me. There's a key for every door, and if you can't find it, you can make one. That's always an option."

– Pharrell Williams, "Fast Company," December 2013/January 2014

So strap on your crash helmet and grab onto something stable.

First up: A new way to look at your business. **Do the math!**

— Merrilyn Astin Tarlton & Joan Feldman, Attorney at Work

The Money-Making Proposition

BY MERRILYN ASTIN TARLTON

It's simple math, actually. You can fiddle around with yearly billables expectations, "pieces of the pie" and annual hourly rate adjustments — and even stop stocking free coffee in the breakroom. But your ability to build a legal business that thrives — one that makes money — is going to require a more systemic approach.

You'll need to do more than "tweak" to make things work to your satisfaction in today's environment. Let's look at the money-making proposition that is your legal practice:

R + P + M = C

Yeah, you remember this. It's algebra! (Yawn.) But this time, you really *are* going to use it.

Resources (R) + Process (P) + Marketing (M) = Cost (C)

Resources	People Facilities Technology Materials
Process	The work to be done (draft a will, conduct a deposition, try a case, etc.).
Marketing	What it takes to make the connection between what you have to sell and someone who will want to buy it.
Cost	The sum total of your costs for resources, process and marketing.

(Okay, let's stop here and admit that this is oversimplified. But there's a point to be made, so that's just how it's going to be.)

Once you've done the math and figured out your cost, you simply subtract that amount from what someone will pay for the service you are providing. What's left is your profit. *Boom.*

Fee – Cost = Profit

Yep. Simple. But what does it tell us? Think back to Mr. McGrumpy's third-period algebra class. What makes it algebra is that you can "perform operations of arithmetic with non-numerical mathematical objects representing numbers that are either not yet known or unspecified." In other words, algebra helps you predict things when you don't have all the facts. In this case, it helps show how you can build a better, or at least different, mousetrap out of your law practice.

Let's take litigation. If the following scenario were true for your firm, you would simply drop real numbers into place instead of the letters.

SCENARIO ONE

Resources + Process + Marketing = Cost

Resources	5 senior partners 7 associates 3 paralegals 1 office manager 1 IT manager 1 bookkeeper Luxurious high-rise offices Top-of-the-line technology, furnishings and services
Process	Bet-the-business litigation, beginning to end.
Marketing	Full-boat corporate marketing program including branding campaign and media relations. (Roughly 12% of gross.)
Cost	R + P + M

Still fairly straightforward, right? Now let's switch something. Let's say you decide to no longer do litigation, but you have great knowledge and experience when it comes to complex discovery, including document management and depositions. Your equation changes, as we see in the next scenario, below, but R + P + M *still* equals C.

SCENARIO TWO

Resources + Process + Marketing = Cost

Resources	5 senior partners 7 associates 3 paralegals 1 office manager 1 IT manager 1 bookkeeper Luxurious high-rise offices Top-of-the-line technology, furnishings and services
Process	Contract discovery services for large law firms and legal departments.
Marketing	Full-boat corporate marketing program including branding campaign and media relations. (Roughly 12% of gross.)
Cost	R + P + M

About your costs — some are fixed, some are flexible. Depending on the culture of your firm, the number of people, their roles and the nature of your offices, then your personnel and facilities may be fixed costs (and typically the biggest ones). And this can make it extremely difficult to innovate. It helps explain why most new business models (your competition) come from outside of established firms. And why so many "new normal" lawyers first bailed out of BigLaw.

If you did this in real life, you'd notice pretty quickly that some people in your firm are no longer engaged in doing work of any particular value to the firm. Yet you continue to pay them the same amount

because … well, that's the deal. Unfortunately, you will find it hard to compete with others offering the same services with such a high cost of unneeded resources. (I'll leave you to figure out how to handle partners who don't have anything to do.)

Work It Out

Back to the algebra. You can take that R + P + M = C equation, turn any one of those letters into an actual known — and then work from there to make it work. For example, let's say P is going to equal the phone calls and letters required in collections work, and that your client will pay $100 for every $1,000 of bad debt you collect.

> Resources + Collecting on Bad Debt + Marketing = Cost
>
> $100 – Cost = Your Profit

Now, all you have to do is work out how to build a business capable of collecting $1,000 at a cost of less than $100. It may be you in a home office with a smartphone and a laptop getting clients via word of mouth. Or it may be viable to staff collections work with a few paralegals, given the economies of scale and salary expectations. Or maybe there's a way to work it out using certain types of technology. The point is, you *can* work it out.

You can attack this money-making proposition from various angles:

- Start with fixed resources and solve the problem with the kind of work and marketing necessary to arrive at a cost you like.
- Identify a service or product that the market requires, figure out how to staff and house it, and what it will take to get it to market with a cost that both suits you and allows for competitive pricing.
- Or start with cost if you'd like. (Just a warning that it is a much more challenging proposition to say, "I need X dollars," and then build a model that gets you there.)

Your best bet (and my hearty recommendation) is to start with an unmet need in the marketplace and build your equation from there.

After all, that's what's going on now in the new legal business. For example:

- Some young lawyers noticed horrible inefficiencies in the way most lawyers handled document production. They started a document production business, and now law firms contract with them, saving the client money and simplifying the work of the law firm.
- Some observed that simple contracts were often far too expensive for most small businesses and, in the absence of complexity, were something that could be easily adapted to a computer program that asks 20 questions and spits out the correct documents.
- Since corporate counsel demanded more certainty up front about their outside legal costs, some firms developed systems that allow them to provide the same high-quality services at a fixed fee. Some didn't and they are looking for new work and new clients.

Many traditional law firm functions are being cherry-picked from the standard-issue law firm business model. What that will ultimately leave behind is something that can't be replaced by systems, apps or machines: the wisdom, perspective and skill of lawyers who have the bet-the-business answers … who know exactly which button to push … whose presence turns a negotiation positive in a matter of minutes. That's what will be irreplaceable. The equation for that?

> R (1 amazing wise lawyer) + P (solve difficult problems quickly) + M (word of mouth) = Cost
>
> Fee (whatever it takes) – Cost = Profit

Lest you automatically conclude this is the direction for you, consider one final calculation: There are nearly 1.5 million lawyers in the U.S. alone. If there's only going to be a need for 1,000 of these super-high-performers on a good day ... where does that leave you?

Merrilyn Astin Tarlton is Partner/Catalyst at Attorney at Work, a founding member of the Legal Marketing Association, a member of the LMA Hall of Fame, and a past President of the College of Law Practice Management. Follow her @AstinTarlton.

Three Ways to Compete in the Coming Legal Market

BY JORDAN FURLONG

In *Evolutionary Road*, Jordan Furlong describes a hair-raising future for the practice of law. (And, yes, the future is *now*.) While the basics remain the same — solving problems and resolving conflict for clients — the methods and means vary radically. What does *your* future look like? Jordan says you have three options.

Few things will jolt lawyers into action faster than an incursion into the legal services market by someone who is not a lawyer. Claws out, fangs bared, hair raised on end, the profession aggressively protects its territory the way it knows best: by initiating a proceeding under the appropriate jurisdiction's unauthorized practice of law regulatory framework.

This tactic has proven remarkably successful for decades in maintaining lawyers' de facto monopoly on most legal services. And it has, to be fair, gone some way toward protecting members of the public from incompetent or unscrupulous vendors of legal products. But it has also, undeniably, choked off competition, narrowed consumer choice and stultified the growth of innovative services.

Regardless of whether this strategy has been good, bad or indifferent, it is becoming increasingly clear that it has run its course. The U.S. legal market now includes online legal-form vendors, overseas lawyers and advanced software tools; the Canadian market includes licensed independent paralegals; and the U.K. market includes everything from banks, accounting firms and legal publishers to logistics companies to a law firm traded on the stock market.

These incursions will continue. Lawyers need to understand that, eventually, virtually everyone will compete with us, for almost everything that we currently do.

Only a few specialized aspects of lawyers' traditional inventory — trial advocacy foremost among them — will withstand attempts by new

> "Only a few specialized aspects of lawyers' traditional inventory — trial advocacy foremost among them — will withstand attempts by new competitors to gain a piece of the action. The portion of what lawyers do that absolutely, positively, nobody else can do is thin and shrinking."

competitors to gain a piece of the action. The portion of what lawyers do that absolutely, positively, nobody else can do is thin and shrinking.

So we have three choices: Own that thin portion, compete hard for the wide-access work, or create brand-new markets.

1. Own the Exclusives

Lawyers and law firms that pursue this channel will become extreme specialists, niche players brought in to provide a specific service of great importance at the highest standards of quality. Formidable trial attorneys, masterful legal negotiators, topflight regulatory analysts and peerless managers of complex corporate arrangements will find these fields populated only by lawyers.

The remuneration for these kinds of jobs will invariably be very high, given the stakes for clients and the skills of the performers. But the competition among lawyers for these last remaining slices of high-value, lawyer-exclusive work will be unbelievably intense, in part because the volume of this work will be relatively light. "Bet-the-company" work is scarce because companies don't tend to bet themselves every day. The winners of this competition will enjoy extraordinary careers. But be warned: There will be many more losers than winners because there is just not that much room on the top of the mountain.

2. Compete for Wide-Access Work

Demand for all other legal services will continue to grow in the years to come, as it always has. But non-lawyer providers of those services will also increase, and they will take advantage of lower operating costs, more efficient systems, fewer ethical restraints and more sources of capital than lawyers have. Lawyers who wish to remain in this part of the market will have to adapt their approaches and business models to be competitive.

This will be a two-pronged effort. On one hand, lawyers will have to deploy systems and processes to reduce their own costs of delivering services: interactive will-drafting software, automated contract-assembly programs, outsourced legal analysis and the like. Lawyers will have to adopt the streamlined efficiency of their new rivals, perhaps by co-opting them into their own practices, perhaps by developing competing systems. The twin goals will be to improve overall effectiveness while remaining price-competitive.

At the same time, however, lawyers will invest most of their personal time and effort in up-front, client-facing, hands-on interaction at the highest value points in the relationship. For example, once the client has used a machine to draft a will or contract, the lawyer speaks at length with the client, learns the intricacies of the situation, and adjusts the draft document accordingly. The human contact, the lawyer-client relationship, remains the linchpin of value.

Lawyers will never be the least-expensive option in this sector of the future legal market — nor should they strive to be. Lawyers ought to position themselves as a premium yet still affordable option: You will pay a little more to use a lawyer, but you will receive personal, professional, genuine and high-quality service in return.

3. Create New Markets

This is the most challenging course for lawyers to pursue, but also the one with the most upside. Rather than remaining inside the boundaries of traditional law practice and fighting harder than ever for the avail-

able work, this approach involves moving into areas at which lawyers have yet to try their hand, or areas that won't even exist until lawyers create them by tapping into unmet needs.

In the former category might fall a function such as "corporate strategist," a kind of business consigliere role that integrates lawyers' personal judgment, marketplace knowledge, and analytical and logical abilities to provide ongoing strategic planning and risk management. Large accounting, consulting and systems firms have been providing these services up until now, but lawyers arguably have a better mix of skills than any of them to perform these services.

In the latter category might fall new roles such as a "legal physician" who provides families or small businesses with annual low-cost check-ups of their members' legal health; a knowledge designer who creates customized banks of legal know-how for specific clients; or a legal auditor who assesses organizations for legal risk, strategy disconnects, function variances and productivity leakages.

These will be the three primary ways that lawyers will make money in the coming legal market. New competition will oblige us to be exceptionally good at what we're currently doing, or learn to do what we're currently doing in a much more cost-effective and client-focused manner, or strike out into new territory and aim to disrupt other markets just as our own is being disrupted.

Which road will you choose?

__Jordan Furlong__ delivers dynamic and thought-provoking presentations to law firms and legal organizations on how to survive and profit from the extraordinary changes underway in the legal services marketplace. He is a principal with Edge International, a senior consultant with Stem Legal and a blogger at Law21: Dispatches from a Legal Profession on the Brink. He is the author of two recent books: "Evolutionary Road: A Strategic Guide to Your Law Firm's Future," and "Content Marketing and Publishing Strategies For Law Firms." Follow him on Twitter @jordan_law21.

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What Do the Experts Think?

What do you find most encouraging about the changes occurring in the profession? And what concerns you most?

Maybe it was the recession. Perhaps it was the arrival of LegalZoom and its ilk. Or, more probably, it was the sheer weight of too many lawyers that finally sent us tumbling beyond the tipping point. Regardless, things they are a-changin'. New models of law practice are bubbling up and they are no longer merely conceptual. People are really doing it! We asked thought leaders from around the profession for a little perspective. Here's what they had to say.

What do you find most encouraging and what concerns you most?

STEPHEN MAYSON I am encouraged by the impetus for change that is compelling lawyers and law firms to be more business-like, client-focused, innovative and to provide value. I am concerned that a regulatory facade that assumes quality and ethics is providing cover for some who behave unethically, are driven only by personal profit or simply do not want to embrace change.

Stephen Mayson, advisor focused on strategy, law firm economics and ownership and governance issues, and professor of legal services regulation.

RON FRIEDMANN Many law firms see the need to work more efficiently and offer clients better value. So some lawyers now price creatively, manage matters systematically and improve processes. Propagating these initiatives will be hard, though: Most lawyers resist change and most firms struggle to act as institutions.

Ron Friedmann, Consultant, Fireman & Company, and blogger at Strategic Legal Technology.

TOBY BROWN The rapidly expanding number of pricing roles and overall interest from firms in getting pricing right is very encouraging. This is a strong signal that firms are embracing new ideas. With the rise of non-traditional providers, the rules on the practice of law need to evolve. Outdated restrictions on lawyers are driving clients to unregulated services.

Toby Brown, Director of Strategic Pricing & Analytics, Akin Gump Strauss Hauer & Feld LLP, and blogger at 3 Geeks and a Law Blog.

MAGGIE CALLICRATE Leadership. There is exciting leadership driving industry change: from outspoken general counsel, to entrepreneurial and innovative law firm leaders, to educators who champion change in law school curricula, to astute legal process outsourcers. Alas, change can be disconcerting, and my concern is for those who misread or ignore the signs.

Maggie Callicrate, Chief Operating Officer, Pierce Atwood LLP and President-Elect, College of Law Practice Management.

JIM CALLOWAY I'm encouraged that people are talking about change, but quite concerned that so many seem ready to discard the important role played in people's lives and communities by solo and small firm lawyers in favor of those with much less training. A couple decides to divorce. They don't want a war, but have many unanswered questions and an obvious degree of conflict. Can it really be that their only options are to (1) use an online document assembly service that gives no advice, (2) go to a non-lawyer document preparer who gives them no advice or (3) pay hefty retainer fees to separate law firms? Their best option may be for the both of them to sit down with one lawyer and try to work things out. Maybe we need to re-examine the impact of some of our ethics rules and traditions.

Jim Calloway, Director, Management Assistance Program, Oklahoma Bar Association, and blogger at Jim Calloway's Law Practice Tips.

SILVIA HODGES SILVERSTEIN The changes appear to finally be occurring after years of talking about them. I salute the embrace of more efficiency, coupled with an entrepreneurial spirit to find new approaches and business models to better serve clients and society. I am concerned about legal education changing fast enough to address the changes.

Dr. Silvia Hodges Silverstein, researcher and advisor focused on purchasing decisions, metrics, marketing and change in law firms. Lecturer in Law, Columbia Law School and Adjunct Professor, Fordham Law School.

STEVE MATTHEWS I am encouraged by the number of newly created firms that have decided to build boutique practices. They're differentiating themselves through specialized knowledge, rather than simply building a general or regional practice. My biggest concern is for the older established firms, specifically those that have ignored the digital changes of the past 15 years. A number of "older decision makers" have left their firms in a very bad spot; those firms will soon find other service providers encroaching on their territory.

Steve Matthews, President and Founder, Stem Legal, blogger at Law Practice Web Strategy, co-founder, Slaw.

ANTHONY E. DAVIS By far the most encouraging developments are the array of innovative arrangements for the provision of legal services being developed in England under the umbrella of Alternative Business Structures (ABSs). Of greatest concern is the American profession's ostrich-like opposition to the idea that competition should be welcomed, not resisted.

Anthony E. Davis, Partner, Lawyers for the Profession Practice Group, Hinshaw & Culbertson LLP, Lecturer-in-Law at Columbia University School of Law.

MEGAN ZAVIEH Most encouraging: Wider acceptance of alternative business models, with attorneys working virtually and non-traditionally no longer receiving the immediate eyebrow raise and distrust. The alternative models lower costs and barriers to access for clients, and they make law a much more enticing arena in which to work for talented lawyers. What continues to concern me is the risk to consumers posed by unskilled practitioners, particularly newly-minted attorneys branching out on their own with no practical experience. These lawyers mean well but are sometimes ill-equipped to adequately serve their clients, and then they become mine (upon ethics breaches), which is a real shame.

Megan Zavieh, Ethics Counsel and State Bar Defense Attorney, Zavieh Law.

THOMAS S. CLAY I'm encouraged when firms develop strategy to foster collaboration in cross-selling services, sharing work and developing efficient, team-oriented operations. I'm concerned by the persistent misalignment between those efforts and compensation systems that focus on individual performance metrics and ignore critical value-adding activities such as service delivery innovations.

Thomas S. Clay, Principal, Altman Weil, Inc., focused on strategic planning, firm management and organization, and mergers and acquisitions.

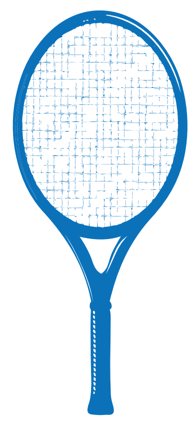
MARK BRITTON I'm most encouraged by lawyers who are embracing technology to deliver higher-quality and higher-margin services. Whether it is social media for marketing, cloud-based systems for client communication, or analytics platforms for practice management (just to name a few), these tech-savvy lawyers are guiding us all to a more productive place. What concerns me the most is the other side of the equation: Lawyers who fear technology and therefore choose to ignore it — or maybe even attempt to scuttle it. These lawyers will often serve up law-exam-quality issues to avoid new technology: "Participating in social media will denigrate the profession!" "The cloud is not secure!" "Answering questions online creates attorney-client relationships!" The issue-spotting is profound but not productive. Every tool has risks … even the hammer can miss the nail. The question is not whether to use the hammer, but how to use it to succeed.

Mark Britton, Founder, CEO and President, Avvo.

BOB DENNEY I am most enthused about the growth of qualified non-lawyers and entities that are providing legal services to the millions of people who need but could not otherwise afford them. I am concerned that the traditional leadership in the profession will oppose this trend.

Bob Denney, President, Robert Denney Associates, Inc.

Practice More Manage Less



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Value Champions: Taking Charge of Legal Spending

BY CATHERINE MOYNIHAN

For proof that we've moved beyond talk to energetic action, you need go no further than the Association of Corporate Counsel's Value Challenge. And as Director of Legal Management Services for the ACC, Catherine Moynihan is in the catbird seat. It seems change accelerates with a little pressure from clients.

What an interesting time to be an attorney. The balance of power has shifted. Corporate counsel are taking the reins firmly in hand, proactively controlling legal costs. And inside and outside counsel are collaborating in new ways, along with innovative legal service providers, to drive value for corporate clients. As the Association of Corporate Counsel's Value Challenge reaches its five-year anniversary, we could not be more excited about these changes.

ACC launched the Value Challenge in September 2008 in response to the disproportionate growth in legal costs relative to other business expenses, coupled with the extreme unpredictability of legal spending. The ACC Value Challenge is committed to the proposition that law firms and law departments can improve efficiency through better relationship, management and pricing practices, and still reduce costs (while maintaining law firm profitability).

The Value Challenge has never been solely a call to action. From the beginning, ACC has been convening conversations about value and sharing what works — building a virtual library of effective "value practices" employed by law departments and firms, as well as guides to implementing value-based fees, project management, strategic staffing,

> "As the success stories mounted, ACC launched the ACC Value Champions program to recognize value initiatives that resulted in reduced spending, improved predictability and better legal outcomes."

knowledge management and more. A couple of years in, ACC responded to a demonstrated need for more practical help with the nuts and bolts of value management practices and added its Legal Service Management workshops, bringing inside and outside counsel together to work on facilitated, case-based exercises using key tools and techniques to build value-based relationships.

Then in 2011, as the success stories mounted, ACC launched the ACC Value Champions program to recognize value initiatives that resulted in reduced spending, improved predictability and better legal outcomes. The ACC Value Champions demonstrate the myriad ways that legal department leaders can drive value. Here are snapshots of their initiatives.

Convergence and Conversion to Value-Based Fees

- Bank of America reduced its approved law firms from hundreds down to a "litigation roundtable" of 30 and moved over 80 percent of its litigation to fixed fees.
- United Technologies has 70 percent of its outside spending on value-based fees, and is on the march to 100 percent.
- Office Depot has reached a tipping point of over 50 percent of outside spending on value-based fees, tailoring the fee type to the practice area (employment, securities, real estate, even patent troll joint defense).
- Pfizer, GlaxoSmithKline and The Home Depot are at or on the march to having 100 percent of outside spending on value-based fees.

Downshifting Low-Value Work and Upshifting Strategic Work

- Nike and British Telecom have implemented legal work intake portals, managed by an LPO and a law firm respectively, that use playbooks to allocate the work. Lower-value, repetitive work is outsourced and in-house counsel get to handle the more complex, strategically important work.
- When Mondelez was spinning off Kraft Foods, it worked with Axiom, supported by playbooks, to address the 20,000 patents, 40,000 contracts and 80,000 trademarks involved — all for a fixed fee.

Heightening Client/Firm Collaboration — Preventative Lawyering

- Healthcare Insurance Reciprocal of Canada (HIROC) and Borden Ladner Gervais negotiated a six-year partnership in 2011, based entirely on value-based fee arrangements. The agreement sets a base price combined with a performance bonus, while making adjustments for reduction of legal demand and in-sourcing over time.
- Target and Nilan Johnson Lewis have parsed employment legal work into four components and applied a slightly different retainer model to each, which, along with prevention measures, is yielding a 20 percent savings.
- RBC Capital Markets and Morgan Lewis have teamed up to achieve savings of 35 percent on employment work by tailoring fee structures to the specific matter or portfolio and driving down the docket.
- Tyco International works with only one firm, Shook Hardy & Bacon, on all of its U.S. litigation. Together, they have cut product liability cases in half, new case filings by 65 percent and case cycle time by 40 percent since 2004.

"The ACC Value Champions demonstrate that the 'new normal' will feature more disaggregation of legal services and more flexible assignment of legal work across a variety of resources — in-house expert teams, smaller firms, non-firm legal service providers, LPOs and innovative new entrants."

- Sherwin Williams and Gallagher Sharp demonstrated how the use of a single firm to coordinate designated types of matters nationwide can result in significant savings (15 percent) and improved outcomes, particularly when both inside and outside counsel undergo technical product training to more effectively represent the client.

Multifaceted Value Initiatives — Pulling Lots of Value Levers

- Marsh & McLennan and Medtronic have handled huge growth in their demand for legal services, while holding steady on in-house counsel staffing and decreasing outside legal spending, by leveraging technology, converging and converting to value-based fees — great models of focused leadership guided by benchmarking and metrics.
- NetApp has combined implementing new technology with legal process and project management outsourcing, and strong outside counsel management practices — value-based fees and quarterly business reviews — to speed up legal services cost-effectively.

Smaller Departments Driving Value — In Lots of Ways and Lots of Countries

- United Retirement Plan Consultants and Porter Wright (U.S.) collaborated creatively to create a tool to overcome two of the most common barriers to fixed fees — lack of data and risk of variability in project scope.
- Lucchini (Italy) has benefited greatly from its GC's leadership on vendor management and use of technology-enabled decision-making and process management to cut cycle time by 65 percent and spending by 40 percent — best practices that other functions in the company have adopted.
- China State Construction Engineering Corporation (Dubai) in-sourced all contract work, gained efficiency with technology and employed new law firm management practices. The company uses fixed fees with success bonuses for outside counsel, a switch that has enhanced recoveries by 60 percent and saved 50 percent on external legal fees in 2012.

What the Future Holds — The ACC Value Champions Point the Way

While the ACC Value Challenge is often associated with the movement away from the billable hour, from the beginning it has pointed to other ways, beyond value-based fees, to drive efficiency and value.

The ACC Value Champions demonstrate that the "new normal" will feature more disaggregation of legal services and more flexible assignment of legal work across a variety of resources — in-house expert teams, smaller firms, non-firm legal service providers, LPOs and innovative new entrants. And will the pricing of all these services be value-based? You bet.

Catherine J. Moynihan is Director of Legal Management Services, Association of Corporate Counsel. She manages all aspects of the ACC Value Challenge, ACC's initiative to promote reconnecting the cost of legal services to the value received. She also manages ACC's Law Department Executive Leadership programs.

FIVE GOOD REASONS

Non-Hourly Billing Improves Your Client's Experience

BY PATRICK LAMB

If law years were dog years, it would be 42 since Patrick Lamb and three colleagues broke from the BigLaw pack and launched Valorem Law Group. Seen as a founding member of the "new normal" establishment, it seems Patrick has been the leader of the fixed fee pack for much longer than these few six years. Here he checks off five ways fixed fees benefit his clients.

Every interaction between a lawyer and client — every interaction — is part of the calculus of the relationship. If the interactions are to the client's satisfaction, the client is likely to continue the relationship, at least until a better option is discovered. One of the many truths revealed since the Great Reset (a term coined by Bruce MacEwen to describe the marketplace changes since the Lehman Bankruptcy) is most clients are interested in value, not lowest price. According to the 2013 *Altman Weil Chief Legal Officer Survey,* in fact, only 9.6 percent of the chief legal officers surveyed wanted the "lowest price" for their legal services.

Given the outsized importance every interaction with in-house counsel plays in the depth and duration of a lawyer's relationship with that client, it is a wonder so little attention is paid to the most important part of the relationship — its economic foundation. The Altman Weil survey also reported that 36.4 percent of respondents wanted "transparent pricing" that would allow them to understand how and why a price was set *and* an opportunity to discuss changes. Few firms meet that threshold.

"Old normal" firms, ones that bill by the hour and raise rates every year, tell their clients each month that the firm cares more about its economic well-being than the client's economic interests:

- When clients call to complain about the amounts of bills (meaning they are surprised), the relationship is injured.

"Most clients still say they don't like hourly billing. Lawyers must decide whether they care more for themselves and their firm or whether they will succeed more by putting clients' interests first."

- When clients hire auditors or have their staff review line items of bills, it means they do not trust their own lawyers. The relationship is injured.
- When a letter arrives announcing an increase in hourly rates and there is no corresponding indication that the client gets any greater value, the relationship is injured.

Indeed, there are many more problems inherent in billing by the hour. Each problem creates further injury to a lawyer's relationship with the client.

Among the most significant features of non-hourly billing, particularly fixed fee billing, is that the client knows before any money is spent what the cost of a matter will be (transparency) and the client has had full opportunity to determine what work will be paid for and what work is unnecessary, this latter feature being inherent in discussing price up-front.

Top Five Ways Fixed Fees Benefit Clients

There is a long list of benefits that clients experience when their lawyers use fixed fees. Here are my top five:

1. It cuts down bill review. Bill review has never been the highest-and-best use of an in-house lawyer's time. Fixed fees eliminate the need for such review. Instead, the focus is on work flow and execution, matters of far greater value.

2. It means predictability. No surprises is always a good thing, but here it enhances the in-house lawyer's relationship with her business clients, who *really* hate the unpredictable, up-and-down nature of legal fees.

3. It dramatically simplifies internal budgeting processes. If a company is doing its budgeting for the following year in May, for a July 1 fiscal year, how can it predict what law firms will do in December? The one certainty is that no company budgets in December for the year that begins in January. So why do law firms ignore this major need? Got me.

4. It reduces mistrust. Some clients feel like their lawyers take advantage of them, or at least that some lawyers on larger matters view the matters as a license to bill whatever number of hours are needed to meet bonus requirements. Clients hate that.

5. It allows clients to see the benefits of collaboration by experienced lawyers. No more silos, which are replaced by a firm incentivized to have its senior lawyers collaborate together to achieve better results faster. Clients see this benefit and don't fret that lawyers meeting together is just an excuse to bill more.

The last thing is that fixed fees are the easiest foundation for holdbacks or outcome-based bonuses, both of which align the firm's economic interest in the outcome with the clients' interests. Most clients love that concept, too.

Most lawyers still bill by the hour. Most clients still say they don't like hourly billing. Lawyers must decide whether they care more for themselves and their firm or whether they will succeed more by putting clients' interests first.

__Patrick Lamb__ is one of the founders of Valorem Law Group, a firm created by big firm refugees to handle complex business litigation matters for corporate clients using non-hourly fee agreements. The firm has grown three-fold in its six-year existence, and Pat has been recognized as one of the leading thinkers in the transformation of the legal world to the New Normal. Pat is a co-columnist of the ABA Journal's New Normal blog and the author of one book on alternative fees. His second book on non-hourly billing is due out in 2014.

Everybody's Talking

"The repetitive work will be commoditized, automated and outsourced. The complex analytical functions will become more and more valuable as critical discrimination and pattern matching skills will be absolutely essential to solve problems in an ever more complex world."

— Stephen Harhai, family law practitioner and blogger at RationalDivorce, "Enterprising Lawyer," Attorney at Work

"I strongly believe that businesses are being increasingly priced out of the legal services market, and that there is a solution for serving those businesses. …. I'm going where I think the clients will be."

— Andy Greene, litigator and founder, LegatiLaw, which publishes fixed fees for litigation, "Enterprising Lawyer," Attorney at Work

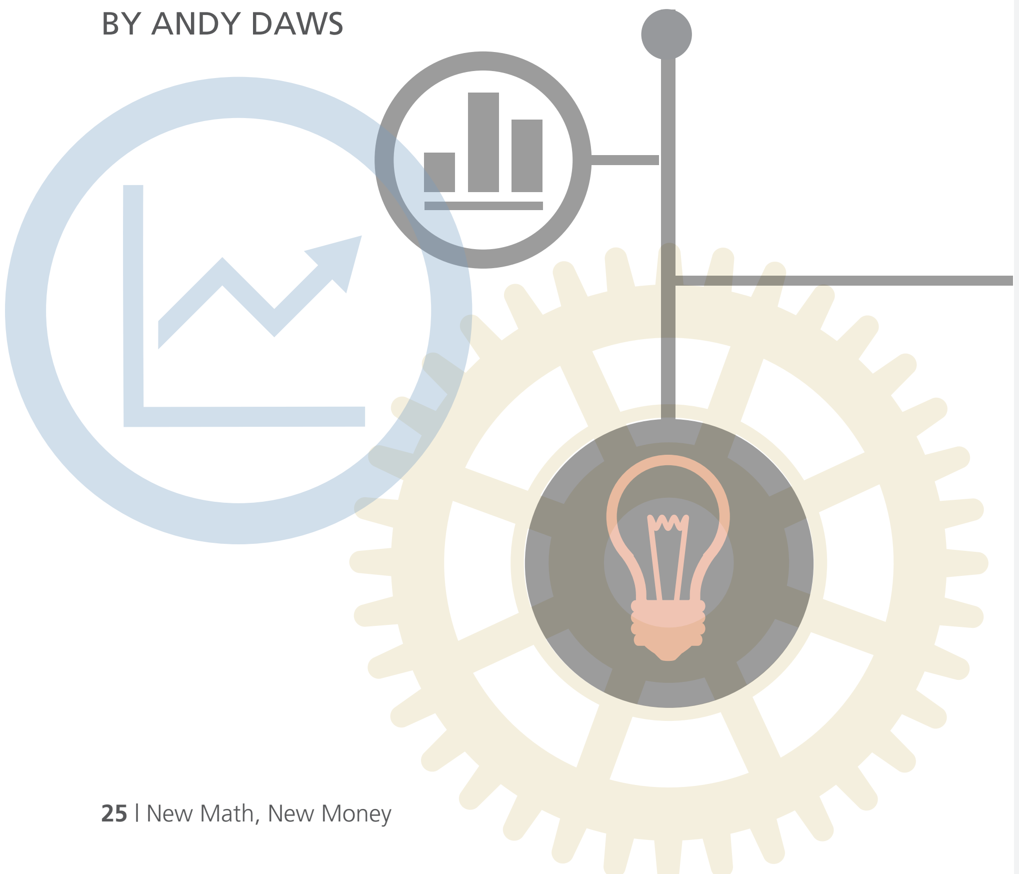
"'It's sad to hear about this fellow, but he's not alone in being in jeopardy,' said Thomas S. Clay, an expert on law firm management and a principal at the consulting firm Altman Weil, which advises many large law firms. 'For the past 40 years, you could just be a partner in a firm, do good work, coast, keep your nose clean, and you'd have a very nice career. That's gone.'

Mr. Clay noted that there was a looming glut of service partners at major firms. At the end of 2012, he said, 84 percent of the largest 200 law firms … had a class of nonequity or service partners, 20 percent more than in 2000. And the number of nonequity partners has swelled because firms have been reluctant to confront the reality that, in many cases, 'they're not economically viable,' Mr. Clay said."

– "A Lawyer and Partner, Also Bankrupt," by James B. Stewart, New York Times, January 2014

Five Questions About Fixed Fees You're Afraid to Ask

BY ANDY DAWS



All it takes is a quick indigestion-inducing view of Riverview Law's 2012 television campaign to understand the real disruptive force of this InnovAction Award winning U.K. firm. Fixed fees. For everything. Every. Thing. Andy Daws, responsible for Riverview's growing footprint in North America, answers the question, "Wait … they can't do that, can they?" Lead, follow or get out of the way.

1. How on earth can you make money with fixed fees?

It's easy! At least, it is if you're one of the many firms that calculate their fixed fees by multiplying the estimated number of hours by their hourly billing rate and doubling it just in case! (Click here to watch "Cometh the Hour" on YouTube).There's a better way, of course, but it's not for the fainthearted or those suffering an entitlement complex. It turns the traditional model on its head and transfers the emphasis from inputs (hours) and overheads to outputs and value. Do you see the difference? One puts the law firm at the center of the equation, the other puts the client there. In one, efficiency is the enemy; in the other, it's a key driver. This approach redresses the power imbalance and replaces it with client value and shared risk. Many professional service industries have been successfully operating in this environment for years and, provided you're prepared to put the work in, there's no reason why it can't be profitable.

2. Aren't clients suspicious about it?

For years, clients have been held ransom to the billable hour by traditional law firms, many of whom have treated it as a license to print money. Often, clients' early experience of fixed fees from these same firms hasn't been terribly positive either. Cynicism abounds and for

good reason. But as we're discovering, if you align your business model to clients' best interests and then offer fixed fees, that same suspicion doesn't exist because they can see that the entire enterprise is all about putting the customer first, delivering maximum value and establishing long-term business relationships. It's not just a veneer to make it look like you're customer-focused. Traditional law firms offering fixed fees is a bit like splashing a coat of shiny new paint on the exterior of a condemned building — you can call it modernization if you like, but it doesn't change the fact that the underlying structure is still not fit for its purpose! This is the key — running a fixed fee structure completely changes your business model, operating philosophy and reward and incentive structure.

3. What happens if you miscalculate?

You don't go back to the client and ask for more money! Nor do you shortchange them by taking shortcuts to reduce your cost base. You take it on the chin, in the context of a long-term business relationship, figure out what you can learn from the experience and move on. Lawyers are typically risk averse and like to see things in black and white. These can be valuable qualities for the practice of law, but they conflict with the fixed fee paradigm, in which there's often at least a hint of gray. The fragile financial ecosystem most firms inhabit only adds to the problem. But with experience and data, the process becomes more science and less art, and the risk is properly managed. A friend of mine with a solo practice wrestled with these very issues but decided to go out on a limb and offer his services at a fixed fee to one of the largest Internet companies in the world — he landed a sizeable ongoing contract as a result. Fortune favors the brave!

4. How can you possibly know if you're making or losing money if you don't have billable hours to track?

Although much revolves around the billable hour within traditional law firms, it's worth remembering that much of the rest of the world is getting by just fine without it. This is a non-question pretty much everywhere else. Admittedly, once you've evolved your business model around the billable hour and chosen to measure and reward success largely by this yard stick, it requires some fundamental changes to reverse out of that cul-de-sac. Such a maneuver will likely be much easier for smaller firms that don't have the same level of entrenchment. However, it still requires a bold decision and nothing short of reinvention in most cases. At Riverview, our teams do not record their time in the traditional manner, but that doesn't mean we don't have a tight handle on all the costs associated with our fixed-fee contracts, because we do. We're simply looking at the teams' activities from an entirely different perspective — a business perspective, focused on outputs and value.

5. Can you do this for litigation, too?

Yes, although as you'd expect, it's sometimes a much more challenging exercise. We do a lot of litigation and we offer fixed fees for all of it — even the major cross-border cases. We just launched a fixed fee M&A offering, too, and are already engaged in our first transatlantic M&A deal. It all comes back to the business model and the data. If you're caught up in the inputs (hours) and overheads, it'll drive you crazy trying to figure it out. But when you're configured for efficiency and have the relevant data at your fingertips, the focus shifts to outputs and value and it's a different conversation — in fact, a different world. But as long as you're not looking for a world in which money grows on trees (you won't find BigLaw here) and don't mind living with a little ambiguity at times, it can be a great place to be. Clients certainly seem to think so.

__Andy Daws__ is Vice President, North America for Riverview Law, a "new model" firm seeking to change the way businesses use, measure and buy legal services, and widely acknowledged as one of the most innovative law firms in the world. He is a regular speaker on innovation and disruption in the industry, and a guest lecturer at several leading U.S. law schools. Andy is also an adjunct member of the New York City Bar's Special Committee on International Legal Practice.

To Find the Treasure in Fixed Fees, You Need a Map

BY JOANNA PENN & JERRY CARTER

How can you make money with a fixed fee, you well may ask. Novus Law is a "global legal services firm" that provides corporations and law firms with document related discovery services. They have tripled their revenue year over year. Revenue that, otherwise, most likely would have gone to big law firms, by the way. Novus's Joanna Penn and Jerry Carter explain what it takes to make money while saving your client big bucks.

What's the key to generating profits when using fixed fees? To find the treasure, you need a map. In other words, the fundamental element in generating profits is creating the right process. By understanding and controlling cost, properly allocating risk, and re-engineering work processes to maximize efficiency, you will be able to determine fixed fees that not only attract clients, but, most significantly, produce a profit for your firm.

Understanding Cost

To best understand cost, you need to map out the steps of your business, task-by-task. While an experienced business professional may have developed an intuition for cost, until metrics and monitoring come into play, cost control is simply based on a gut feeling. Accurate metrics don't lie. While it may involve some trial and error, it is vital that you know all of the activities in the various processes that are needed to complete the work and how long these activities take, as well as the resources and costs associated with completing these tasks.

To give a very rudimentary example of how mapping is utilized to understand costs, let's take the deposition process. Pinpointing the cost of a deposition takes account of direct *and* indirect costs. From compiling research and creating an outline to prepping second-chair attorneys and performing the cross-examination, each activity, including the time, money and people it takes to complete it, must be mapped. Be aware, though, that finding real cost is achievable only after you have mapped and analyzed several depositions.

Allocating Risk

Once you have a better understanding of your real costs and all numbers are in place, you can find your average cost and, ultimately, the fixed fee you will charge for the engagement. That entails determining the acceptable amount of risk to take. Using the deposition example, you might find that, when all costs are tallied, the past 10 depositions have cost your firm between $15,000 and $20,000. Choosing the middle ground of $17,500 for a fixed fee means your firm is taking on moderate

risk. However, there might be other factors to consider, including the price of your competitors, the type of client you are working with and any internal personnel shifts within the firm.

Regardless of the level of risk you decide to take, the fixed fee shifts much of the risk from the client to your firm. While this might seem unsettling from a firm's perspective, the benefits go both ways. One perk is that it helps align the goals of your firm and your client. By using the billable-hour model, a firm may have no incentive to control costs through immediately winning the case (i.e., less hours spent on the case means less money for the firm). In contrast, the two entities work together as a team when the price is set from the beginning. By eliminating the information asymmetry and billing uncertainty, you can create a new long-term relationship built on trust and dependability.

Another benefit of adopting the fixed-fee arrangement is that it produces a better risk-adjusted return on invested capital; a firm reaps the rewards of synergy from understanding costs and maximizing the production function. Carrying the risk creates lean firms that produce better processes, and that leads to better results, detectable in both profit and quality.

Re-engineering Processes

Like cost, you have to map and analyze all of your processes to fully understand quality and efficiency and to re-engineer for the best results. These process maps are best designed in-house by those who best know what you do — the lawyers who are the experts in your firm. All value-added tasks should be mapped, in effect eliminating non-value-added work, and creating a standard by which future tasks should be completed.

Using depositions as an example again, let's think about mapping it. Topics to consider include the type of task to be completed, the person completing the task, the task's degree of complexity, the length of the engagement and so forth. Once the roles and activities are defined, you begin to pair certain tasks with specific people.

If the mapping process reveals that a junior associate has reviewed a document for responsiveness and passed the same document to a senior associate to be reviewed for the same purpose (i.e., a non-value-added task), removing the apparent overlap from the process will save time and money. If too many attorneys are assigned to a certain task (i.e., inefficient use of human resources), reassigning a portion of the attorneys to another matter will create a more efficient resource allocation. This use of mapping allows for opportunity to see where you can cut out steps, increase speed, reallocate talent or outsource to other providers to decrease costs.

We share this advice because, at our core, Novus Law is a data-driven organization that focuses on continuous process improvement and quality management to work more efficiently and deliver cost savings to our clients. We keep in mind that the correct process yields the correct results and always strive to refine our metrics in order to constantly improve profitability from our fixed-fee model. When compared to industry-standard processes, we know that we are 86 percent more accurate, 52 percent faster and 78 percent less expensive than alternatives. We got there by engineering a process that works for us and using metrics that are important to the legal industry.

By utilizing the expertise of your employees, you can achieve your goals by mapping each step of what you do, to understand your true costs, allocate appropriate risk, and engineer processes to eliminate inefficiencies. Once the map is complete, you're bound to find treasure, or, as we like to call it — profit.

Joanna Penn *received her J.D. from the Indiana University Maurer School of Law. She is a licensed attorney in Illinois. After undergraduate, Joanna moved to Shenzhen, China, and served as a copywriter for Global Sources, a Hong Kong-based B2B. Two years later, Joanna moved to New York City, where she was Media Relations Coordinator for the retail company UncommonGoods.*

Jerry Carter *joined Novus Law in June 2013 and is a licensed attorney in Illinois. He received his J.D. from the Indiana University Maurer School of Law and his MBA from the Sungkyunkwan Graduate School of Business in Collaboration with MIT Sloan. Jerry has worked at the Toyota Group's trading arm and law firms in Japan, India and Korea.*

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Let's Talk About Alternative Fees

BY MARK ROBERTSON

Lawyers often struggle when talking to clients about fees. If you're proposing an alternative fee arrangement in lieu of an hourly rate fee, at least you don't have to say, "I don't know how much it will cost because I don't know how much time it will take." But what do you say to the client about the proposed flat fee for estate planning work? Mark Robertson has a framework to get there.

Start with Understanding the Client's Needs and Values

Good communication is important in all matters handled for clients — but it is particularly important when using alternative fee arrangements and value billing, where satisfying the client's perception of value is paramount. Communication with a client is critical to establish and define what the client wants. What are her objectives? Does she want a Mercedes or a Volkswagen? Preparation is 90 percent of success when communicating about a proposed fee arrangement with a client.

Early in the process of establishing an appropriate fee arrangement for a matter, you should elicit from the client what the client's goals and expectations are. This may not be easy, since clients often haven't formulated a goal, or may have an objective that they don't want to disclose. As a result, the definition of objectives may be an ongoing process. It also is critical to determine as early as possible, based on the then-known facts, whether the client's goals and expectations are reasonable and attainable.

You also need to understand how the client is going to measure the value of the services you are providing. For example, a real estate client may use square feet or the number of lots to break down the costs and hence the value of something for a project. A consumer, in contrast, may look strictly to the dollar cost. Understanding how the client measures and determines value is critical to establishing and communicating your proposed fee arrangement.

Also, when learning what clients want and need and how they measure value, your discussion should be collaborative rather than positional or confrontational. There can often be a lot of give-and-take between the attorney and client in establishing a plan and a fee arrangement. Keep it collaborative so the client considers your fee proposal with an open mind and not defensively.

Communicating Your Fee Proposal

There is a certain order to follow when communicating your fee proposal to your client — it goes like this:

1. Define the benefits of the services you are proposing.
2. Define the scope of the representation, both what is included and what is not included in the fee.
3. Outline the timing of the work to be performed.
4. Describe the payment terms.
5. Describe the nature of the proposed fee — is it a percentage, fixed, adjusted hourly?
6. Finally, give them the dollar number.

The client is expecting the number and will listen carefully until hearing it — after that, clients will typically focus only on whether that

is higher, lower, outside their range, etc., and won't hear much else. If your client is to understand the *full* scope of what you are proposing, the amount should be communicated last.

Note that when discussing the alternative fee being proposed, you should define the value proposition with the client in terms of the desired outcomes and not the documents you are preparing for them. For example, in suggesting a fee for an estate plan, discuss how the plan will meet the client's needs in avoiding family conflicts, keeping the wealth and beneficiaries private through using the trust instead of a will that must be probated, providing for special needs, etc. Then you can say, "To meet those needs, we will prepare the following documents..." (showing the effort you will go through to establish the plan).

Giving a Client Choices

Some projects can lend themselves to multiple types of fee proposals. Don't think you have to offer just one to the client. In my private placement securities practice, for example, I have been offering options to clients since 1982 with great success. Through experience with doing a number of private placements, I was able to develop an alternative fee arrangement using a fixed fee for preparing the placement memorandum and other documents, which needed paid before the final documents were delivered to the client for printing, with a success fee paid if the offering closed. In every fee agreement I also offered to do the work at a stated hourly rate, with an estimated range of what it might cost. In 31 years of offering clients the choice, they all liked having the choice, although very few ever opted for the hourly rate.

The certainty of the fee and how much was coming out of their own pocket if the deal didn't sell (and the fact that it would all be paid out of the deal if it did sell) was enough to convince most clients that an alternative fee addressed their value concerns.

__Mark A. Robertson__ is a partner with Robertson & Williams in Oklahoma City, focusing on corporate and securities law and representing businesses and the families that own them. A popular speaker and writer on practice management topics, Mark is co-author of "Winning Alternatives to theBillable Hour: Strategies that Work."

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Everybody's Talking

"The strategic question that drives business today is not 'What else can we make?' but 'What else can we do for our customers?'"

– Niraj Dawar, "When Marketing is Strategy," Harvard Business Review, December 2013

"Consider your child's 'lawyer.' He or she will live somewhere in the global village that our world has become. He or she was educated and could be located anywhere on the planet. ... In fact, this person could be a non-lawyer, and might not even be a person: The advice could be coming from a website or computer program. It is unlikely that this person, website or program will be admitted to a bar, subject to regulation or ethics rules, or have malpractice or similar insurance in the same way as your parents' lawyer."

– Dan Pinnington, "The Future of Law," LawPRO Magazine, September 2013

"The greatest opportunities for today's lawyers are online. This is where the conversation about legal services is happening for the public, whether lawyers are present or not. It's not just personal legal services that we are talking about. Companies and corporate clients are online, listening and engaging with their customers. Lawyers who understand and stay constantly up to date with the technology and the different opportunities to engage in online conversation are going to continue to grow and succeed. This is not only for client development. Lawyers need to know how their clients communicate and operate their businesses."

– Stephanie Kimbro, Partner, Burton Law, "The Next Lawyering Frontier," Attorney at Work

Virtual by Design: Burton Law

BY JARED CORREIA

Virtual lawyers of every stripe offer online basic legal services to corporate and consumer clients at reduced and fixed rates. It's a simple equation: By adding technology and removing traditional overhead, the client gains better access and lawyers enjoy a new flexibility. Jared Correia profiles one virtual practice here.

"Stephanie hated me at first. She thought I was really annoying."
— Chad Burton

"I thought Chad was trying to pump me for free information. He was on his iPad the whole time."
— Stephanie Kimbro

Whatever scenario by which a small law firm is built in your dreams, it is probably not the way it plays out in reality. When Stephanie Kimbro, a solo attorney from North Carolina and 2009 winner of the American Bar Association's annual award for Excellence in eLawyering, decided to join Chad Burton's Ohio-based Burton Law LLC, they'd only met in person one time.

No matter. They had plenty of other methods to get to know each other.

To this point, two years into her employment with the firm, Stephanie has been to Ohio only one time, for a Dayton Dragons minor league baseball game. Of course, she's not alone: to date of the eight lawyers employed by Chad's firm, none of them work in a traditional law office, and two live on the East Coast. But, how is it that a small law firm can provide effective service to its client, and the requisite amount of collegiality to its members, when each of the attorneys inhabits his or her own physical workspace?

Mobile technology, that's how.

Small Law Writ Large: Remote Connections

Although Stephanie works from her own desk, or some other desk, most of the time, she'll always have at least two laptops (one for drafting, one for video gaming — for legitimate, work-related purposes, really) and an iPad (for firm email) fired up. Stephanie is on the road 40 percent of the time; but, her home office and her away office(s) are virtually the same, since her technology travels with her.

Burton Law uses Yammer (an enterprise social network for businesses — think: Facebook for your office), so that Stephanie can communicate with her colleagues, in real time, from wherever she has a secure Internet connection.

Chad never works from a desk; and, since April of 2013, following the ABA TECHSHOW, he has exclusively used his iPad and iPhone for work. He's even given up his Bluetooth keyboard, to find that he's just as proficient typing onto his iPad screen. Despite utilizing different technology tools in their daily workflows, both Chad and Stephanie can access and leverage the same essential firm data from a single repository, which is essential.

Of course, for mobile attorneys, cloud-based case management systems (Burton Law uses Clio) are a boon. The ability to access complete client information and case files with only a secure Internet connection and log-in makes it possible for lawyers to work anywhere, at any time. For Chad and Stephanie, this means that they can collaborate on documents within a secure protocol, assign tasks to administrative personnel, run conflict checks on potential clients, and schedule deadlines and settle meeting times on the fly. Chad and Stephanie are both self-admitted workaholics, likely to find each other across their internal firm connections on weekends, during evenings and at other times removed from traditional "office hours." When they do, Stephanie says that "it's nice to have everything in one place."

In any law firm, data controls must be applied to make case information intelligible. Without naming conventions for files, each attorney and staff person would call their documents whatever they'd like, making it impossible for colleagues to jump into a file, and to know what was going on. Without protocols for maintaining secure accounts and devices, one careless user could expose the entire firm to massive liabilities. Within a mobile practice, the application of systems (documented, and bought into) is perhaps more imperative than in the traditional practice, since the shadow of compliance is merely a virtual one. Mobile lawyers must have, or gain, an established knowledge not only of the programs they use, but of the ways in which they will use them.

At Burton Law, "policies and procedures hold the firm together," according to Stephanie. "Chad is very structured in his thinking and planning," she continues, and order is maintained "even though each attorney uses a unique combination of separate, piecemeal solutions to get results."

Underscoring its mobile bent, Burton Law issues an iPad to each new attorney it hires. Even though employees use various other devices as well, Chad corrals that usage by mandating "comprehensive sets of procedures and policies to maintain security."

Just Another Link in the Evolutionary Chain

Chad, however, views Burton Law's standing in the law firm revolution as something more like another link in the evolution of law practices. Nor is Burton Law always looking for the next thing; they're just seeking the best thing. One of the recent developments Chad is most excited about is that Burton Law has taken on a new attorney … and his traditional, physical office space. The new hire will be able to integrate additional mobility into his practice, and Burton Law will be able to provide as-needed physical office space to its Dayton-based lawyers. Chad sees this as an evolution for both firms, and looks forward to "changing both dynamics."

Stephanie says the benefit of a virtual law practice, properly run, is that you can "offer a complete range of legal services in either a virtual or offline environment, as specific needs arise."

Of course, it's a staggering leap for many attorneys to think of offloading an entire practice of law, or a large part of it, to the web. But, to achieve the mobility so useful (and probably necessary) to the modern practice, small firm lawyers must begin to leverage, and to secure, online access options. But Chad asserts that the virtual law practice is "not as bizarre, at the end of the day, as people think. It's taking the standard skill sets of a lawyer, and using them in different forms."

In the final analysis, he says, "It ends up creating a more organized version of the law firm, one that introduces more secure ways to store data."

__Jared Correia__ is Assistant Director and Senior Law Practice Advisor at the Massachusetts Law Office Management Assistance Program. Prior to joining LOMAP, he was the Publications Attorney for the Massachusetts Bar Association. Before that, he worked as a private practice lawyer. Jared is the author of the ABA book, "Twitter in One Hour for Lawyers." He writes on practice management topics for Attorney at Work. Follow him @jaredcorreia.

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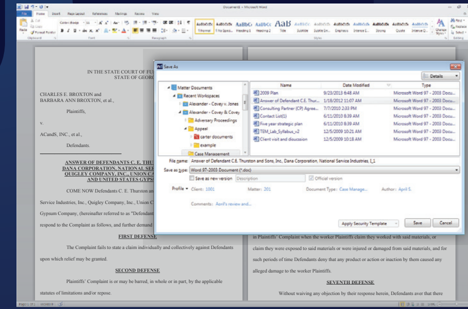

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The Virtual Law Practice: Look Before You Leap

BY MEGAN ZAVIEH

Megan Zeviah is a classic example of the virtual lawyer. While representing lawyers who face state bar disciplinary action in three different states, federal district court and the U.S. Supreme Court, Megan resides and works from the state of Georgia. As you might guess, she's pretty well versed in the professional responsibility aspects of a virtual practice.

Virtual law practice is gaining ground, and many factors promote its rise: Clients, looking for lower-cost legal solutions, are more willing to accept practices that lack a brick-and-mortar presence. Technology has made virtual practice cheap and secure. With law jobs still scarce for law school graduates, more new lawyers are striking out on their own, sooner than in the past. Plus, the new generation of lawyers is more comfortable with technology and the virtual model than its predecessors. Telecommuting may have been slow to catch on in law firms — just a few short years ago, the idea of working entirely virtually with no physical connection to a client would have been dismissed by the legal establishment — but over time, "traditional" lawyers have begun delivering more of their services electronically, in some cases morphing into entirely virtual practices.

The Ethics of Virtual Practice

As used here, "virtual" is a law practice where the attorney has no physical presence in terms of interacting with the client — the attorney does not maintain an office for clients to visit, nor does the attorney meet clients at the client's office. The work is completed totally through the use of technology, includng phones, video chats, email and cloud computing. The attorney's physical location is of no consequence to the client.

"Electronic" delivery of services means that the work product created by attorneys for their clients is not a hard-bound, originally signed piece of drafting or an in-person oral argument delivered in court. It is an emailed document for the client to print and sign to use, or one received via a website or cloud storage location. Attorneys have been using some form of electronic delivery of services for decades. Technology has evolved so that electronic services have become the norm, with email becoming the primary form of communication, and attachments the most common way to exchange documents.

When we set out to practice virtually, a read through the ethics rules reveals that they have not kept up with the changes in technology and virtual practice. The rules were originally written with no thoughts

of cloud computing, cross-jurisdictional video chatting or social media. Established rules contemplate attorneys occasionally venturing outside their geographic area and needing to be admitted pro hac vice for a simple matter, but the idea of an attorney sitting in one state while offering legal advice online accessible around the world is new.

Slowly, the ethics governors in each state are trying to catch up. They have gained the most ground with social media, putting forth rules and rulings on how attorneys may use it in advertising, when it triggers the pre-existing attorney advertising rules, and how attorneys may use social media to investigate opposing parties, counsel, witnesses and jurors. These rules are applicable to virtual firms which may have a heavier online presence than traditional firms, but the rules are of general applicability to all lawyers.

Most states have yet to act when it comes to how the rules apply specifically to virtual law practices. Where issues specific to virtual practice remain unaddressed in the ethics rules, attorneys must keep abreast of nationwide rulings applying existing rules to current technology. Since the issues are the same in all states and the states are slow to issue guidance, it is reasonable to assume that any ruling in the country will eventually bear some influence in other states.

Here are some of the primary ethics questions, along with some resources for virtual practices.

Technology's Role and Acceptability in Virtual Law Practice

COPRAC Ruling. The State Bar of California's Standing Committee on Professional Responsibility and Conduct has issued the most comprehensive virtual law practice opinion — Formal Opinion 2012-184 — which lays out guidance for states that have not yet reached this issue. Addressing primarily technological issues, COPRAC considered the question of whether an attorney operating a virtual law practice can be in compliance with the ethics rules when the virtual firm's communications with clients and storage of and access to all client materials are conducted solely through secured cloud computing. COPRAC's scenario is the most extreme version of a virtual law practice; in it, the attorney does not communicate any way but through the online cloud system — no personal meetings, video chats, emails or phone calls.

COPRAC concluded that practicing in the cloud in this manner is consistent with compliance with an attorney's ethical obligations. It considered the attorney's obligations to maintain confidentiality, duty to deliver services competently, duty to communicate with clients and duty to supervise other attorneys and staff.

COPRAC concluded that all of these obligations may be fulfilled in a virtual law office. It cautioned that attorneys working virtually must still take all reasonable steps to ensure third-party vendors are not exposing the attorney to ethics breaches, not only when the attorney first contracts with the vendor but periodically thereafter as well. The attorney must also take precautions to ensure that all of the applicable duties remain fulfilled despite the lack of personal meetings — questions like whether the person with whom the attorney is communicating is the actual client, whether there are any conflicts of interest, whether the attorney can in fact address the legal needs of the client within the scope of the attorney's competence, and whether the client is understanding the legal advice being rendered by the attorney. All of these obligations exist whether the attorney is practicing in a traditional firm or virtually, but the use of a third-party vendor to host communications and the lack of personal contact with clients add a layer of complexity of which the attorney must be aware. Issues such as whether the client knows how to adequately use the online software through which services are delivered need to be addressed.

Cloud Computing: State Bar Rulings and the ABA

Without addressing virtual law practice specifically, several states have addressed the acceptability of cloud computing in law practice. North Carolina, Massachusetts, Oregon, Florida, New York, Pennsylvania and Iowa have all issued guidance concluding that cloud computing is acceptable under the applicable state ethics rules, with the caveat that the same sorts of precautions necessary to protect client data outside of cloud storage are necessary in the cloud. The attorney must consider

security of access, retention of copies by third parties, third-party vendor agreements and limits on liability and similar issues.

The ABA also considered cloud computing outside of virtual practice when it revised Model Rule 1.6 by adding Subsection (c), providing that when dealing with confidential information, lawyers must "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." In the comments to this section, the ABA states that among the considerations to take into account in evaluating the security of confidential information are additional safeguards the attorney might take.

State Rules Applicable to All Areas of Practice

While virtual law practices are not addressed specifically by most states' rules, they are law practices so they are not exempt from any ethics rules. As COPRAC's opinion makes clear, any nuances of virtual law practice that make them different from traditional practices simply impact what an attorney must do to assure compliance with the rules, and they do not change the rules' applicability.

Unauthorized Practice of Law. The Internet opened up a world without borders, and that is no more obvious than in virtual law practice. When an attorney's entire practice is online, it is perfectly reasonable for clients from all over the country, or all over the world for that matter, to be in contact with the lawyer. While ethics rules say that we may only practice in states in which we are admitted, it is becoming an outdated method of practice to be admitted in each state in which we render legal advice. For the virtual lawyer, this issue is critical. The unauthorized practice of law is punishable as an ethics offense and also as a criminal act in many states.

Model Rules. The ABA's Model Rule 5.5(b)(1) states that an attorney must not establish a "systematic and continuing presence" in a state in which the attorney is not admitted to practice. What is a "systematic and continuing presence" when an attorney operates a website offering legal services that is accessible from any place on the planet?

This question has yet to be answered. California's COPRAC has affirmatively declined to address it for the time being, and no other regulator has issued guidance. This issue needs to be addressed in a consistent manner by all states, so hopefully the ABA will take action. Inconsistent rules around the country would unnecessarily complicate virtual practice.

Ad Hoc Rulings. At least one virtual lawyer has been questioned for the unauthorized practice of law. Rachel Rodgers, a lawyer well-known for starting a virtual law practice and now also offering a workshop for other lawyers on setting up their own, was investigated by the state of Arizona for the unauthorized practice of law. Rodgers has operated her virtual firm from temporary locations in Arizona and South Dakota, and from her permanent location in New Jersey, while being admitted to practice in New York and New Jersey. Upon receiving Rodgers' explanation that she did not represent Arizona clients or hold herself out as an Arizona lawyer, the unauthorized practice of law matter was dropped without prosecuting.

Without rules of broad applicability being issued, ad hoc cases like Rodgers' will be watched carefully by virtual lawyers as guidance on making sure they too are in compliance with their ethical obligations.

With virtual practice gaining momentum, lawyers operating in the cloud are left largely to their own devices to figure out compliance with ethics rules. No one wants to run afoul of the ethics rules, but when technology outpaces the development of the rules, attorneys must come back to the basics of the rules to carve out the best path to compliance with new technology. California's COPRAC opinion lays out a good starting point for analysis of the rules and attorney obligations, but there are more questions to be answered. Will other states and the ABA follow California's approach of applying existing rules to new technology rather than issuing rules specific to virtual practice? Will any of the states or the ABA address the issue of unauthorized practice of law by an otherwise fully qualified attorney operating online from another state? What new issues will the next wave of technology raise?

Megan Zavieh *focuses exclusively on attorney ethics, providing limited scope representation to attorneys facing state bar disciplinary action, and providing guidance to attorneys on questions of legal ethics. She is admitted to practice in California, New York and New Jersey, as well as in federal district court and the U.S. Supreme Court.*

Simple, Clear and Flat: Selling Packaged Legal Services Online

BY JOSH KING

The Internet has opened up a wealth of opportunities to market and sell to consumers online. Price transparency and consumer choice have never been greater. But compared to virtually any other industry, the legal services industry is a serious laggard. Contributing factors include the conservative nature of the profession, a legacy of advertising restrictions, state-based licensure and a bespoke approach to addressing all manner of legal problems, no matter how straightforward.

Some attorneys, however, are beginning to find ways to improve consumer price transparency. These attorneys recognize that many consumers stay on the sidelines, not buying legal services at all, out of fear of the "black box" that is, all too often, legal services pricing. By offering packaged legal services — simple, clear and flat rate — these attorneys can bring more clients in the door and expand the market of those purchasing legal services.

Doing so, however, can't be done without regard for an attorney's professional responsibility obligations. Let's look at how these issues come up — and how they can be successfully navigated — when attorneys sell packaged legal services online:

- **Conflict checks.** Selling a packaged service online creates the potential for a sticky conflict problem: The client has already paid for the service before you can run a conflict check. Processes must be adopted to check for conflicts before the client has had an opportunity to provide any confidential information, and obviously a full refund must be provided in the event of a conflict.
- **Competence and diligence.** When selling a packaged legal service online, it's important to have processes to ensure you can serve all of your new clients in a time-appropriate manner. You also must be willing to provide a full refund if, on meeting with the client, it turns out that the matter is one you cannot handle.
- **Earned retainers**. What if the consumer pays for the packaged service and never claims it? In some states (including New York), you may treat the fee as an earned retainer for being available to handle the matter in a given time frame. Other states, however, may require that such fees be kept in trust indefinitely.
- **Special issues for third-party services.** Imagine a flat-rate legal offering joining the discounted restaurant meals, balloon rides and spa services presented daily by Groupon. Offering such a service raises some special ethics issues, as discount sites like Groupon aren't designed with lawyers in mind. Consumers transact directly

"Selling legal services online certainly isn't as straightforward as selling books on Amazon or a used canoe on Craigslist. But attorneys shouldn't let the obstacles keep them from crafting offers designed to reach those who steer clear of legal services due to price opacity."

with the discount service, and the service then remits a portion of the charge (typically 50 percent) to the service provider, keeping the remainder as its marketing fee. Some of the additional issues raised when selling online through intermediaries include:

- **Reasonable cost of advertising.** Lawyers are only permitted to pay the "reasonable" cost of advertising. Although this should simply be determined by what the market would bear, at least one state (Indiana) has determined, in an ethics opinion related to Groupon, that the retained fee is excessive. You'll want to make sure that whatever fee you pay is reasonably similar to what you pay for customer acquisition via other channels.
- **Fee-splitting.** The arrangement used by Groupon is technically a fee-split, and fee-splits with non-lawyers are technically prohibited. A number of states (AL, AZ, IN and PA), in reviewing services like Groupon, have found that the service is impermissible for use by lawyers on this basis. However, other states (MD, NE, NY, NC and SC) have taken a more enlightened approach, noting that the fee-split is not a problem because it does not create the risk of interference with the attorney's exercise of independent professional judgment. This, after all, is the only rationale for fee-splitting prohibitions. Still, the comfort lawyers have with selling via such a service model is going to vary considerably state-to-state.
- **Trust accounts.** Selling through intermediaries makes it more difficult to comply with trust account provisions, as a portion of the fee paid is retained by the intermediary and thus cannot go into the trust account. However, this problem can be addressed via proper procedures to protect client interests, such as the attorney adding the marketing portion of the fee into the client trust account.
- **Excessive fees and refunds.** Some bar regulators fret that offers via intermediaries could lead to excessive fees. However, this concern is based on the assumption that, in the event a refund was necessary, the attorney would not refund the portion of the fee paid to the intermediary. This objection can be easily overcome by simply refunding the entire amount in such cases, and treating the fee paid the intermediary as the marketing expense it is.

Selling legal services online certainly isn't as straightforward as selling books on Amazon or a used canoe on Craigslist. But attorneys shouldn't let the obstacles keep them from crafting offers designed to reach those who steer clear of legal services due to price opacity. It's just a matter of understanding one's professional responsibilities and setting up the right processes to ensure that clients and potential clients are not harmed.

Joshua M. King *is General Counsel and Vice President, Business Development, of Avvo.com. He is responsible for the company's business development, professional and government relations, and legal affairs. He received his J.D. from the University of California, Hastings College of Law.*

The LLLT and the Power of Positive Thinking

BY MERRILYN ASTIN TARLTON

The realities of the so-called "new normal" in the profession are not limited to the street corners where legal rebels hang out. Regulation, often in aid of needy underserved populations, is transforming to create greater access for clients and, at the same time, new business opportunities. A perfect example is Washington state's new Limited License Legal Technician. Already on the table in several more states, the LLLT concept, in essence, empowers someone without a law degree to provide legal services directly to clients. (That muffled cough you hear is the discomfort of the traditional bar.)

This LLLT Thing May Not Be What You Think

In June of 2012, with a goal of making legal help more accessible to the public, the Washington Supreme Court adopted the rule APR 28, entitled "Limited Practice Rule for Limited License Technicians." The rule will allow non-lawyers with certain levels of training to provide technical help on simple legal matters. Chief Justice Barbara Madsen said of the new rule, "With our civil legal aid system overtaxed and underfunded, this is one strategy the Court believes can help assist those who find themselves in court, yet are unable to afford an attorney."

Under the new rule, persons who are trained and then authorized by a court appointed Limited License Legal Technician Board will be able to provide technical help to the public on civil cases. The parameters are simple. Recommended specifics are currently under review, but in general, once the rule-making is completed, to qualify for LLLT certification, a person must:

- Be at least 18 years of age
- Meet education, examination and experience requirements
- Show proof of financial responsibility
- Show proof of continuing legal education courses
- Abide by a code of ethical conduct
- Be subject to discipline

California, New York and Georgia are climbing on the bandwagon, too. California isn't far behind Washington. There, an LLLT Working Group held public hearings and ultimately recommended the concept should be pursued. Suggestions for the sort of work an LLLT might handle were made by the Executive Director of Consumers for a Responsive Legal System. They included:

- Name and gender changes
- Small claims

- Uncontested divorce
- Unlawful detainer
- Restraining orders
- Traffic infractions and misdemeanors
- Criminal record expunging
- Modification of existing support orders
- Resolving fees and fines

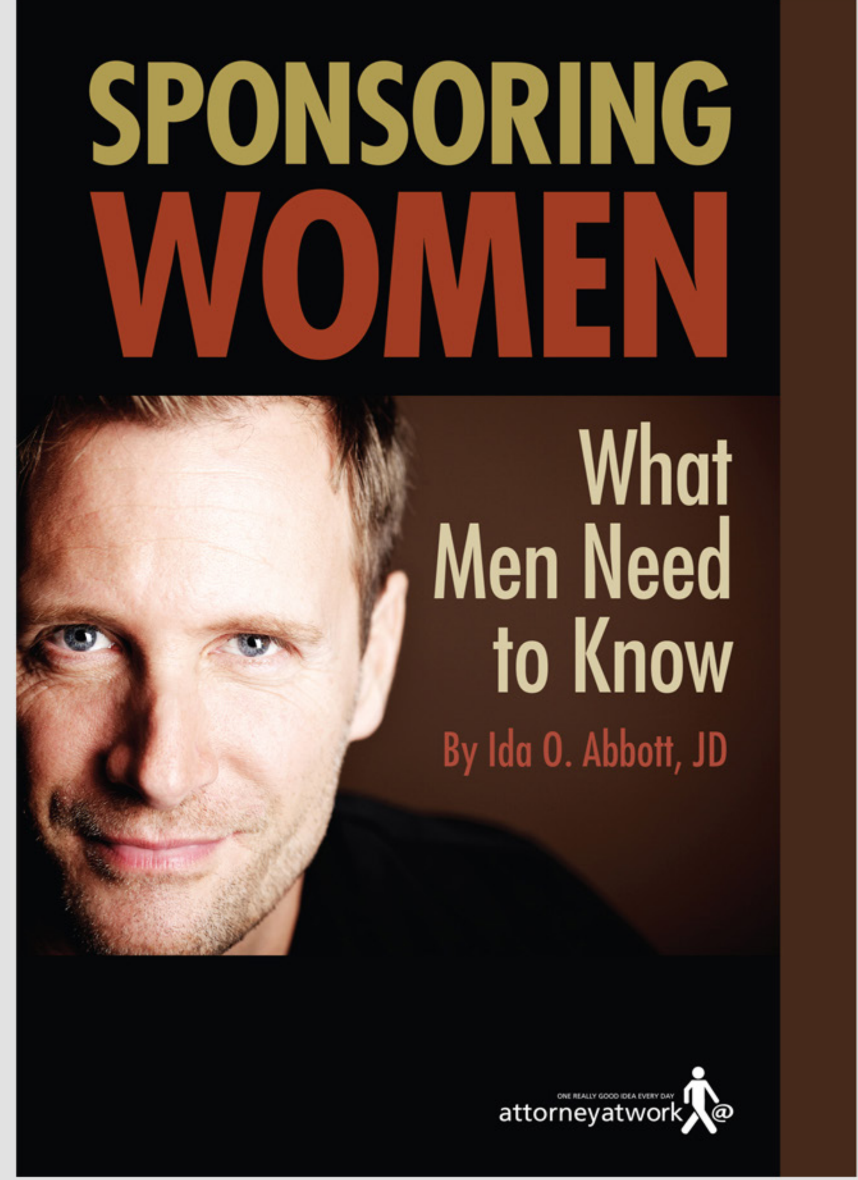
This isn't a sudden development — it's been under consideration in Washington state for more than 10 years. But, given the current flood of jobless law grads and changes in the business of practicing law, what was quiet concern is turning into raised voices in opposition. While the LLLT concept flows from concern for under-served populations with little or no access to justice, it's all too easy to see it as yet another threat to the value of that law degree you're still trying to pay for.

Not So Fast

If at first glance this feels like taking food out of the mouths of hungry lawyers, consider the possibility that in certain quarters it could be a real boon to the bottom line. Your firm might hire a handful of these licensed technicians to handle commodity work that, while necessary, has been a problem for you to handle at a lawyer's hourly rates. A real estate practice may find that creation of a collections unit — effectively priced and efficiently managed — could turn a handsome profit.

If approached as a new positive resource to be applied in a way that delivers affordable services in a profitable way, rather than the new competition in town, this just might be a pretty good thing.

__Merrilyn Astin Tarlton__ has been helping lawyers and law firms think differently about the business of practicing law since 1984. She is Partner/Catalyst at Attorney at Work, a founding member of the Legal Marketing Association, an LMA Hall of Fame inductee, and a past President of the College of Law Practice Management. Follow her on Twitter @astintarlton.



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What's Your Next Step?

The world really is starting to work differently. And it's a little rattling to say the least. But while the path is uncertain, change is creating opportunities for new career directions.

Legal careers expert Wendy Werner asked a few smart people for their best advice for lawyers just starting out: **"What's the one thing a new lawyer should do right now to prepare for tomorrow's law jobs?"**

"The study said 65 percent of today's elementary school children may end up in jobs that haven't been invented yet. We in the legal profession would be very foolish to think that doesn't apply to us in the here and now."

— Renee Newman Knake, Michigan State University ReInvent Law Laboratory, "2013 Legal Rebels," ABA Journal

"In today's world of constantly changing technologies and business practices, adaptation is becoming not just a competitive advantage, but a survival tool."

— Rocky Dihr, Enterprising Lawyer, Attorney at Work

What's the one thing a new lawyer should do right now to prepare for tomorrow's law jobs?

BE FEARLESS! While change *is* happening, the legal profession as a whole continues to place a high value on "prestige." There are still those who will try to tell you that these newer options are geared towards those who *could* not secure the traditional "prestigious" jobs, rather than those who *choose* not to pursue those paths. Be confident in your own definition of "success" and the choices you make about how you want to live your life. If YOU believe you are successful, the rest of the world will, too!

Kathleen Brady, career/life management coach, author and trainer, CareerPlanners.net and Kanarek and Brady.

DEVELOP A "T-SHAPE" OF SKILLS. While a lawyer needs deep legal knowledge and skill (the T's vertical line), successful lawyers of the future will also need the ability to communicate and collaborate across multiple disciplines, such as business, analytics and technology (the T's horizontal line). For example, the "legal knowledge engineer" identified by Richard Susskind and now employed in many legal service companies needs legal knowledge and research skills, but also must use technology to translate that knowledge into expert systems. The "T-shape" concept, often credited to IDEO, has become popular in other industries and is apt in law as well.

R. Amani Smathers, Innovation Counsel, ReInvent Law Laboratory at Michigan State University College of Law.

DEVELOP A PERSONAL BRAND. In the restructured legal environment, new lawyers must stand out from the pack. That means they need to develop a reputation early on for taking the initiative to solve problems, providing value to clients and cultivating business connections. To set themselves apart, new lawyers also need to spread the word about their skills, accomplishments and connections. Using a variety of approaches is best, but business social media sites and in-person connections are both critical.

Grover E. Cleveland, attorney, speaker and author of "Swimming Lessons for Baby Sharks: The Essential Guide to Thriving as a New Lawyer."

LEARN ABOUT PROJECT MANAGEMENT and process improvement, including how to leverage technology to deliver legal and law-related services more efficiently and effectively. Lawyers who have this knowledge and skill set will be better positioned to respond to a marketplace in which legal work is increasingly disaggregated, unbundled, automated, outsourced and managed in entirely new ways. Because of these fundamental changes, the skills that lawyers traditionally learn in law school and the early years of practices are no longer enough for continued professional success.

Andrew Perlman, Professor, Suffolk University Law School, Director, Institute on Law Practice Technology and Innovation and Director of the law school's Legal Technology and Innovation Concentration.

BE CURIOUS about the world outside your office. Get out and connect with others. You are much more likely to become aware of changes in the marketplace, including new practice models and career paths, if you take advantage of opportunities to interact with others. Alumni events, bar associations, business groups, community organizations and continuing legal education seminars are just some of the ways you can meet new people, expand your professional network and learn about career opportunities. Take the initiative to expand your horizons.

Marcia Pennington Shannon, Assistant Dean, Career Services, Georgetown Law.

NEW LAWYERS need to be able to articulate their value proposition — to a potential employer or to their own clients. You must know what you are good at and how it would serve your employer or your clients. What are you passionate about? Focus on ways that you can assist an employer or client. What special abilities do you have that would help you generate revenue, serve clients and provide service? And beyond that, know what skills you would like to further develop. Having your law license is the starting place, not the destination.

Wendy L. Werner, is a career coach and practice management consultant for lawyers and professional services firms at Werner Associates, LLC. and former Assistant Dean of Career Services at St. Louis University School of Law.

About Attorney at Work

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