

MOVING TO A VIRTUAL PRACTICE MODEL DO YOU HAVE THE RIGHT STUFF?

BY JIM CALLOWAY

The idea of a completely web-based law practice might sound like a dream come true to many lawyers. You can conduct all your work from home or the local coffee shop, ditch that stuffy suit for shorts, a T-shirt and flip-flops, and never be interrupted by clients knocking at your door again. Yes, that sounds appealing—but, as you might guess, there's more to it than that. And the reality is that virtual practice is not for every lawyer or every practice area.

With all the attention that's being devoted to the subject, one might assume that the definition of "virtual law practice" is largely established at this point. But many who use the term still attach different meanings to it. So for purposes of our discussion, let's begin by homing in on a good working definition.

Beyond the Boundaries of Email and Static Websites

If a virtual law practice—or virtual law office (VLO), as it's also called—means lawyers communicating electronically with clients whom they've never met in person, then pretty much every lawyer would be a virtual practitioner these days. Nearly all lawyers, at one time or another, have represented a client who was so geographically removed that the parties never actually held a face-to-face meeting. Even before email and the Internet, the invention of the telephone made that possible—and before that, there were no doubt lawyers and clients who were connected only by the Pony Express.

But at the core of the lawyer's practice there has always been a public base of operations—the venerable law office—meaning a bona fide physical location where clients can meet with their lawyer to confer in person as needed.

So does virtual practice simply mean that a lawyer swaps his or her physical office for a few electronic communication and productivity tools? Not quite. While such tools are requisite to eLawyering in general, a VLO calls for a particular kind of website infrastructure.

Stephanie Kimbro has operated within a virtual practice setting for many years and is author of the seminal book *Virtual Law Practice: How to Deliver Legal Services Online* (ABA, 2010), wherein she provides the following definition:

A virtual law practice is a professional law practice that exists online through a secure portal and is accessible to both the client and the lawyer anywhere the parties may access the Internet. Legal services are delivered online using this method. The lawyers and their clients have the ability to securely discuss matters online, download and upload documents for review, create legal documents, and handle other business transactions related to the delivery of legal services in a secure digital environment.

Kimbro gives us a good working definition. Note, too, that her book, the ABA/LPM eLawyering Task Force and various other resources provide information on the security tools and other online applications being used in virtual practices. See the resources list on page 47 and the features elsewhere in this issue to learn more about associated ethics issues as well.

But now to further flesh things out, let's take a look at the general types of practices that might lend themselves to a virtual model.

What's the Formula for a Virtual Practice?

There are, as other sources have written about, a variety of ways in which VLOs can be structured, but overall they can be broken into two main types: (1) an entirely web-based firm and (2) a virtual practice that's dedicated to a particular practice area but exists as an element of a larger, traditional law firm.

Most virtual practices at this point seem to focus on areas that are heavy in routine document preparation, often providing document assembly tools for a fixed fee. A typical model might work like this: Once the lawyer-client relationship is established and the client pays an initial fee, the client then has access to a secure personal

portal on the firm's website, where needed information is provided to the lawyer, typically in some combination of answering questionnaires and uploading relevant documents. The lawyer may request additional information or clarifications and confer with the client about options. Once the documents are completed and also reviewed by the lawyer, the client receives an electronic notification that they are ready for download and use as soon as the balance of the fee is paid electronically.

Given that, a virtual practice would typically use some type of task-based billing system, under which clients agree in advance to receive a set service or completed document for a set price. Of course, there can be, and indeed are, variations on the formula just described.

In general, however, various uncontested family law matters, routine business contracts, certain aspects of copyright, trademark or other IP work, certain estate planning matters and similar types of work with many routine documents could fit this service delivery model handily.

For example, a traditional law firm that has significant experience in family law might decide for any number of reasons to stop handling contested family law cases and then open a virtual practice outpost that enables it to continue doing uncontested family law matters. In this way, the firm could still benefit financially from its expertise in family law while reducing in-house workload and overhead in one of its more labor-intensive practice areas.

The increase in pro se litigants and legal form assembly websites illustrates a demand for this type of business model. And not all pro se litigants, remember, are those who cannot afford counsel. Some wish for greater control

of the process and others see a large expense for something like a simple uncontested divorce as unwarranted.

But as lawyers, of course, we know that not all apparently simple matters are, in fact, simple. And many of those who might otherwise consider a do-it-yourself option would find that having a licensed lawyer prepare documents for a predictable cost is the far-preferable route. Plus, if retaining a virtual lawyer means greater assurance of a quality product without having to take time off for a set office appointment during the workday, all the better.

At the same time, there's a limit to the types of clients and the types of work that can be dealt with under a business model in which face-to-face interactions are either nonexistent or very limited. To return to the example of an estate planning practice, certainly some decent-size estate plans can be completed virtually at this point. Still, it's hard to imagine many millionaires who would prefer to handle their estate planning by sending out their financial information over the Internet without face-to-face meetings with their lawyer. And obviously, a busy litigation practice, where interviews and witness statements are taken daily and trips to courthouses are frequent, does not seem to lend itself to a virtual practice arrangement.

But we shall see how it all pans out in the future.

So Should You Consider a Virtual Practice?

Generally, as just discussed, the type of legal services you wish to deliver will play a sizeable part in determining the answer to this question. But another thing you should ponder before considering virtual lawyering is your ultimate comfort level with technology.

Sure, you may know how to use email, own some productivity software and have a website for your practice. But remember, virtual practice entails tools and tactics that go beyond the usual elawyering ones.

In fact, the earlier-mentioned notion that we might all be virtual lawyers nowadays generated a contact with Marc Lauritsen, who is co-chair (with Richard Granat) of the ABA/LPM eLawyering Task Force. For his part, Lauritsen sees virtual law practice as a subset of elawyering, which is then a subset of lawyering in general. He notes that both of these subsets appear to be growing.

However, as Lauritsen explains it, "Elawyering, in most general terms, is the use of electronic tools and media to do lawyering—for instance, providing interactive questionnaires on websites to gather information from prospects and clients, opening up a shared space for collaborative deliberation about a particular decision or using interactive visualizations.... Each of these practices is a form of elawyering, but does not make the law practice 'virtual.'

"Virtual law practice requires advanced electronic tools and media so that lawyers and clients can communicate and collaborate remotely and asynchronously," Lauritsen notes. "So all virtual law practitioners are engaged in elawyering, at least when they are operating in the virtual mode. Many lawyers, of course, run hybrid practices, with some client interactions mostly or totally done the old-fashioned face-to-face way, punctuated with phone calls and emails."

So, if a lawyer is comfortable with delivering legal services this way and works in an area suited to a virtual practice, there are many practitioners of various backgrounds who

might want to consider this new business model. Here, based on the author's "best-case" scenarios for virtual lawyers, are a few candidates:

- A lawyer located in an area of a state where there are many lawyers to compete with, but where other areas of the state appear to be underserved. Even though a lawyer's license allows practice within an entire state, lawyers rarely practice statewide, particularly in larger states. A virtual practice means one can serve clients in every corner of a state.

- A lawyer who moves to another state where he or she is not licensed. Whether occasioned by a job opportunity for a spouse, family responsibilities or just a more-inviting locale, a lawyer who moves from one state to another might decide that virtually maintaining his or her practice in the former home state is better than dealing with re-licensing and building a practice from scratch in the new state.

- A lawyer with expertise and good clients in a particular area who wishes to practice part-time. Whether it is caring for preschool children or training for a tryout for the Olympic team, there are many reasons why a lawyer might need or want to practice part-time. And working in a traditional law firm part-time is often problematic for a number of reasons, including that firms can balk at the overhead costs involved for a part-timer and co-workers aren't always accepting of the status.

- A younger lawyer who's currently unable to find permanent employment in a firm but does not have the initial capital or appetite for the risk that's involved in opening a traditional law

LAWYERS IN THE VIRTUAL REALM

With all the talk about virtual practices, it is easy to ask whether any lawyer or firm is actually doing this. To find out, we asked Stephanie Kimbro and Richard Granat, both of whom have experience in marketing "turnkey" virtual practice solutions, for some examples of lawyers and law firms who are finding success in the virtual practice realm. Readers can visit these firms' websites to see what they have done.

RICE LAW, PLLC, based in Wilmington, North Carolina, is a family law firm that serves both in-person clients (www.ricefamilylawfirm.com) and virtual clients, primarily military overseas, at www.ricefamilylaw.com/firm/vlo.htm.

RANIA COMBS provides virtual legal services throughout Texas in estate planning, wills and trusts through www.texaswillsandtrustslaw.com, even though she no longer resides within Texas.

BRIAN V. POWERS provides services to Indiana businesses, entrepreneurs and start-ups. His website is <http://bvplegal.com>. But he also provides fixed fee, online legal services and preparation of documents at <http://indianaonlinelegal.com>.

HEDEKAR & PERRELLI is a Chicago-based firm that does tax work and estate planning. Their firm website has a catchy name, www.cutyourtax.com, but they also have a virtual practice site serving Illinois residents at www.smarterwill.com that has received quite a bit of media attention.

ALDEN PEARSON, based in Minnesota, represents businesses and the construction industry. The firm's site is www.aldenpearson.com. But the firm also offers its Law Plus Services at www.aldenpearson.com/alden-peerson-law-plus-service.html, which allows clients to purchase legal forms and documents as well as communicate and collaborate with the lawyers. It also includes a client document repository.

MCGRATH & SPIELBERGER practices in the areas of business law and consumer law (www.mcgrathspielberger.com). Because the two named partners are

each licensed in two different states, they can represent clients in four different states. Their online legal services site at <http://mcgrathspielberger.com/online-resources/online-legal-services> provides legal documents, legal advice emails, legal and court coaching and legal document review. Under the legal documents tab are several drop-down menus with various documents, priced as low as \$15 for a bad check notice letter, each with a "buy it now" button featured next to it.

GROSSBART, PORTNEY & ROSENBERG is a Maryland consumer bankruptcy firm. Their site is www.mdbankruptcylaw.com. The firm provides an Internet gateway for clients. A profile of the firm's efforts appears at www.directlaw.com/case-study.asp.

And, of course, our contributors both have virtual law practices themselves.

RICHARD GRANAT operates Granat Legal Services, P.C., which has provided services in uncontested Maryland family law cases since 2003 at www.mdfamilylawyer.com, and he also provides services for District of Columbia clients at www.dcdivorceonline.com.

STEPHANIE KIMBRO is licensed in North Carolina and her Kimbro Legal Services is online at www.kimbrolaw.com. She provides a fairly wide range of services for individual consumers, including family law, estate planning, landlord/tenant, small business, wills and trusts.

—Jim Calloway

office. Compared to opening a physical law practice, starting a virtual practice can require a much smaller initial cash investment. Smart use of free social media for marketing, cloud computing providers for practice management, "turnkey" virtual practice solutions, and use of a virtual assistant versus an on-site one could all enable setting up a new practice relatively quickly and inexpensively. The practice will no doubt start slowly, but that at least allows time for more marketing and perfecting the use of the more-advanced tools.

How about the Downsides to Working in a Virtual Setting?

Perhaps at this point you're sure you have the right stuff to follow the virtual practitioner's road and are serious about moving your practice into full web mode. If so, you'll want to make sure you are prepared to undergo

certain challenges, including these:

- Working in isolation from clients and colleagues and a lack of positive interaction with others can be a difficult issue, as many solos have noted. Plus, if you intend to practice out of your home, that has its own set of challenges, particularly if other family members will be in the residence. While one can ignore a ringing phone and let the call go to voice mail while completing a project, it's invariably harder to ignore a spouse who needs "just a minute" of help, a needy child wanting some attention, or even a pet that's feeling ignored. Home has many other distractions as well. Spending a few minutes gardening to relieve some stress may turn out killing most of an afternoon. Although flexibility and the ability to work anywhere are among the greatest benefits of virtual
- One of the joys of a legal career is the variety of matters than one may handle. Working on very complex legal issues is not only rewarding intellectually, but it leaves the lawyer with a deep expertise in an area that can be used again and again, leading in turn to professional advantage. In contrast, if the VLO focuses primarily on unbundled delivery of legal services in one limited area (e.g., uncontested family law matters or simple estate planning), over time some may find this too personally constraining or limiting.
- When a lawyer is the only one offering legal services virtually in a state or region, it's easy to see that there is the potential for a good client base.

EMERGING STANDARDS FOR CLOUD COMPUTING

Many lawyers have concerns about the ethical and security implications of storing confidential information online, whether through a cloud computing-based practice management solution or a virtual law practice service provider. Two nonprofit industry groups have emerged with the combined goals of helping to shape the future of cloud computing for users.

The Legal Cloud Computing Association (LCCA) is a consortium of legal cloud computing vendors with the collective aim of helping shape both policies and standards relating to cloud computing.

"We saw the opportunity to have a greater impact acting as a group than we would individually," says Jack Newton, a founding member of the LCCA and CEO of Clio. The LCCA currently includes Clio, Dialawg, DirectLaw, RealPractice, Rocket Matter, NetDocument, Nextpoint and Total At-

torneys. The LCCA has taken an active role in providing feedback on cloud-related issues with the ABA as well as state-level bars. "We feel we've already had a tremendously beneficial impact as an association," Newton says, adding, "The organizations we've been working with, including the ABA Commission on Ethics 20/20 and the North Carolina State Bar, have been very receptive to feedback."

A second effort, the International Legal Technology Organization (ILTSO), is working to establish best practices and

lawyering, some may find that they still have to figure out a way "to go to work" outside of home on many days.

But if even a dozen lawyers in that state open VLOs, then they are all in direct competition with each other for what is certainly not an unlimited pool of potential clients. Plus, if the business model involves publicly disclosing pricing for standard services online, it becomes extremely easy for competitors to undercut those prices.

- Doing unbundled or routine matters for the public at modest flat fees will likely mean steady business and a steady income stream. But the idea of doing thousands of these matters to generate significant wealth will likely be reserved for a few, if any. The reality is that you will have your market share and others will have their market share, so there's a potential ceiling on income.

It Looks Like Exciting Times Ahead

Some parts of every law practice will use more lawyering tools in the near future, if they are not already doing so. (To get an idea of what this may mean, turn the page and read some predictions from the eLawyering Task Force's co-chairs.) But right now, for those lawyers who decide to go completely virtual, either for all or part of their careers, it will certainly be an exciting challenge. Perhaps they will be trading flexibility for income. Perhaps they will ultimately receive a job offer from a large law firm that wants to go virtual with some practice areas. Or perhaps they will alternate between virtual and traditional as their life situations dictate. And some may find that it really is their dream come true. Again, we shall see....

Jim Calloway (jmc@okbar.org) is Director of the Oklahoma Bar Association's Management Assistance Program and a member of the *Law Practice* magazine Editorial Board. He writes the award-winning Jim Calloway's Law Practice Tips Blog (<http://jimcalloway.typepad.com>).

LEADING THE VIRTUAL FIRM

BY KAREN MacKAY Virtual lawyering sounds great. The independence, the low overhead, the telephone meetings in sweats. But perhaps your practice requires collaboration with other virtual lawyers. Or maybe you want to keep some collegiality and skip the isolation by creating an entire virtual firm—a handful of team players virtually connected to each other and their clients. Plenty of professionals—including a growing number of lawyers—are doing just that. Of course, any time two or more gather together, even virtually, there is managing to be done. Issues arise. Decisions must be made. There are interpersonal dynamics to be managed. Here are some tips for leading a virtual firm.

GET TO KNOW EACH OTHER UP FRONT. Professionals are attracted to virtual firms in part because they can create and direct their own lives, but the autonomy also demands a shared commitment to work effectively together. To build that commitment, invest time up front to get to know each member of the team—the whole person. Make certain you agree to uniform client service standards as well.

SHARE WORK. A virtual firm typically values people for what they do best, but if you are not willing to develop and share business within the firm, leading will be difficult. Plus, just as in any firm, new business must be developed not only for profitability, but also so that your professionals have the opportunity to get better at what they do.

PROVIDE COORDINATED TECHNOLOGY. Technology is especially critical to supporting your team when you can't just walk down the hall to fix something or discuss a high-priority document in person. You need technology that enables full communication between and among team members that is available wherever team members are and whenever they need it.

PAY FAIRLY. You have to figure out a compensation model that makes the money issue a non-issue. And be consistent—side deals and different compensation packages will come back to haunt you even in the virtual world.

NO CARROTS, NO STICKS. Generally, the professionals in virtual firms want to set their own targets. So talk with each member of your team regularly to find out what they want to achieve this year, this quarter, this month. Work closely with them to map it out, and then get out of their way.

BE CLEAR ABOUT VALUES. Core values are different for every organization. Be clear about what they are for you and this firm, and then give examples of what they mean to your team members. When tension or conflict arises (and it will) go back to your values and use that lens to sort things out.

CREATE GLUE. Consider sending a daily email update about current work and client issues to all members of the team. Get together in person from time to time to nurture the sense of having colleagues. Do things together for fun as well as for work.

Virtual firms can attract talented professionals committed to excellence as well as to creating the life they want. But to ensure that it works, leadership is required, just like in a brick-and-mortar firm.

Karen MacKay is President of the consultancy Phoenix Legal Inc., focusing her work on leadership and strategy execution for law firms.