CHAPTER ONE

Virtual Law
Practice Basics

Introduction

The goal of this book is to provide detailed information on how to responsibly deliver legal services online to your clients and how to successfully operate a virtual law office. In addition to operating my own virtual law office, I have the privilege to work with innovators in the field of eLawyering and with other lawyers enjoying their own virtual law practices. I’ve combined my experience with state-by-state research of the different rules of professional responsibility and ethics and advisory opinions related to this topic. Also included are tips and guidance from experts in the legal and IT professions along with case studies from other lawyers delivering legal services online.

eLawyering and using technology to practice law are not new concepts. Many lawyers and law firms have been using technology to provide legal services to clients and communicate with other legal professionals since it was feasible to do so. What has changed is the growing demand by the general public for the use of technology to receive legal services specifically through the use of the Internet. The continued push toward the delivery of legal services online affects the legal profession across the board from solos to large law firms and affects our clients’ expectations. Mainstream legal professionals who have preferred to stick with more traditional law practice methods can no longer turn a blind eye to this change if they wish to remain competitive.

Our clients are going online to seek out legal professionals and to find ways to solve their legal needs through the Internet. The continuing trend is toward e-commerce transactions as consumers shop, bank, con-
duct business, and pay their credit cards and taxes online. While it is not clear how many prospective clients are choosing online legal services over traditional law firms, we do know that Legal Zoom, Inc. has been serving thousands across the nation over the past few years and has generated millions in revenue from the sale of form-generated legal documents. Online demand for legal services and the number of people using the Internet to transact business is surging.

Online companies such as Legal Zoom, Inc., Nolo, Inc., and USLegal, when available for specific areas of law, are being turned to by the public and individuals who may otherwise have consulted with a lawyer in person. The problem with these online legal services is that they are not reviewed by a lawyer and therefore may not provide the best legal guidance even though they are more affordable and easy to access online. Members of the public are also turning to “do it yourself” legal kits or forms purchased online or in bookstores. In some cases, they are searching for legal documents online and then cutting and pasting together their own versions, attempting to solve their own legal needs. The motivation for using these methods is clearly an issue of access and affordability.

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1 According to Forrester, e-commerce will continue to grow as factors including ease of accessibility and changing demographics of online users will help support this growth. By 2013, the estimated US online retail sales will reach $299 billion at a compound annual growth rate (CAGR) of 10% over a five-year forecast period. US Online Retail Forecast, 2008-2013, Evans, Patti Freeman, updated March 4, 2009, Forrester Research, Inc. See also, US Ecommerce Growth to Pick up In 2010, But Hit Mature Stride, Bloomberg BusinessWeek Blog (February 2, 2009). [http://www.businessweek.com/the_thread/the_thread/blogspotting/archives/2009/02/us_ecommerce_gr.html](http://www.businessweek.com/the_thread/the_thread/blogspotting/archives/2009/02/us_ecommerce_gr.html) (accessed May 27, 2010) providing a summary of the Forrester predictions for e-commerce over a five-year period.

2 For example, in a petition to have a case removed from a court in Missouri to federal court, Legal Zoom states that it has served over 14,000 Missouri residents over five years which generated over $5,000,000 in sales. See IPWatchdog.com blog for links to the legal documents related to [Janson v. Legal Zoom, Inc.](http://www.ipwatchdog.com/2010/02/09/legalzoom-sued-in-class-action-for-unauthorized-law-practice/id=8816/) (accessed May 27, 2010).

3 During March, 2010—one month alone—an estimated 535,000 people in the US searched online seeking legal solutions through the Legal Zoom website and an estimated 164,000 people in the US searched for legal services through the USLegal website. See Quantcast audience statistics related to websites providing online legal services. The number of duplicate people searching is not quantified. [http://www.quantcast.com](http://www.quantcast.com) (accessed May 27, 2010).

4 Nolo, Inc., sells blank legal forms to individuals online, whereas LegalZoom prepares the documents for the clients through a document-assembly program online. USLegal provides both legal documents for sale and online document preparation. With both types of services, the customers do not communicate directly with a licensed lawyer and the product being sold does not go through individual lawyer review. See [www.legalzoom.com](http://www.legalzoom.com), [www.nolo.com](http://www.nolo.com), and [www.uslegal.com](http://www.uslegal.com).
Nonprofit form services created by legal aid organizations and some state court systems have begun to provide online solutions to the public’s demand for access to affordable legal services. For example, Law Help Interactive (www.lawhelpinteractive.com), powered by ProBono.net (www.probono.net), assists members of the public online with filling out legal forms. A2J (Access to Justice), powered by the Center for Access to Justice & Technology (CAJT), in partnership with the Center for Computer-Assisted Legal Instruction (CALI), walks individuals through a set of interactive questions with an avatar to guide them to determine whether specific forms are appropriate for the individual’s legal needs. Some traditional law firms have also begun offering blank forms or interactive forms on their Web sites as a method of drawing in prospective clients.

Web sites that connect members of the public with experts are also gaining popularity as different models are introduced online. For example, members of the public registering on LawGuru.com are able to ask legal questions and receive counsel from lawyers registered on the site and licensed in their jurisdiction. A lawyer wishing to provide legal guidance through these sites must first answer a series of questions and provide proof that he or she is a licensed lawyer in the state in which he or she will be providing online guidance. Other “expert” sites may or may not verify that the individual providing legal guidance to the public is a licensed lawyer. Regardless of the method of delivery, the fact that these resources are growing in number and in demand by the public implies a significant gap in the market for affordable and convenient legal services. It also indicates an opportunity for the legal profession.

Virtual law practice provides a solution to the consumer need for access to justice and also meets the needs of our changing profession. It permits the public to retain the services of a lawyer without having to turn to less secure methods of solving their legal matters. More affordable pricing, convenience, and less intimidation are all factors that make the virtual law office appealing to a large segment of the lower- to middle-income

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1 For an analysis of the need for more accessible and affordable legal services in our country, see the Brennan Center for Justice at the New York University School of Law’s Civil Justice Initiative, The Economy and Civil Legal Services Analysis, May 17, 2010 http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services/ (accessed May 27, 2010).
2 See also the ABA Pro Se/Unbundling Resource Center’s list of online self-help resources, at www.abanet.org/legalservices/delivery/delunbundself.html.
3 Access to Justice (A2J): www.a2jauthor.org/drupal
4 See, for example, the term-sheet generator on the Wison Sonsini Goodrich & Rosati firm Web site: www.wsgr.com/wsgr/Display.aspx?SectionName=practice/termsheet.htm
5 See, for example, JustAnswer.com, at www.justanswer.com.
individuals in our country. Likewise, the benefits to the lawyer through streamlined legal work and a competitive advantage with secure online access make it a cost-effective solution for both solos and small firms to implement.

**What Is a Virtual Law Practice?**

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. A virtual law practice has been referred to in the following ways: virtual law office (VLO), virtual law firm, Web-based law practice, or online law practice.

Virtual law practice and the delivery of online legal services are forms of eLawyering. ELawyering is defined by Marc Lauritsen, the co-chair of the ABA's eLawyering Task Force, as

> all the ways in which lawyers can do their work using the Web and associated technologies. These include new ways to communicate and collaborate with clients, prospective clients and other lawyers, produce documents, settle disputes and manage legal knowledge. Think of a lawyering verb—interview, investigate, counsel, draft, advocate, analyze, negotiate, manage and so forth—and there are corresponding electronic tools and techniques.¹⁰

With future innovations in technology, additional eLawyering capabilities will evolve to expand the concept of virtual law practice and the delivery of online legal services.

**What Is a Client Portal?**

A client portal is the primary feature of the virtual law office that facilitates the delivery of legal services online. It contains a unique username

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What Is a Client Portal?

CLIENT registers and logs in through a secure client-specific portal to request legal services.

ATTORNEY logs in through secure client portal to provide legal services.

www.virtuallawoffice_clientportal.com

FIGURE 1  This graphic illustrates the use of a client portal in a virtual law practice.

and password that the client uses to enter into his or her own secure account Web site within the lawyer’s virtual law office. This client-specific portal where the client and lawyer interact is unique to virtual law practice and is the key to differentiating it from other Web-based services and companies offering legal documents to the public online. End-to-end encryption keeps the clients secure as they log in and work with the lawyer to receive legal services.

In some instances, this same portal may also be used by other lawyers related to the case who are not members of a virtual law office. Opposing counsel or an out-of-jurisdiction lawyer collaborating with the owner of
the virtual law office may communicate securely and transfer documents through a case file on the back end of the virtual law office. While the definition, terminology, and features of virtual law practice will evolve with the technology, the client portal is the core feature that will remain out of necessity with each reincarnation.

What Is Not a Virtual Law Practice?

Any law practice, whether a solo or a large law firm, may implement eLawyering methods in their practice, and many do. However, a virtual law office is only one aspect of eLawyering and focuses on the online delivery of legal services to clients. It should not be dismissed as another use of cloud computing for law practice management, because there are unique issues in virtual law practice that extend beyond a discussion of cloud computing or software as a service (the primary method of cloud computing used) in law practice management. Accordingly, the technology, security, and ethics issues raised in virtual law practice are discussed in greater detail.

It is also important to distinguish a professional virtual law practice from the many companies selling online legal forms without lawyer review and from the many new variations of law practice management or client development tools that involve Web-based technology. A virtual law practice is not an online Web site that sells legal documents without lawyer review. A virtual law practice provides direct and personal communication between a lawyer and a client rather than strictly form-generated, unbundled legal documents for sale to the public or single online task management.

Virtual law practice is also not a law firm Web site with an e-mail “contact us for a free quote” form for prospective clients. Communication by e-mail does not constitute a virtual law practice even if sent through a law firm’s Web site. E-mail is limited as a method of transacting business and is typically unencrypted and therefore not a secure method of transmitting sensitive data.

A Virtual law practice is also not a rented physical office that may be shared with other professionals along with a receptionist service. Physical office space rented out to a lawyer for a monthly fee for the purpose of meeting with clients is often referred to as a “virtual” law office. While this arrangement allows the lawyer to work from a home office and meet
with clients in a shared, remote office space, the arrangement does not use technology to operate the functions of a law office or provide an online interface to obtain and work with online clients.

Likewise, while virtual private networks (VPNs), extranets, and other services, such as GoToPC and LogMeIn, allow a lawyer to access the law office desktop remotely, this is also not a virtual law practice, as that technology is not being used to retain online clients and to deliver legal services online. For years, larger law firms have had client extranets. However, the extranets were not marketed to a prospective online client base and the legal services were not delivered using the technology to establish the attorney/client relationship and complete the delivery of legal services through to the payment and rendering of the final product by the lawyer. A virtual law practice has the ability to encompass the entire process of working with a client online from beginning to end.

The term virtual law firm has been popular in the news, with the formation of Virtual Law Partners, Rimon Law Group, and FSB Legal Counsel—law firms that are made up of a conglomeration of lawyers that use technology to collaborate online while working remotely and reducing costs. The difference between these larger law firms made up of lawyers working remotely and a virtual law office is the act of delivering legal services to clients online through a secure client portal. These larger law firms use a virtual infrastructure to centralize the management and administrative aspects of their practice and may use software applications piecemeal to communicate with each other and their clients remotely, but they do not specifically market themselves as delivering legal services online.

Virtual law practice is also not a law practice based in a virtual-reality world. Some lawyers and law firms have opened up law offices within virtual-reality worlds, such as Second Life. There is even a Second Life Bar Association with members of the legal profession meeting regularly to discuss issues related to virtual-reality world laws. CLEs and other presentations have also been held by legal professionals in Second Life for educational and professional credit. However, a virtual law office is not based in an online reality world. Some virtual law offices may advertise their services through the opening of a virtual-reality world law office, but at this time there are very few lawyers who are able to make this marketing effort result in paying online clients for their real-world practice. Virtual law

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practice is a law practice that is bound in the real world by the jurisdiction of the state bar in which the operating lawyer is licensed to practice law.

These distinctions are important because it affects the security and ethics concerns related to the use of the technology. It is also important because some state bar rules regarding unauthorized practice of law require an examination of whether the services being offered by the lawyer constitute the “practice” of law. Delivering legal services online to clients is the “practice” of law. Furthermore, the online delivery of legal services from start to finish requires a higher standard of care on the part of the lawyer operating a virtual law practice and demands close attention to compliance with the rules of professional responsibility that may not always apply to the structure and processes of a traditional law practice. When interpreting the state bar rules regarding virtual law practice, electronic communication, and unbundling legal services, it is important to have a solid understanding of the structure of the virtual law practice and what services will be provided to clients online.

Changing Technology

Given the rate at which technology evolves, the features of a virtual law practice will continue to expand to provide additional communication and security features for the legal professional beyond what currently may be imagined. However, the core function of a virtual law practice should remain the same—the ability to securely deliver legal services and work with clients and other legal professionals online through a secure online portal. Because of the rate of change in technology and in this area of law practice management, a Web site companion to the book has been set up at www.virtuallawpracticebook.com to provide updates to the Appendix.

What Are the Benefits of a Virtual Law Practice?

The benefits of operating a virtual law practice are going to differ based on what the practitioner hopes to accomplish with their practice. Some of the main benefits include the following, which will be discussed further:

- Lower overhead
- Eco-friendly, paperless, less office waste
- Greater work/life balance and flexibility
Ability to expand client base across jurisdictions; competitive advantage

- Flexibility to transition between different phases in life and career to meet professional and personal needs
- Tap into a broader market of consumers seeking legal services
- Serve as an amenity for existing clients of a traditional law practice
- Added security of hosted backups and other cost-effective benefits of using software as a service (SaaS)
- Lessen malpractice risks through the use of technology to automate checks
- Streamline administrative features of a law practice to permit the lawyer to focus on the actual “practice” of law.

What Are the Risks of a Virtual Law Practice?

Many of the risks in operating a virtual law practice are related to either the security or the ethics and malpractice concerns. This book devotes entire chapters to address these topics in greater detail along with providing resources in the topical appendix for further research. Some of the risks that require consideration and mitigation before opening a virtual law office include the following:

- Security of the technology, including third-party control and storage of law office data
- Retention and return of law office data
- Confidentiality
- Competency of providing unbundled legal services
- Unauthorized practice of law in other jurisdictions

The risks and benefits of a virtual law office will depend on a number of factors, including the chosen management structure, the lawyer’s practice areas, the regulations of the lawyer’s state bar(s), the years of prior experience that the lawyer has in running a law practice, whether he or she has an existing client base to start with, and what the strategy and goals are for the virtual law practice.