

eLawyering: Providing More Efficient Legal Services With Today's Technology

By Richard S. Granat

The phenomenon of eLawyering has swept through the legal world with amazing speed. Until recently, lawyers practiced law the same way that generations of lawyers before them had practiced. The tools of the trade, such as they were, tended to be passed down from experienced lawyers to newer lawyers without much change. The computer revolution, which began in the 1980s, however, has changed the way lawyers work in dramatic and fundamental ways. Today, lawyers in every field of practice, every geographic locale, and every type of organization use technology to improve their efficiency, productivity and profitability in countless ways.

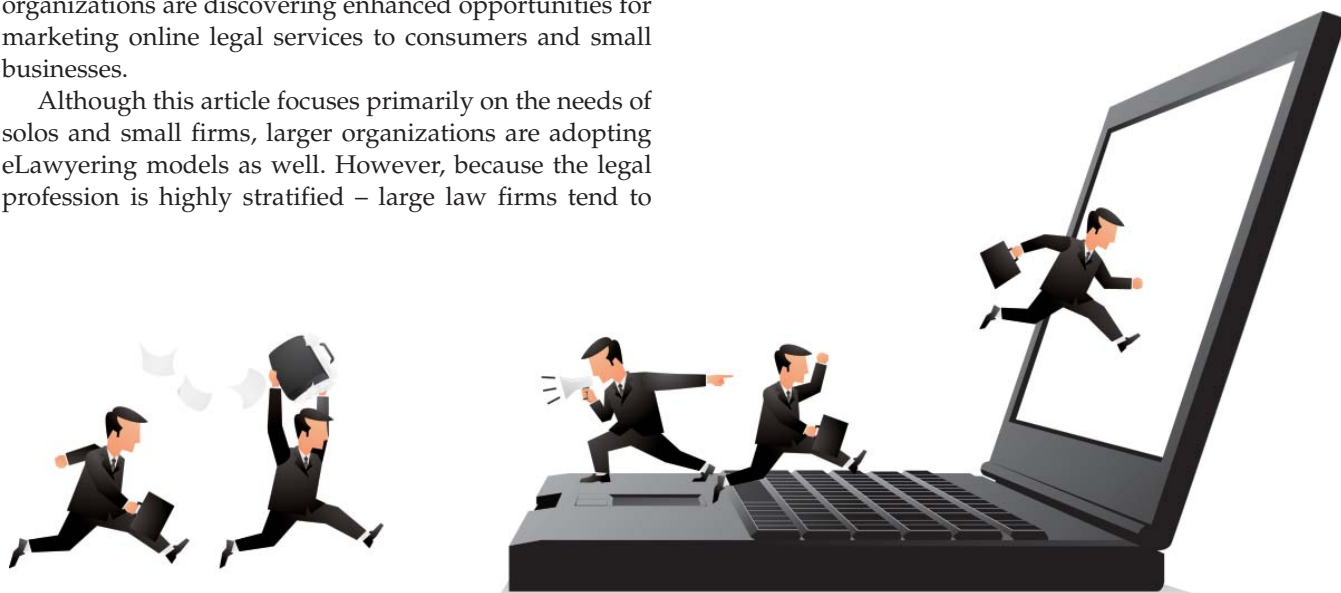
The Internet

The Internet deserves special attention because of its singular potential to transform the way lawyers deliver legal services to clients. The advent of eLawyering provides unprecedented opportunities for enhancing the productivity of all lawyers, but particularly those in solo and small law firms. In addition to service delivery, smaller organizations are discovering enhanced opportunities for marketing online legal services to consumers and small businesses.

Although this article focuses primarily on the needs of solos and small firms, larger organizations are adopting eLawyering models as well. However, because the legal profession is highly stratified – large law firms tend to

serve large corporate clients, while solos and small law firms generally serve consumers and small businesses – it is difficult to make generalizations about these two different worlds. By and large, large law firms compete for a finite number of large corporate clients, whereas the markets for consumer legal services are constantly shifting, with some practice areas contracting, such as Chapter 7 bankruptcy, while other practice areas, such as immigration, are expanding. Consumer markets can be segmented by type of substantive practice area and also by client demographics. For example, one specialist in divorce law may serve primarily a middle-income clientele while another divorce practitioner may represent very wealthy clients with vast assets. Yet, a large proportion of the consumer market remains underserved by

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the legal profession because of affordability and access issues. It is this consumer market in which eLawyering offers the greatest prospect for meaningful change in the delivery of legal services.

The Changing Legal Landscape

Since 2000, a new category of non-lawyer/legal information Web sites has emerged, which sites offer direct-to-consumer, very low-cost legal solutions. The legal information industry of self-help books and forms has gone online. The solo and small law firm segment of the legal profession is squarely in its sights. Because legal information solutions can often substitute for the professional services of an attorney, legal information sites present a new reality, which lawyers generally, and solos/small firms in particular, will need to address.

There are now literally hundreds of Web sites that provide legal resources and information, in areas such as wills, divorce, adoption, bankruptcy, business incorporation, child support enforcement, living trust creation, debt counseling, immigration, trademark search, copyright registration, patent registration, and landlord-tenant law. Sites such as these offer Web-enabled legal forms, legal information services, advisory systems, law guides, FAQ guides, and other tools for legal problem resolution, short of delivering what could be called "full legal services."

These new alternatives are capturing or acquiring clients from both the "latent" market for legal services and from existing law firms. And these Web sites are very efficient. Once content is published to the site there is little else that the publisher has to do to generate cash flow, except to market the site on the Internet and provide customer support. Consumers pay with a credit card. Cash goes directly into the publisher's account within 48 hours of purchase.

The revenues from the purchase of legal form content, whether the legal forms are automated or not, can be viewed as a royalty stream that continues to flow to the publisher, for as long as the product is available for sale. There is a cost in maintaining the currency of legal form content, but it is relatively insignificant. Many legal forms are stable in terms of content and do not change greatly from year to year.

The effect of the legal information Web sites on solos and small law firms is just beginning to be felt, but they are already having an impact. For example, in the area of no-fault divorce, sites, such as www.completecase.com, www.legalzoom.com, www.selfdivorce.com, www.divorcelawinfo.com, www.divorcenet.com, www.docupro.net, and www.uslegalforms.com, have processed more than 50,000 online divorces in the past 18 months. If the average legal fee for an uncontested, no-fault divorce is about \$1,500, then approximately \$75 million in legal fees have been drained from lawyers' practices nationwide.

Very little accurate market research data exists on the opinions of U.S. consumers and their view of the legal profession.

More significantly, this is an amount that will continue to increase – at the expense of practitioners. As legal information sites become more sophisticated and incorporate more rule-based, intelligent Web applications that substitute for the judgment and the labor of an attorney, they will thrive. Because of their private corporate structure, these companies have access to more capital and superior management resources than the typical small law firm. While utilization of an "intelligent" legal form is not a substitute for the services of an attorney, for many consumers smart legal forms and supporting legal information content provide a result that is "good enough" and evidently is proving satisfactory to thousands of consumers.

What Consumers Want

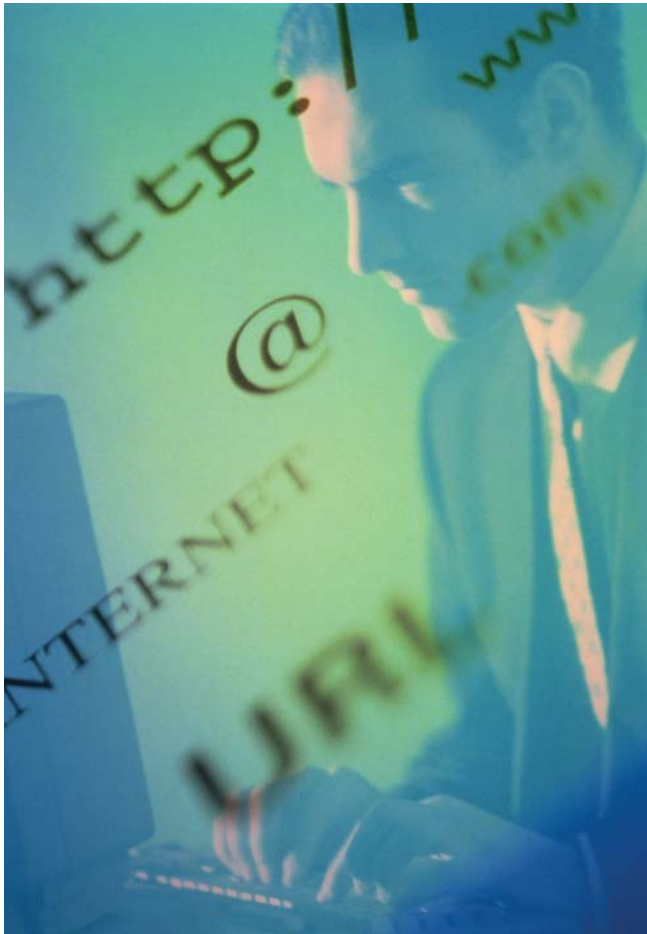
Why do consumers look for alternatives to lawyers? The answer is not always obvious. Consumers will avoid using a lawyer unless they really must because:

- They cannot afford lawyers, who may typically charge from \$200 to \$500 an hour, or more.
- They do not trust lawyers to always represent their best interests.
- They believe that lawyers are inconvenient and inefficient to use.
- They dislike paying hourly rates.
- They perceive lawyers as high risk in terms of benefits versus cost.

Consumers will sub-optimize and seek the assistance of an independent paralegal, for example, rather than the full services of an attorney in the interest of economy, even though it is far from the perfect solution. Thus, crafting marketing strategies for law firms that serve consumers and small businesses requires a deeper understanding of what consumers want and why they are seeking alternatives to lawyers.

Very little accurate market research data exists on the opinions of U.S. consumers and their view of the legal profession. For good, in-depth research on this issue one may look to the United Kingdom. An organization called *Which?*, the largest consumer organization in Europe and the equivalent of our Consumers Union, has extensively studied consumers' opinions of lawyers. Its most recent findings show that

- 29% of consumers reported that legal services were poor value for their money;



- 23% said their solicitor did not listen to their opinion;
- 30% did not feel well informed about charges;
- 40% said that despite being unhappy with the service, there was no point in complaining because the Law Society would not do anything anyway; and
- 63% thought it would be a good idea to get legal services at supermarkets or retail banking institutions.

For these and other reasons the United Kingdom is in the process of de-regulating the legal profession. The goal is to promote greater consumer choice and create the framework for introducing modern methods of management, modern technology, and capital into the delivery of legal services. Sometime in 2009 the following reforms will take effect:

- independent regulation through a Legal Services Board that is not dominated by the legal profession;
- independent complaints handled by a new Office for Legal Complaints;
- authorization of alternative business structures that would permit non-lawyer entities to invest in and develop law firms and create new legal service delivery structures;
- abolition of the prohibition against splitting fees with non-law firms in order to encourage more innovative marketing arrangements; and

- narrowing of the prohibition against unauthorized practice of law that enables non-lawyers in many areas to provide legal advice and create legal documents for consumers.

It will be a long time, if ever, before similar reforms happen in the United States, but it will be interesting to see what happens in the United Kingdom during the next few years as these reforms take effect. The U.S. legal profession can learn from the experiments that are being carried out in the United Kingdom and the impact of these experiments on consumer choices.

What do consumers want? *Which?* has also conducted extensive research on what consumers seek from their lawyers. The dominant theme is better customer service. Consumers want

- information about what their case is going to cost;
- an idea of how long their case will take;
- progress updates on their cases;
- prompt response to letters and phone calls;
- prompt responses to their complaints.

Which? also reports that consumers want legal advice and legal services to be delivered

- online, by phone and even by text;
- beyond usual business hours;
- linked to related services, such as the purchase of a home;
- together with unbundled and do-it-yourself (DIY) legal services.

Because consumers of legal services in the United Kingdom are not greatly different from consumers in the United States, there is much to be learned from this research. From consumers' perspective, the system for delivering legal services must be re-designed to address their needs by creating a new value proposition; eliminating the necessity of meeting at the lawyer's office; increasing the speed of the transaction; and offering services at a flat fee.

Lawyers need to devise models that meet the needs of consumers, or else the migration of consumers to less valued, and often less effective, alternatives will continue unabated. But lawyers can address this trend by doing the following:

- Increasing the transparency of the transaction between client and lawyer by moving away from hourly pricing towards fixed pricing and/or pricing by result. The lack of transparency in lawyer pricing creates tremendous anxiety on the part of consumers. A consumer can obtain a fixed price from a home builder to build a \$1 million home (with allowances for unforeseen circumstances), but cannot receive a fixed price from a lawyer for a relatively simple divorce.
- Improving productivity of the legal transaction and passing the savings on to the client. Consumers suspect that lawyers are using information technology to increase their productivity by automating more

routine legal tasks such as document production. They resent the fact that productivity enhancements are not passed along to the consumer in terms of lower prices. Without competition from other kinds of providers, the legal profession has no incentive to lower prices. Instead, legal fees tend to increase over time. Full service stock brokers were impacted by online discount stock brokers, resulting in price reductions. A competitive economic environment for legal services would have the same result.

- Changing the structure of the relationship with clients. The lack of transparency of lawyer-client transactions and the increasing level of fees compound the inconvenience of communicating and working with a lawyer. While it is necessary to appear in a doctor's office for a physical examination, it is not necessary to be physically present in a lawyer's office in order for the law firm to do its work. Yet the prevailing mode of doing business often requires that the client give up half a day of work or more and travel to a lawyer's office for advice at the lawyer's convenience, not the consumer's.

The Connected Generations

The pressure to change the way legal services are delivered to consumers will increase dramatically in the next

few years, as the "connected generations" come of age. The size of the connected generation born between 1970 and 1986 is approximately 76 million. Whatever trends are now in place will accelerate over the coming years as these people mature and come into the age at which they require legal services. They have grown up with computers and look to the Internet first, before checking the Yellow Pages, reaching for a telephone, or consulting with a professional face-to-face.

Moreover, for those in the generation born since 1986, a defining cultural-historical characteristic is that they spent their formative years in the Internet era. This "iGeneration" has no memory of (or nostalgia for) a pre-Internet history, which greatly differentiates them from older generations that had to learn to adapt to "new" technologies. The iGeneration takes the Internet for granted. Sites launched since 1998, such as MySpace, YouTube, iFilm, Internet forums, Wikipedia and Google are part of the global cultural ecosystem.

Connected consumers use the Internet for business and social networking, shopping, product research, and finding a mate. They value:

- innovation;
- immediate results;
- authentication and trust;



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Online consumers behave differently from consumers of prior generations:

- They look to the Internet as the first place to go for information.
- They use comparison sites as a tool for decision making.
- They want to try before they buy.
- They look for communities of interest where opinions and information can be exchanged (see, for example <http://www.avvo.com>).
- They seek digital spaces that are interactive.
- They will interact with a Web site before talking to a professional.
- They may consult with a professional, but only following digital exploration.

The connected generations want to do business over the Internet with attorneys. They intuitively understand eLawyering concepts, even if most lawyers do not.

What Is eLawyering?

The concept of eLawyering can be traced to the beginnings of the Internet, when early law firm Web sites such as <http://www.visalaw.com> first appeared. In January

This is a good beginning for understanding the concept and attitude of eLawyering. At its core is a law firm Web site that incorporates interactive and Web-enabled applications that support interaction between lawyer and client along a number of dimensions.

Creating an eLawyering Practice

The first step is to build a “strategy map” that identifies who and where your existing and potential clients are and how you can serve them more effectively over the Internet. A highly localized and neighborhood-based practice serving lower income families may find that, in fact, the Internet is less relevant to its client base. On the other hand, a law firm that serves small businesses in a specialty area such as intellectual property, immigration or employment law, and is seeking to expand its practice from a single city to statewide, will find the Internet quite relevant and useful.

Time, pricing, convenience, the degree of emotional hand-holding needed, the possibility of unbundling transaction components, the degree of specialization that is required, and the degree to which the transaction lends itself to self-help approaches, are all factors to take into account in creating a strategy map for adding an eLawyering dimension to a practice.

A law firm that serves small businesses in a specialty area and is seeking to expand its practice will find the Internet quite relevant and useful.

2000, William Paul, then president of the American Bar Association, created the ABA eLawyering Task Force, and the idea of eLawyering was formally recognized as a way of delivering legal services. Paul’s vision was that lawyers would be able to use the power of the Internet to serve clients of moderate means who have been priced out of the legal market.

Undoubtedly, eLawyering will grow in importance in coming years, just as shopping online has experienced year-to-year growth. Marc Lauritsen, co-chair of the eLawyering Task Force of the Law Practice Management Section of the American Bar Association, in an article in *Law Practice* magazine,¹ succinctly defined eLawyering 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.

In order to develop a competitive strategy, it is necessary to think like a disrupter. The growth of companies like Southwest Airlines, the University of Phoenix, and Wal-Mart follows a common pattern. Each of these companies started with a solution that made it easier, simpler and more affordable for customers to solve a critical problem in their lives. Each of these companies then identified a group of customers that typical suppliers in the industry considered insignificant and then adopted an approach that made it difficult for traditional suppliers to respond.

As Clayton M. Christensen² points out, when Sony entered the consumer electronics market, it didn’t compete with the leading tabletop radio providers by making better radios. Instead, it introduced a portable and inexpensive transistor radio that was designed for teenagers who wanted to listen to ball games or music without being supervised by parents. When Apple introduced the iPod, it didn’t compete with the Sony Walkman. Instead, it created a unique platform so that this same demographic could carry their music libraries in their pocket.

The lesson here is that non-clients of your law firm can become great clients if you figure how to reach them with an alternative offering that meets their needs. Sometimes, the best target customers or clients are those that lack the skills, wealth, success or time to consume existing products or services. Removing barriers to consumption can create a pathway to growth.

Once you figure out what kinds of clients you want and how you will serve them, you can translate the strategy into a Web site development plan. This plan will estimate investment costs, revenues, and the intangible benefits that result from the creation of a Web-based legal service delivery system that is a platform for interactive Web-enabled applications.

This is key. Many law firms have what could be called "first generation" Web sites that consist of little more than an expanded Yellow Pages advertisement. A much smaller number of law firms have "second generation" Web sites that provide rich, substantive content and legal information. A still smaller number of law firms actually provide applications that help clients solve their legal problems over the Internet in a way that is both satisfying and price competitive. Examples of Web-enabled law firm sites include:

- www.illinoisdivorce.com,
- www.mdbankruptcyllaw.com,
- www.visalaw.com, and
- www.mdfamilylawyer.com.

These are true eLawyering Web sites that offer legal solutions directly to middle-income consumers. The number of such sites is on the rise, although not all sites are operated by lawyers.

A law firm that has a first-generation Web site is not engaged in eLawyering. Such sites do not provide any interactive applications and are little more than brochures in digital format. Often these sites exist within a larger law firm directory and the firm has no control or access to the Web site itself in order to be able to add interactive applications. They are not "interactive service" sites. For these firms, the practice of law is business as usual.

On the other hand, a law firm Web site that is based on eLawyering concepts goes beyond presenting flat legal content and helps clients collaborate with their lawyer and do legal tasks over the Internet. These Web-based, interactive applications save lawyer time, often increase lawyer productivity and profit margins, and provide a more satisfying experience for the client.

The law firms that are moving into this next stage may be described as "Web-enabled." They are committed to using the power of the Internet to change the way they practice law by creating highly interactive Web sites. For these law firms, the Web site becomes the primary way in which the law firm relates to its clients and manages the flow of legal work. To accomplish this objective, a

Web-enabled law firm should consider the following applications.

Client Extranets

A client extranet is a secure and private space for each client, where the client can communicate with his or her attorney securely, documents can be archived, the client can check the status of the case or matter, and legal fee billings can be presented and reviewed, if not actually paid electronically. A client extranet permits personalization of the client experience; security of communication; and the convenience of having all of one's documents and transactions with the attorney documented and in one private and secure Web space.


A client extranet can be costly to create if you program the entire application yourself. Few lawyers possess this level of programming skill, so a more practical alternative is to create a client extranet around applications that are hosted by third parties, such as Findlaw, Microsoft's Sharepoint, and WebEx Web Office. These are easy to set up and reduce the cost of entry substantially, as no custom programming has to be done.

Web-Enabled Document Automation

Within a secure extranet client space, clients can provide data through an online questionnaire. The data can be used to create documents through the use of Web-enabled document assembly solutions such as HotDocs Online and Rapidocs Online. The client enters data directly into

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an online interview; this reduces the time that the attorney must spend on the interview process, and results in an instantaneous generation of a draft ready for a lawyer's more detailed review.

Traditionally, document automation has been used by lawyers within the office environment to speed up the production of documents of all kinds. This is important, but it does not have as dramatic an effect on the law firm work process as client-centered and Web-enabled document automation. By moving the document automation process onto the Web and enabling the client to provide data online – without initial lawyer intervention – a major increase in lawyer and client productivity occurs.

Creating automated document templates that work on the Web is not a trivial undertaking.

The Next Step

The next step involves productizing the legal service – that is, systemizing the production of the service rather than custom crafting the service every time you produce it. Often this means integrating a digital application with the production of the legal service. Unlike the “DIY” legal form companies discussed above, a law firm must still provide a human service, but the time required can be greatly reduced by using online software applications. By shifting a portion of the legal work to the client, attorney time is released for more complex matters or other pursuits. In many industries, the customer as a co-producer of a service or product has resulted in great leaps of productivity and efficiency.

Creating automated document templates that work on the Web is not a trivial undertaking. All of the major document automation systems require some skill in the use of a scripting language. If the firm has already automated documents that have been used on the desktop, the task of importing these documents for use on the Web is made much easier. DirectLaw, Inc. already has large inventories of state-specific, automated legal documents which can often be used with minor adjustments. These predefined document templates can be used to generate first drafts, which are then further customized by the attorney.

Other kinds of online digital applications save attorney time and increase law firm productivity. Below are some examples.

Online Calculators

Online Web interview forms can be used to collect financial data that is the basis for a calculation and offers the client an immediate, useful legal result. Examples include the child support calculator at <http://www.mdfamilylawyer.com> Web site and the Chapter 13 eligibility calculator at <http://www.mdbankruptcy.com>.

Client Appointment Scheduling

Clients can make appointments to see their attorney directly through the Web site using third-party applications such as Microsoft's Appointment Scheduler and other Web-based scheduling applications. This reduces the amount of time spent playing telephone tag.

Client Data Intake

Clients can provide data through online forms that are the basis for an office consultation. Providing the data in advance enables the lawyer to fully prepare for the office consultation and often reduces the time required for the in-house consultation. Although in this case the forms themselves are not being created, there is still a major saving in attorney time; the attorney has all of the client's financial data at hand when the client walks through the door for their first meeting.

Interactive Legal Advisors

Some law firms are creating interactive legal advisors. Like online document assembly, the client answers questions through an online questionnaire, but instead of a legal document being created, the intelligence engine generates a legal answer by manipulating a series of “if-then” statements that offer a legal answer to the client immediately.

While these interactive legal advisors are not easy to program, they can be used for a long time without major revision. Interactive legal advisors can be designed with a trap door to alert the lawyer of potential problems that require more sophisticated analysis and direct legal advice. (The U.S. Immigration Service has several such legal advisors on its site that determine, for example, the immigrant's eligibility for U.S. citizenship.) Attorney time is saved, and some attorneys have figured out how to monetize such applications by either charging a small fee or generating advertising revenues to offset development costs and make a profit. In these cases, the firm is functioning more like a legal forms company than a law firm, but with a properly designed “trap door,” the user is guided to the attorney when a complication arises.

The New Billable Hour

The only way to get out from under the endless chore of keeping track of hours and billing clients in six- or 15-minute increments is to devise automated applications, such as using Web-enabled document automation and Web advisors, and then monetizing those applications by charging clients either on a subscription basis or a transaction basis – independent of the time factor involved to use the application itself. The price must be set at a level that reflects added value to the client, perhaps less than you would charge on an hourly basis, but given sufficient volume levels, resulting in a net profit that is greater than what you would secure if you charged by the hour.

Online Legal Advice

Lawyers are providing legal advice by telephone and e-mail, publishing both the questions and the answers to a client's secure Web space for future reference by the client. Often such legal advice is offered at a fixed price per incident – see, for example, <http://www.dcsselfhelp.com> and <http://www.dcdivorceonline.com>. This is a convenient service for clients who have relatively narrow questions and want a quick answer. Lawyers can answer these questions during times of the day when they are not busy, maximizing use of time that normally has marginal billing utility.

Online Case Management

Data about and within cases can also be made available over the Internet for clients to view and analyze. Information that clients see can be restricted to certain fields when they log in, at the same time keeping clients up-to-date on the progress of their cases. This will bond the client to the law firm in the same way that a consumer bonds with an online brokerage firm – by using it regularly. All of the major case management software vendors are, or will soon be, offering Web-enabled versions of their desktop applications, which can be made accessible to clients through a client extranet.

Online Dispute Settlement

Video- and Web-conferencing applications can also support forms of online dispute settlement and mediation. An online dispute settlement space can be set up easily by renting Microsoft Sharepoint Application and dedicating it to a particular case or controversy. The application contains, within a single and secure Web space discussion group, functions, document uploading and archiving, calendaring, and e-mail notification, which provide all of the elements for asynchronous conversations.

Multimedia

Communicating with the connected generations should not be limited to textual material. An interactive law firm Web site utilizes the maximum advantage of the benefits of multimedia. Educating clients about their legal situation can be done using multimedia programming that engages the client or prospective client in ways that plain text cannot.

Some law firms are integrating video and podcasting into their Web sites to complement the textual explanations. Web sites, blogs and podcasts offer unprecedented opportunities for reaching connected clients in unique ways. You must determine what sets you apart and convey your differentiated message consistently using the media of the online generation. That way, clients will get to know you in an authentic and compelling way before they even set foot in your office.

The Future

Figuring out how to incorporate interactive technologies into law firm business models will be both a challenge and an opportunity, particularly for firms that offer personal legal services to the broad middle class. The initial outlook is promising that law firms and the legal profession will rise to the challenge of offering services on the Web as they move toward experimenting with delivering legal services over the Internet.

The future belongs to law firms that learn how to use Internet technology to disrupt their competition by offering a client experience that is both low cost and high quality. The Internet is changing the way legal services are delivered to moderate and middle-income individuals and small-business entities. Combining digital applications with traditional human service is a way to increase small law firm profit margins without increasing the amount of time that the attorney spends on each transaction. For many attorneys, liberation from billing on a time basis, together with the capacity to practice law anytime and in any place, is a dream come true. ■

1. Marc Lauritsen, *The Many Faces of E-Lawyering*, L. Prac. 36 (Jan.-Feb. 2004).
2. Professor at Harvard Business School, author and co-founder of Innosight.

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