

Time For a Virtual Revolution

by

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The idea of an office as a static thing is crumbling as practitioners in different regions and specialties utilize technology and innovation to form a virtual firm without walls or boundaries.

The definition of a “virtual firm” can be many things and changes as fast as the technology that sustains it. There are loosely organized groups of lawyers who practice in different firms but operate under a collaborative network providing niche services, such as IP litigation. There are lawyers who form a firm by connecting over the Internet without maintaining a traditional office space. In this case, the firm’s website is essentially the “office.” There is also the rare instance of the multijurisdictional virtual firm with lawyers licensed in multiple states.

What unique ethical dilemmas face these cyber practitioners?

Advertising considerations are paramount to the virtual practitioner. The virtual firm relies heavily on branding and its website as a means to advertise to potential clients. Virtual practitioners must consider whether their actions violate ethical advertising regulations in multiple jurisdictions.

Unlike traditional mediums of advertising, there are no jurisdictional boundaries on advertising on the Internet. Attorneys cannot limit the reach of their website advertising to only those jurisdictions in which the attorney is licensed to practice. On the Internet anyone can view a website from anywhere.

Some states go even further than Minnesota in regulating attorney websites. For example, DR2-105 of New York Code of Professional Responsibility requires attorney advertising for legal services to include a physical address, not just a website or e-mail address.

To some extent, advertising contains researchable regulations that provide guidance to lawyers and the majority of the regulations can be observed with minor difficulties. However, some of the regulations are inconsistent.

Since a website is accessed in various jurisdictions, it is highly unlikely that a single site can comply with each state’s inconsistent and sometimes irreconcilable advertising regulations. The best practice for the virtual practitioner seeking to solicit clients in other jurisdictions is to survey each individual state’s advertising regulations.

The virtual practitioner must also be aware of multijurisdictional practice (MJP) concerns. The addition of

Rule 5.5 of the Minnesota Rules of Professional Conduct, governing the unauthorized practice of law and MJP, has created some flexibility for attorneys to engage in the “temporary” practice of law in states where they are not licensed. But attorneys must be careful not to overstep the boundaries of “temporary practice” by regularly soliciting business and engaging in the practice of law in a state where they are not licensed. The lack of geographical restrictions on virtual firms permits them to reach clients anywhere. But virtual practitioners must still comply with the licensing requirements of any state where they intend to practice and failure to do so is tantamount to the unauthorized practice of law.

Technology is what makes the virtual firm possible, but technology is still dependent on the human element and the willingness of participants to use it constructively.

In a virtual law firm, participants must share a common culture dedicated to providing competent and quality legal services. More so than traditional firms, the virtual firm needs consistent procedures utilized by all firm members in representing the client. Because the lawyers and staff in the firm are in different geographical locations, there is a greater chance for inconsistency between firm members in conducting conflict checks, determining billing, supervising nonlawyer assistants, returning client communications, etc.

Finally, the virtual firm will have to address challenges in providing quality representation. Clients choosing a virtual firm often favor the convenience and technology that such firms employ.

Most communications between virtual practitioners and their clients occur by e-mail. While e-mail communications offer convenience and expediency, there can be drawbacks. To what extent does the elimination of face-to-face meetings and in some cases even phone conversations affect the quality of the representation? To what extent does this increase the possibility for miscommunication or an inability to adequately address the client’s legal needs?

The allure of the virtual firm is for lawyers and staff to independently work together to best accommodate their individual needs while still building a robust legal practice. This advantage also creates one of the biggest obstacles, that of camaraderie. The virtual firm is only as successful as the quality of its members. The traditional law firm affords the opportunity for mentoring new attorneys, using colleagues as resources and day-to-day communications. One of the biggest challenges for the virtual firm will be how to foster camaraderie and collaboration among members and how to build stable quality relationships with clients over the often impersonal Internet.

The virtual firm is becoming an increasingly attractive business model for lawyers. It provides for more independent practitioners as well as dramatically reduced operating costs. As the allure of these factors become more attractive to the legal profession, the ethical dilemmas posed by this virtual practice will become more apparent.

The virtual revolution is at hand and ethics will play a challenging role in the success of the virtual law firm, because it’s impossible to separate the ethics from the technology.

