

Be Flexible, Be Successful, Be Essential

By Roberta Tepper

It's a brave new world, and it's no secret that the practice of law is changing at lightning speed. The use of technology to create self-service products for consumers and the corresponding impact on the practice of law have started a sea change that shows no signs of slowing. Add to that the increasing threat that artificial intelligence (AI) will make lawyers obsolete and you have the perfect storm, leading pessimists to predict the demise of lawyering as a profession. Despite the glum predictions of some, however, it's not the beginning of the end for lawyers or the profession.

What's necessary for lawyers to remain relevant, though, is taking a fresh look at the practice of law and how it's conducted. Lawyers need to cultivate their flexibility and be unafraid to reimagine and reinvigorate the practice to meet the needs of their future clients and the profession.

Why do we have to become flexible?

Some (though not many anymore) wonder why it's so important to rewrite the

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norms that have governed the day-to-day practice of law. Why can't we stick with billable time, bankers' hours, and conducting business as usual?

Well, folks, the train is coming, and you can either hop on or be run over. Consumers, also known as prospective clients, are faced with an amazing array of do-it-yourself legal products;¹ they can now, if they choose, avoid a trip to or the expense of a lawyer. To be sure, there are risks: these services may not adequately serve their users, resulting in bad outcomes for the users or users' having to turn to a lawyer to repair the damage.

Notwithstanding the risks, these services are alluring to consumers; they are easy, fast, and affordable. They are available 24/7/365. Fees and costs are a known quantity; they may be accessed from any computer or mobile device in any location. For the unwary consumer, the lure of DIY—keeping control of their legal matters and saving money (at least in the short run)—seems irresistible.

What about the robots?

Much of the AI competition is not sophisticated and consists of expensive products not readily accessible to lay consumers.² The good news for lawyers is that the

tools on which these services are based are ones that lawyers can easily adopt including automation, document assembly, decision trees, expert systems, and yes, some AI. We can't be afraid to adopt new technology, and if needed, adapt our current processes to work better with it. What AI cannot provide (at least not yet) is the personal touch—making clients feel valued and important.

Why are lawyers afraid of technology?

As you read this, you probably deny being afraid of technology. But lawyers—even those who have grown up in a world replete with technology—may not feel comfortable with implementing technology in their practices. Sadly, being a knowledgeable end-user does not automatically translate into the ability to effectively choose appropriate and cost-conscious technology, particularly for solo and small-firm lawyers who may not have IT assistance.

The good news is that help is available. The State Bar of Michigan has a great resource for you: the Practice Management Resource Center at <https://www.michbar.org/pmrc/content>. The knowledgeable practice management advisors are available as a

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member benefit, offering consultations, recommendations, and referrals to technology products that best suit the individual lawyer or practice. Even the most tech-friendly lawyers should not hesitate to rely on the expertise of professionals in selecting the right software and vendors for their purposes.

Here's how to do it, or at least some suggestions

Predictable fees

One of the attractions of do-it-yourself services is predictable costs. Consumers know that for a certain fee, they'll get a specific product or result. This is consistent with many other professional services. DIY, or low-touch, legal services offer much the same certainty. Consumers know up front what it'll cost for each option—including low-cost, price-certain options for lawyer assistance. It's not surprising that this certainty appeals to consumers; by contrast, how many lawyers offer a fee schedule on their website?

This is a low-touch version of legal representation. The fact that contact with a lawyer is not a primary component of these options appears not to dissuade consumers from using them; it's apparent that consumers do not crave a lawyer's involvement if the price is high. Flexible lawyers will not close up shop, but will revamp their representation design to respond to this trend.

Many lawyers view set fees with skepticism. In terms of pricing, for example, a flat fee comes with some degree of risk to both lawyers and consumers. The lawyer's risk is that the scope of representation will require more work than anticipated, decreasing net gain. On the other hand, the client risks paying the lawyer more than he or she might have paid hourly if the representation takes less time than anticipated.

Successfully implementing flat fees depends on integrating technology into a lawyer's practice. Determining the appropriate

flat fee requires analyzing the time needed to successfully accomplish specific tasks. Time-keeping software makes this process fact-driven rather than guess-driven. Equally important is the effective use of technology to automate routine tasks and documents and streamline internal processes. An increasing number of practice management platforms offer features such as rules-based calendaring, client portals, and more—providing the tools to deliver quality service while minimizing routine, labor-intensive tasks. Successfully competing with a DIY service requires reducing or eliminating repetitive work.

Unbundled legal services

Michigan now allows lawyers to offer unbundled legal services, also known as limited-scope representations, as long as they're "reasonable under the circumstances."³ Permitting consumers to opt in for legal services for specific aspects of their cases and opt out for tasks they can accomplish on their own is the key to providing value for service. This is the hallmark of the flexible lawyer: understanding that the old model of taking over litigation in full is no longer what consumers want or can afford. Equally important is the lawyer's ability to clearly articulate to the client the services the client will receive and the price for those services. Scope creep—the slow and insidious increase in the amount of work to be handled for the same fixed price—is the downfall of both flat fees and unbundled legal services.

Fill the legal gap

Much attention has been focused on access to justice and the gap in legal services, resulting in part in the proliferation of DIY products. Individuals who do not qualify for pro bono legal assistance but cannot afford traditional legal services comprise a large and largely underserved population. These

consumers are more likely to find DIY solutions or represent themselves pro se.

Lawyers seeking only traditional fees and salaries are missing a great opportunity. Reimagining a legal practice can address the representation gap and enable a visionary lawyer to build and grow a thriving practice. Key to this reimagining is leveraging technology to provide efficient, cost-effective services and embracing limited-scope representation and unbundled legal services. Add in flexibility regarding physical location and venue and an agile, consumer-friendly website, and you have a recipe for a vibrant practice.

Be flexible about your office

Lawyers reimagining their practices must consider where, or whether, to have a physical office. Technology, perhaps augmented with some on-demand meeting space, makes virtual offices possible. A true home office may be an option if you have the means to have a space separate from the rest of your household.

Office sharing, on-demand or office co-ops, and home offices all bear some ethics-related thought concerning confidentiality. The need to protect the confidentiality of clients and all information relating to the representation while using a shared receptionist, for example, may guide some decisions on this front.

Have you noticed the number of professional services located in malls, big-box stores, and other less-traditional settings? They offer services to consumers in a place and during times when it's convenient to consumers.

With lawyer wellbeing of paramount importance, it's not necessary to be available around the clock. But having a practice available to clients during the clients' free time should be an option. For example, a lawyer concentrating in defending charges of driving under the influence may be well-advised to offer some overnight hours.

Your website

It's no longer enough to have a website that looks great on a desktop computer and is the electronic version of a print ad. Today's websites must be mobile friendly and

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have responsive design. Look at your website from the consumer's point of view or get feedback from a brutally honest friend. Consumers want added value; that may be a short video on a specific topic that explains a point of law or process or offers basic information such as where to find the courthouse or where to park.

A final word on ethics and cloud computing

It's no longer practical—or even possible—to avoid the cloud while practicing law. Having practice data in the cloud offers myriad benefits, including mobility, scalability, and flexibility while creating new challenges to be addressed and resolved. Above all, security and privacy are key to main-

taining client confidentiality. Lawyers using virtual services must determine the degree of access to individual client data permitted by the rules of professional conduct. And don't forget the fundamentals like basic cybersecurity, password integrity, avoiding ransomware, phishing, and scams. A rudimentary level of technological competence is necessary.

Go forth and be flexible

You can be a flexible lawyer. You may need to use technology in a new way—or for the first time. But if you put yourself in your prospective clients' shoes and think about what they want and need and what the market tells us they are willing to pay for, you have taken an important first step. ■



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ENDNOTES

1. For example, LegalZoom is likely the best-known product, but a quick online search may also lead a consumer to similar products like RocketLawyer, FindLaw, LawDepot, and more.
2. These products include the array of legal productivity tools, from practice management software to document assembly products, to products that provide AI-assisted assistants for everything from scheduling appointments to analyzing an opposing counsel's brief.
3. *Limited Scope Representation Rules Adopted by Michigan Supreme Court*, SBM <<https://www.michbar.org/News/NewsDetail/nid/5494>> (accessed April 30, 2019).

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