



Virtual Law Practice

RISK MANAGEMENT HANDOUTS OF
LAWYERS MUTUAL



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DISCLAIMER: This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.

INTRODUCTION

The number of online legal services available to the public has increased in recent years. Prospective clients of legal services are going online to search for affordable and convenient unbundled assistance and legal guidance. However, many of the existing online companies provide only legal forms or generate legal documents that do not include attorney guidance or review of the final product. Virtual law practice provides a way for the legal profession to respond to this public demand with high quality legal services from licensed practitioners. The North Carolina State Bar is one of the first state bars to publish an opinion that specifically allows for the online delivery of legal services. See NC State Bar 2005 Formal Ethics Opinion 10, January 20, 2006 “Virtual Law Practice and Unbundled Legal Services.”

A virtual law office or firm is a professional law practice that is located online through a secure portal and is accessible to both the client and the attorney anywhere the parties may access the Internet. It may be structured as a completely web-based law office or integrated into a traditional law firm. Virtual law practice is one form of eLawyering which is defined by the ABA 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.¹

The key feature of virtual law practice is a secure portal where the prospective client chooses a unique username and password and interacts with the attorney in a secure digital environment. A virtual law office is created through the use of Software as a Service (SaaS), one form

of cloud computing. This means that the law office data is stored securely online by a third-party. Transmissions between the law firm and the clients are encrypted from end to end and the data itself is stored on servers that are housed in multi-million dollar data centers with the same high level security that is relied upon by government, banking and financial institutions.

Features within a virtual law office will differ depending on the technology chosen, and the structure of virtual law practice the firm chooses. For example, some features might include document storage, legal form and document assembly, file and law libraries, online payments and invoicing, billing and calendaring, online discussion threads with clients and others in the firm, malpractice checks, and other client and case management tools. Regardless of the technology features chosen, the key purpose of a virtual law office is the ability to deliver legal services online to clients through the secure client portal.

WHY ADOPT VIRTUAL LAW PRACTICE?

Virtual law practice provides benefits to both the law firm and its clients. The benefits will depend on the chosen structure of virtual law practice and the firm’s goals in its implementation. Overall, virtual law practice is one way for the legal professional to respond to the increase in the public’s demand for online legal services and to provide a secure method of delivering these services to the public over the Internet while maintaining high professional standards for quality legal work.

One practical benefit of virtual law practice may be the time-savings created through the convenience of online access and the ability of the technology to streamline portions of the firm’s workflow and administrative tasks. Attorneys and clients are able to access their client files and information 24/7. Clients may be given limited access to only portions of their client files online, but the ability to check the status of their legal matter and communicate with the law firm during non-business hours helps to ensure the client that their legal matter is being addressed by the firm. This feature has the

¹ Marc Lauritsen, co-chair of the ABA eLawyering Task Force, *Law Practice* (January–February 2004): 36. See also Lauritsen’s *The Lawyer’s Guide to Working Smarter with Knowledge Tools* (Chicago: ABA, 2010), pp. 97–100.nov02/wisdom.html.

ability to lessen the malpractice risk that the firm is not responding promptly to a client's requests for information. The firm is able to use the technology to respond quickly to clients' requests for information, and it may reduce daily phone tag or unnecessary in-person office appointments between the parties. Additionally, the firm may place many administrative features of their business online and through the use of online invoicing, collection, accounting, calendaring and other features, may be able to reduce the time spent on administrative tasks so that more time may be spent on the actual "practice" of law. This flexibility may also be beneficial for members of the firm to create different work schedules and/or work remotely based on personal and professional needs.

Another benefit of virtual law practice is the cost-savings of using cloud computing applications for practice management. The cloud computing business model typically operates on a monthly subscription basis where the cost includes the maintenance and upgrading of the software automatically along with regular backups and

technology support. Typically, employing this model in a law firm will be less expensive than retaining the services of a full-time IT support specialist to set up and maintain in-house servers and/or install software. The creation of digital files for the client also greatly reduces the firm's overhead costs. The virtual law office may be run as a "paperless" office or at least minimize the firm's use of paper and office supplies.

The lower overhead and cost-savings from a virtual law office may allow the firm to lower the costs of certain legal services to clients. At the same time, the firm may choose to expand its client base across the jurisdiction(s) where its attorneys are licensed and have the potential to increase overall revenue by acquiring an online client base and/or providing unbundled legal services in addition to full-service representation. Virtual law practice has the potential to help both the law firm as a business and meet a consumer demand for online legal services and increased access to justice.

INTEGRATING VIRTUAL LAW PRACTICE INTO A LAW FIRM

As with any practice management solution, there are risks in virtual law practice that must be mitigated to avoid malpractice and to ethically deliver legal services online. Any law firm considering creating a virtual law office or integrating one into its existing business structure should conduct a thorough risk/benefit analysis tailored to the details of its unique practice. The following questions may be useful in conducting this initial analysis:

1. Does the firm want to acquire a completely online client base or provide the virtual law office as an amenity and marketing point to full-service clients?
2. What are required features that the firm has for a virtual law office? For example, the firm might prefer that the system handle online invoicing and credit card payments or contain document assembly functionality.
3. Does the firm intend to create a multijurisdictional law practice using a virtual law office? How many jurisdictions will be included and what will be necessary from each state in order to comply with the rules and regulations for professional conduct in each?
4. What services does the firm provide that may be delivered online as unbundled legal services?
5. What practice areas handled by the firm would and would not be appropriate for virtual law practice?
6. Would the firm's primary client base be comfortable communicating with the firm and receiving legal services online?
7. Are the attorneys at the firm comfortable with and responsible for learning and keeping up with changes in technology and security necessary to practice law online and with remote devices?
8. Would paralegals and other assistants have access to the virtual law office along with associates? Would the firm be retaining virtual assistants and paralegals?

MINIMIZING THE RISKS: BEST PRACTICES FOR DELIVERING LEGAL SERVICES ONLINE

After choosing the structure of virtual law practice, whether web-based or integrated into a full-service firm, the firm's next step should be to thoroughly research prospective software providers. Review the North Carolina State Bar proposed Formal Ethics Opinion 7 which provides a list of potential questions to ask a SaaS provider.

In addition to these questions, it is important to closely review and understand the provider's service level agreement (SLA). If the software provider is working with a third-party hosting company that houses the servers where the law office data will be stored, the firm may also wish to read any agreement between the provider and that company to see how it may impact the firm's relationship with the provider and the handling of the law office data. Below are some of the items to look for in the SLA.

1. Data return and retention policies, including response procedures for government and civil search and seizure actions;
2. Software service availability or the percentage of uptime;
3. Clear definition of "use of the service;"
4. Geo-redundancy of servers and if data escrow is offered;
5. Customer support response time;
6. Confidentiality, privacy policy and nondisclosure statements;
7. Access to the law office data (How are backups, maintenance and updates to the service handled? Data should remain encrypted and only decrypted with the permission of the attorney. Does the provider conduct regular security audits?); and
8. Subscription and renewal terms for the service.

In addition to researching the SaaS provider for a virtual law practice, the law firm must also be careful to adhere to daily best practices for the use of technology. The following are suggested tips for any law firm engaging in virtual law practice, whether using a completely web-based virtual law office or adding one to full-service law firm offerings.

1. Keep up to date on technology and security issues related to the software and hardware that the firm has chosen. This is not an area of practice management that the firm can adopt without a commitment to keeping track of how the technology is advancing and changing. In many cases the SaaS provider will be able to provide continuing education for the firm with regards to the software, but the firm needs to also be aware of security issues involved in the use of its hardware, especially mobile devices. Consider making one individual in the firm responsible for keeping everyone up to date.
2. Develop office policies for the use of the virtual law office. For example, establish response policies that dictate the timeframe and other procedures for the attorney or paralegal's response to the online client's request for services.
3. Many of the security practices related to the use of the firm's hardware should carry over to its use of a virtual law office. For example, attorneys should be careful when practicing law on remote devices that they do not use unsecure, free Wi-Fi access. The firm may also want to consider using a safer Internet browser with a pop-up blocker, such as Mozilla Firefox with No-scripts add-on.
4. To avoid malpractice risks, make sure to use any checks built into your software or to create your own system and procedures for mitigating these risks by using the technology the firm has chosen. Include the following malpractice checks in the firm's virtual practice:
 - a. jurisdiction checks to avoid unauthorized practice of law;
 - b. conflict of interest checks on both online and offline clients;
 - c. clear online engagement agreements that dictate the terms of the online relationship, the scope of representation, and the use of the technology that is tailored to the firm's intentions for the virtual practice; and
 - d. terms of use and disclaimers for the virtual law office website.

ADDITIONAL RESOURCES

NC State Bar 2005 Formal Ethics Opinion 10, January 20, 2006 “Virtual Law Practice and Unbundled Legal Services”
<http://www.ncbar.gov/ethics/ethics.asp?page=1&keywords=unbundled>

NC State Bar 2010 Proposed Formal Ethics Opinion 7, *State Bar Journal*, Summer 2010

ABA Legal Technology Resource Center “FYI: Software as a Service (SaaS) for Lawyers”
(<http://www.abanet.org/tech/ltrc/fyidocs/saas.html>)

ABA Elawyering Task Force website with links to additional resources: www.elawyering.com

Kimbro, Stephanie. *Virtual Law Practice: How to Deliver Legal Services Online*, ABA/LPM Publishing, 2010.

ENGAGEMENT LETTER: TERMS AND CONDITIONS OF USE

The Terms and Conditions of Use (“Agreement”) are provided by Kimbro Legal Services, LLC, an online North Carolina law practice established in Wilmington, North Carolina and managed by attorney Stephanie L. Kimbro, a North Carolina Board Licensed, solo practitioner. The Agreement will govern your use of this website, including all content provided on the website and through access to all online services provided by Kimbro Legal Services. The Agreement to provide legal services to you covers the time period from which you accept this Agreement and we have received your payment through our funds transfer service to the time we have provided you with the requested and purchased legal service.

You agree that it remains your responsibility to proceed as a pro se litigant by filing all legal documents and complying with North Carolina state and local legal procedures. By providing you with limited legal services, Kimbro Legal Services has not agreed to attend a hearing or trial on your behalf or provide any legal services extending beyond those services which you have purchased and we have agreed to provide. We only provide limited legal assistance and document preparation and review. After performing the services purchased by you, we have no further obligation to you.

Limitation of Services

While authorities in some jurisdictions may deem this website and this law practice to be an advertisement for legal services in their jurisdiction, our website is not to be considered as a solicitation for legal services related to any other states’ law. This website and this legal practice offer services related to North Carolina law only.

Unlike a geographically located law practice, Kimbro Legal Services will not provide physical legal representation or commence litigation on your behalf. The purpose of Kimbro Legal Services is to provide limited legal advice and general counseling on North Carolina legal matters with prompt service provided in a cost-effective manner. If we determine during our communication with you that your specific legal matter requires the engagement of a full-service law firm, such as in the event that your situation may require the commencement of a formal lawsuit, then we will promptly refer you to a full-service North Carolina law firm in your area or refer you to the North Carolina Bar Association’s Lawyer Referral Service.

Nature of Unbundled Legal Services

Kimbro Legal Services is not a pre-paid legal service; it is an online legal practice where you are charged a one-time fee for limited legal services related to North Carolina law. Kimbro Legal Services provides unbundled legal services. This means that the legal services provided by us only extend to those services of which you have requested and purchased and we have provided. After you have purchased a service and we have agreed to provide it and have completed the work, you cannot expect us to perform in any additional capacity. For example, if we assist you in creating Estate Administration documents, it is not our responsibility to ensure that the forms are properly filed, to attend a hearing or trial on your behalf, or to provide any other legal services related to that matter beyond the original purchased and provided limited legal services. Likewise, after you have paid for the requested services and we have performed them, we will not expect any further payment from you other than payment for the original requested legal services performed by us.

As with any legal service, we cannot guarantee any legal outcome. By purchasing our services, you agree that it remains your responsibility to properly and timely file any legal documents and to comply with North Carolina state and local legal procedures.

Confidentiality - Security - Retainment of Records

Kimbro Legal Services provides limited legal services pertaining to North Carolina law only. The attorney responsible for this site is licensed to practice law only in the State of North Carolina.

In compliance with the professional rules and restrictions of the North Carolina State Bar and the North Carolina Bar Association and for reasons of personal integrity, this practice is bound by stringent professional standards of confidentiality. Any information received by us from our clients is held in strict confidence and is not released to anyone outside of this practice, unless agreed with by you, or as required under applicable law.

An attorney-client relationship with this practice is established only after a specific question has been posed to an attorney at this practice through a prospective client's personal login page and that question has been confirmed as received through a reply communication from an attorney at this practice. Prospective clients should be aware that our duties of confidentiality and the attorney-client privilege may not arise until an attorney has expressly communicated the ability to respond to that prospective client. Once you have provided us with your personal information, we will first run a crosscheck for any possible conflict of interest before accepting representation of your matter. We may decline to provide our services to you if a conflict of interest is discovered.

All our records are securely retained in electronic files, along with secure backups, for the period of years required under North Carolina law.

Articles and Other General Public Information Provided on this Website

Any articles for general knowledge published on this website contain basic information on legal matters and are not meant to provide advice regarding a specific legal problem you may have. We remind you not to rely on this general information without first communicating with us or other legal representation regarding your specific legal situation.

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Client Funds

No fee will be charged or obligation incurred by registering on this website. In most situations, a client's funds will not be transferred to Kimbro Legal Services until the legal services requested by the client are ready to be accessed and received by the client on their personal login page. Some requested services may require the upfront payment of a retainer fee before Kimbro Legal Services will begin work. After the client's payment of the agreed upon price is confirmed through a Cardholder Information Security Program (CISP) compliant credit card processor, the client will have complete access to the legal advice, documents, research or other services provided by the attorney. If further communication with the attorney is required, the client may post a separate question regarding the received legal services or request a price quote for additional legal work. Kimbro Legal Services will not pay any court costs associated with your case which may be required as part of a lawsuit, filing fees or service of process fees.

Technology – Security

Kimbro Legal Services does not rely on email to communicate with clients.

Email as it is commonly sent and received is unencrypted and does not provide a secure means of interacting with our clients. Primary communications are done through this website over Secure HTTP, which provides you with the highest industry standard protection available on the web. All payments are processed by Cardholder Information Security Program (CISP) compliant credit card processors, and no credit card or payment account numbers are stored on our servers. The maintainer of this site has over 7 years experience developing secure web-based applications, from tax filing to background checking software, and uses secure programming techniques and best practices along with continual code auditing to ensure that this site is as secure as possible.

Links and Email Addresses

Links posted on this website to other websites are provided only as a convenience to our clients. We assume no responsibility for the content, security or reliability of any websites to which we have posted links. Spamming, the unsolicited broadcasts of email addresses or links in this website, is prohibited and unauthorized.

Web Tracking - Cookies, Information Collection and Privacy Policy

1. General Site

To view the articles and public documents on this site you do not need to reveal any personal information. This site will present your browser with the option of accepting JavaScript and cookies in order to lay out the web page correctly and to store customized settings for your next visit. These features may be disabled by your browser, however this will limit the look and functionality of the website. All page requests are logged in order to properly maintain the service and security of this website.

2. Virtual Law Office

In order to use the virtual law office, you must first register a username and provide personal information about yourself. This information will be used during your transactions with Kimbro Legal Services, LLC to provide limited legal services in compliance with North Carolina law. Your information may be provided to a third party in order to provide the service you requested and/or as is required by law. All other use of your personal information will be limited to your attorney/client relationship with Kimbro Legal Services, LLC. This site uses cookies to store a session id. Therefore, in order to register on the website, cookies must be enabled so that we can provide you with a secure transaction.

Registration

In order to retain our services, you must register on our website. There will be no fee charged for registration on this website. By registering you will receive access to a personal information page where you may request our services in a secure manner. By registering on our website, you are representing that you are at least 18 years of age and able to enter into a binding contact with Kimbro Legal Services. Furthermore, by registering you are representing that the information you provide to us is correct, accurate and updated.

Reviewing and Updating Your Personal Content

Kimbro Legal Services requests that you keep your personal contact information current. After you have registered on our website, you may enter your personal information page at any time to review and update your personal information.

Contact Information

Because we are a virtual law practice, we would prefer that you provide your information to us using the technology provided for you on your personal client login page. However, if this is not possible and we require further information in order to review your legal matter, our mailing address is P.O. Box 4484, Wilmington NC 28406.

Limitation of Liability - No Warranties

Kimbrow Legal Services assumes no liability for any errors or omissions in the content of this website. We will not be responsible under any legal theory for damages, including direct, indirect, incidental, consequential or special, arising as a result of your use of this website. As stated above, this website pertains to the practice of North Carolina law only. Therefore, the content of this website is not applicable in any other state other than North Carolina.

The general information provided on this website is provided without warranty of any kind, express or implied. Kimbro Legal Services reserves the right to change, modify, add, and delete the content on this website.

Jurisdiction

The terms of this agreement will be governed by the laws of the State of North Carolina. The state and federal courts located in New Hanover County, North Carolina will have exclusive jurisdiction over any case or controversy arising from or relating to this agreement, Kimbro Legal Services' website or any services provided by Kimbro Legal Services. Each person who registers on this website consents irrevocably to personal jurisdiction in such courts with the respect to any matters and waives any defense of forum non conveniens. Furthermore, each person who registers on this website is deemed to have knowingly and voluntarily waived any right to a trial by jury in any case or controversy related to this agreement, Kimbro Legal Services' website or any services provided by Kimbro Legal Services.

Assignment

The rights and obligations created for you under this agreement may not be assigned to any other party.

Force Majeure

Kimbrow Legal Services will not be deemed to be in breach of this agreement for any delay or failure in performance caused by reasons out of its reasonable control, including acts of God or a public enemy; natural calamities; failure of a third party to perform; changes in the laws or regulations; actions of any civil, military or regulatory authority; power outage or other disruptions of communication methods or any other cause which would be out of the reasonable control of Kimbro Legal Services.

Severance

In the event that one or more of the provisions of this agreement shall be found unenforceable, illegal or invalid, it shall not affect any other provisions of this agreement, and this agreement shall be construed as if the provision found to be unenforceable, illegal or invalid had never been contained in the agreement, or the unenforceable, illegal or invalid provision shall be construed, amended and/or reformed to be made enforceable, legal and valid.

IRS Circular 230 Disclosure

In compliance with the requirements of the IRS pertaining to the publication of Circular 230, we inform you that any advice contained on this website or in any communication originating from this website or this law practice which is related to U.S. federal tax advice is not intended or created to be used, and cannot be used, for the purpose of 1) either avoiding penalties under the Internal Revenue Code or promoting, marketing or 2) recommending to another party any transaction or matter that is contained on this website or in any communication originating from this law practice.

Complete Understanding

This agreement supersedes any prior or contemporaneous communications, representations or agreements between Kimbro Legal Services and the client and constitutes the complete and final agreement between the parties relating to this agreement, Kimbro Legal Services' website or any services provided by Kimbro Legal Services.