



Information and resources found in this ebook have been updated and expanded upon in *Delivering Legal Services Online: How to Set Up and Operate a Virtual Law Practice*, to be published by the ABA LPM, Summer 2010 and its companion website: <http://www.virtuallawpracticebook.com>, providing updated ethics and technology information.

**Revised: January 15, 2009
First published: September 6, 2008**

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Table of Contents

- I. Introduction
- II. Beyond Email: What is a Web-based Virtual Practice?
- III. Benefits of a Virtual Law Practice for the Public & the Legal Profession
- IV. How Are State Bars and the ABA Addressing Virtual Law Practice?
 - A. State Bars
 - B. American Bar Association
- V. Ethics Considerations and Malpractice Standards for Virtual Law Practice
 - A. Unauthorized Practice of Law in Other Jurisdictions
 - B. Providing Competent Limited Representation
 - C. Establishing the Attorney/Client Relationship
 - 1. The Clickwrap Agreement
 - D. Protecting Client Confidences
 - 1. Verifying the Client's Identity Online
 - E. Storage and Retention of Client Data
- VI. Defining the Scope of Representation
- VII. Advertising a VLO
 - 1. VLO Website Content
- VIII. Virtual Legal Assistants
- IX. VLO Web 2.0 Technology and Security
 - A. Know the Company Hosting the VLO
 - B. VLO Data Security & Encryption
 - C. Securing Mobile Devices
 - D. Securing Email Outside the VLO
 - E. Conflict of Interest Checking
 - F. Categorizing and Linking Online Data Libraries
 - G. Ticker Systems & VLO Calendar
 - H. Metadata Risks
 - I. Alternative Billing Methods
 - J. Online Payments
 - K. Electronic Discovery
- X. Additional Benefits of Operating a VLO
 - A. Reforming Attorney Work/Life Balance
 - B. Going Green: Eco-Benefits of a VLO
- XI. Conclusion

Appendix

- I. Sample VLO Client Homepage
- II. Sample Case on Attorney Side of VLO
- III. Sample Bar Opinion: The Supreme Court of Ohio Board of Commissioner on Grievances and Discipline, Opinion 99-9
- IV. Sample Bar Opinion: North Carolina Bar 2005 Formal Ethics Opinion 10
- V. Sample Flag for Jurisdiction Check in Client VLO Registration
- VI. Sample VLO Conflict of Interest Check
- VII. Sample Attorney Response to Prospective Client
- VIII. Checklist for Opening a VLO
- IX. How May Different Law Practices Use A VLO?



I. Introduction

Operating a virtual law practice ethically requires a strong understanding of the technology and security issues involved in a virtual law office. This ebook will discuss the web-based, software as a service (SaaS) technology used to host a virtual law practice and examine the security and ethics standards that accompany the introduction of the legal profession to the online community.

The careful management of a virtual law practice may benefit both the online public and the legal profession. A virtual law practice may be used as an alternative or complementary method of practicing law for the solo and small firm practitioner. The technology used to create a virtual law practice may be integrated into the legal profession in a variety of ways, including but not limited to the following examples:

1. Solo and small firm practitioners wanting to practice law online to lower business overhead and expand their client base across the state to compete with larger firms,
2. Existing traditional law firms wanting to add online clients, lower overhead and provide more cost-effective services and online amenities to existing clients,
3. Online attorney collaboration both in-state and across jurisdictions, allowing smaller firms or solo practitioners to pool business and networking resources,
4. Attorneys wanting to set up home-based or remote online law offices,
5. Legal professionals, such as paralegals, legal assistants or virtual assistants, wanting to work online for an existing law practice, and
6. Attorneys wanting to work part-time, such as retiring attorneys, work-at-home parents, or legal professionals needing to take time

away from the office to care for children, ill spouses or aging parents.

Given the wide potential for use of web-based virtual law practice software within the legal profession, the following ebook will focus on the solo or small firm virtual law office.

II. Beyond Email: What is a Web-based Virtual Law Practice?

By definition, a completely virtual law office (VLO) is a professional law practice that exists online through a secure portal and is accessible to the client and the attorney anywhere the parties may access the Internet. A VLO provides attorneys and clients with the ability to securely discuss matters online, download and upload documents for review and handle other business transactions in a secure digital environment. See Appendix I and II to view screenshots of attorney-client communication in a web-based VLO. With a VLO, an attorney's clients benefit from the convenience and accessibility. The attorney benefits from the flexibility of a virtual law practice, an online client and revenue generating software, and lower overhead associated with setup and maintenance of a nontraditional law office.

More specifically, the technology used to create a VLO is a secure, web-based, software as a service (SaaS) application. Software as a Service means that the technology used to create and maintain the VLO is a secure, hosted system. Some of the benefits of SaaS include the following: 1) data stored on the server is encrypted using a 128 bit or greater Advanced Encryption Standard (AES) quality cipher algorithm¹, 2) regular software updates and new features added without disturbing the workflow, 3) no in-house software installations, 4) access to data anywhere the attorney may securely access the Internet, 5) regular data backups, and 6) less expensive than paying for software, storage, and server hardware and having to run it internally with or without hiring an IT professional for the office. SaaS is becoming an increasingly popular business model as Web 2.0 companies have turned to it to provide their professional clients with the latest technology. SaaS is the ideal platform for the legal professional to establish a VLO because it allows the attorney to focus more on providing quality online legal services to the public without time-consuming in-house software installation, maintenance and support.

It is important to distinguish a professional VLO from the many online websites selling legal documents, from law office websites with email contact forms and from rented "virtual," physical offices. A VLO provides direct and personal communication between an attorney and a client rather than "form generated," unbundled legal documents for sale and purchase by the public. Communication by email does not constitute a virtual law practice even if sent through a law firm's website. Email is

¹ Rijndael, Serpent or Twofish are the most common cipher algorithms used.

limited as a method of transacting business and is typically unencrypted, and therefore not a secure method of transmitting sensitive data.

Physical office space rented out to an attorney for a monthly fee for the purpose of meeting with clients is often also referred to as a “virtual” law office. While this arrangement allows the attorney to work from a home office and meet with clients in a shared, remote office space, the program 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, a VLO is not an extranet set up by a law office to share documents or view the office computer remotely, such as with GoToPC.

Previous hesitation by legal professionals regarding “eLawyering” or the practice of law online centered on technology that was limited in both protecting the security of sensitive data and in allowing for adequate communication between attorney and client. As Web 2.0 and web-based applications continue to evolve, the definition of a virtual law practice will need to adapt at the same pace. While the software applications and technology used to create a VLO may update continuously, the public demand for online access to legal services will sustain the VLO method of practicing law. It will remain the responsibility of the individual virtual law practitioner to stay current with security concerns related to the technology used for the VLO and to maintain strong ethics and professional conduct when practicing law online.

III. Benefits of a Virtual Law Practice for the Public and the Legal Profession

The attorney population nationwide is increasing in record numbers, yet access to legal services for citizens remains a constant need. Along with the public’s need for legal services, solo and small firm practitioners are seeking innovative business methods to stay competitive in a crowded market. A virtual law practice may address the needs of the legal profession as well as the general public. As the legal profession continues to grow more competitive, with an increasing number of law school graduates, the most effective law practices will be those that can expand beyond the traditional brick and mortar law offices and those that can more efficiently manage their clients through the available technology.

According to the American Bar Association’s E-Lawyering Task Force, “[l]awyers... are exploring the new Internet landscape. These lawyers have the vision to see a wholly new market of un-met legal needs.”² Attorneys who connect with the online purchasing community increase their potential client base and tap in to a vast new online market. The use of a VLO minimizes an attorney’s overhead while allowing the attorney to increase the client base to the entire state where he or she practices

² American Bar Association Law Practice Management Section: E-Lawyering Task Force at <http://www.abanet.org/dch/committee.cfm?com=EP024500>, last accessed January 18, 2009.

law. This business strategy may generate additional client revenue for the attorney and maintain a competitive edge with other legal professionals.

Online clients benefit from the ability to efficiently communicate and retain legal services online. A VLO may provide the option of unbundled legal services which allows an individual to handle much of the footwork with the guidance and drafting skills of an attorney. The benefit to the client comes through the potential savings from the use of online legal services, which may be more efficient and convenient than making appointments and meeting face to face with an attorney or his or her office staff. VLOs may also facilitate the attorney's use of alternative billing options, such as fixed fees or payment plans, rather than the standard billable hour.

"The highest leadership of the ABA knows we need a catalyst for lawyers to adapt and flourish in the new technology-driven economic order. The Internet presents us with unparalleled opportunities and powerful new tools to provide legal services. Innovative law firms and web-based companies (many run by lawyers) have already cast off -- successfully -- into these uncharted waters. They have set up web sites that go far beyond a list of partners, practice areas and a map to the law firm."³

Consumers are increasingly becoming more comfortable with the idea of accessing business services through the Internet. Consumers shop, bank, conduct business, and pay their credit cards and taxes online. The legal profession has also grown with technology. Attorneys use software applications for their billing, office and case management. However, the legal profession does not widely use the available web-based technology to provide legal services directly to their clients other than to provide websites advertising their law practices or providing resources and FAQs pages for the public. The public will drive the legal profession to provide online legal services in one form or another. The responsibility of the legal profession is to ensure that these services maintain strong professional standards and provide quality legal services to the public.

IV. How Are State Bars and the ABA Addressing Virtual Law Practice?

A. State Bars

Web-based virtual law practice has only recently expanded the opportunity of the legal professional to conduct legal services online that extend beyond form-generated legal documents. Several state bars have published advisory opinions regarding the use of technology in law practice. These opinions have primarily focused on the



³ Id., American Bar Association Law Practice Management Section: E-Lawyering Task Force.

ethics or malpractice concerns arising from the use of nonsecure email as a method of attorney/client communication or from “shopping cart” websites selling legal documents online. Only recently have state bar advisory opinions begun to explore the use of other technologies used for law practice management, such as third-party backup and online storage of law office data and SaaS technology.⁴ Several of these more recent opinions are referenced throughout this manuscript as they relate to the different ethics and malpractice issues discussed herein.

Many attorneys are in the process of seeking formal approval from their state bars regarding the ability to operate a web-based virtual law office. Others are operating their VLOs with the guidance already provided by their state bars regarding other uses of technology in law practice. Some state bars, such as the Maryland State Bar, do not make their ethics opinions public so the virtual law practices of the attorneys in those states are themselves defining the standards for operating a virtual law practice in their jurisdiction.

Because of the flexibility in the way that a VLO may be set up by individual legal professionals, it is difficult for state bars to issue more than an opinion expressing concern for ethics issues that may arise in virtual law practice. In the event that a state bar issues an opinion specifically covering the delivery of legal services using technology, it tends to be vague regarding the technology and focuses on ethics concerns that have the potential to arise in any form of law practice, virtual or traditional.

Because earlier forms of virtual law practice primarily involved the collection of client data online using email, some state bars specifically limited their opinions to addressing the issue of collecting client data over the Internet. One example of a state bar’s opinion on this topic is from the Ohio State Bar’s Advisory Opinion of the Board of Commissioners on Grievances and Discipline, Opinion 99-9 issued on December 2, 1999.⁵ Please see Appendix III for the full opinion.

⁴ An example might be some state bar’s advisory opinions regarding electronic storage of confidential client information. See the Vermont Bar Association Committee on Professional Responsibility, Opinion 2003-03, <http://69.39.146.6/Upload%20Files/WebPages/Attorney%20Resources/aeopinions/Advisory%20Ethics%20Opinion%20s/Confidences%20of%20the%20Client/03-03.pdf>, last accessed January 17, 2009; the State Bar of Arizona's Committee on the Rules of Professional Conduct, Opinion 05-04, July, 2005, <http://www.myazbar.org/Ethics/opinionview.cfm?id=523>, last accessed January 17, 2009; the Massachusetts Bar Association Committee on Professional Ethics, Opinion 05-04, March 3, 2005, <http://www.massbar.org/for-attorneys/publications/ethics-opinions/2000-2009/2005/opinion-05-04>, last accessed January 17, 2009; and the New Jersey Advisory Committee on Professional Ethics, Opinion 701, April 24, 2006, http://lawlibrary.rutgers.edu/ethicsdecisions/acpe/acp701_1.html, last accessed January 17, 2009.

⁵ Since Opinion 99-9, the Ohio State Bar has issued other ethics opinions that more specifically address the use of email communication to advertise or send unsolicited emails to prospective clients, but has not issued any ethics decisions specifically addressing virtual law practice using technology which is more complex than email correspondence. The Ohio State Bar’s Advisory Opinions may be accessed online here: http://www.sconet.state.oh.us/BOC/Advisory_Opinions/, last accessed January 17, 2009.

The Ohio State Bar's Board of Commissioners on Grievances and Discipline stated that it was acceptable for an attorney to collect a prospective client's information online through the use of an online intake form on the attorney's law firm website. The Board acknowledged that the collection of this confidential data was by email and that the attorney's response to the prospective client would also be in the form of an email. More significantly, the Board stated that it was proper for the attorney to charge a fee for the communication of legal advice conveyed in this manner, provided that the attorney's actions complied with the Ohio Code of Professional Responsibility and other guidelines provided in the opinion. The guidelines provided in Opinion 99-9 regarding the collection of online client data are those which apply to any form of law practice, including but not limited to adequate conflicts of interest checks before responding to clients by email, avoiding the unauthorized practice of law, protecting client confidences and complying with advertising rules.

As attorneys are beginning to use more complex technologies to practice law, state bar opinions are gradually appearing that go beyond the scope of client data collected online through the use of email. Some state bars are even classifying the delivery of legal services using technology as a "virtual law practice" or operating a "virtual law office." As an example of one state bar's opinion specifically geared towards a virtual law practice, on January 20, 2006, the North Carolina State Bar adopted its 2005 Formal Ethics Opinion 10 (Ethics Opinion 10) providing advice regarding virtual law practice and online unbundled legal services. See Appendix IV for the full opinion.

Ethics Opinion 10 "explores use of the Internet as an exclusive means to promoting and delivering legal services." Therein, the North Carolina State Bar expressed the following concerns: 1) engaging in unauthorized practice in other jurisdictions, 2) violating advertising rules in other jurisdictions, 3) providing competent representation given limited client contact, 4) creating an attorney/client relationship with a person the lawyer does not intend to represent, and 5) protecting client confidences.⁶

Similar to the concerns found in the older state bar opinions regarding methods of virtual law practice, such as the above Opinion 99-9, the concerns expressed in the North Carolina State Bar's Ethics Opinion 10 are malpractice standards that any law practice must address, whether it be a VLO or a traditional law office. Accordingly, before opening a VLO, an attorney should address each of these concerns in the setup and maintenance of his or her web-based practice. These ethics and malpractice issues are addressed below and may be applied to similar rules of professional conduct and ethics opinions issued by individual state bars.

⁶ The North Carolina State Bar's ethics opinions may be accessed online here: <http://www.ncbar.gov/ethics/>, last accessed January 17, 2009.

B. American Bar Association

The American Bar Association's Law Practice Management Section has an eLawyering Task Force.⁷ The Task Force was established to address issues related to attorneys who are practicing law using the Internet. The website for the Task Force contains the *Best Practice Guidelines for Legal Information Web Site Providers* published on February 10, 2003. The guidelines were a collaboration of both the eLawyering Task Force, the ABA Law Practice Management Section and the ABA Standing Committee on the Delivery of Legal Services and are referenced in more detail below regarding the creation of a VLO website.

As the number of attorneys using technology to delivery legal services online grows, the Task Force is evaluating ways to provide information to the legal profession regarding virtual law practice. As of the latest revision of this manuscript, the Task Force is drafting malpractice guidelines for virtual law practice which will then be presented to the Law Practice Management Section and ABA for approval. The goal of these guidelines will be to provide attorneys, their state bars and malpractice insurance carriers with a set of standards for the delivery of legal services online. Many of the ethics and malpractice issues that will be addressed in these future guidelines for virtual law practice are discussed herein.

V. Ethics Considerations and Malpractice Standards for Virtual Law Practice

A. Unauthorized Practice of Law in Other Jurisdictions

The responsibility of avoiding the unauthorized practice of law falls to the attorney practicing law online to make the determination, even with a jurisdiction check in the VLO software, that he or she is able to handle the requested legal services without committing malpractice. In many respects, the analysis for unauthorized practice of law does not differ greatly from the process that an attorney in a traditional law office would go through to prevent committing malpractice on this issue. However, there are two primary differences of which an attorney practicing law online should be aware.

One difference is that the notification to the prospective client of the attorney's jurisdiction to practice law is handled online rather than in person or through a mailed engagement letter. The other difference is that the scope of potential online clients registering for legal assistance will be greater in number, requiring added careful

⁷ ABA eLawyering Task Force website: <http://www.abanet.org/dch/committee.cfm?com=EP024500>, last accessed January 17, 2009.

examination for the unauthorized practice of law in each online request for legal services presented by a prospective client.

ABA Model Code Rule 5.5(b) states that “[a] lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.”⁸ This rule applies to any law firm Internet presence, not just a virtual law practice. However, because clients will be able to work with and purchase legal services from the web-based VLO, the virtual law office website or blog needs to be even clearer to the public about the services that are provided and the nature of unbundled legal services in general.

In order to comply with the ABA Model Rule 5.5(b) and the rules of most state bars, the attorney setting up a virtual law practice should pay close attention to the website content and advertising rules established by the state bar(s) in which he or she is licensed. Law office website content is discussed in more detail below. Regarding the unauthorized practice of law in other jurisdictions, it is the responsibility of the virtual law practitioner to provide clear notice throughout the VLO website that he or she is only licensed to practice law in the state(s) in which the attorney holds an active bar license. Furthermore, to also guard against the unauthorized practice of law in other jurisdictions, the VLO should contain an address and the name of the attorney running the VLO. By providing adequate notice throughout the VLO, the VLO attorney should not be found to be soliciting clients from a state where he or she is not able to practice law.

To prevent malpractice, a well-designed VLO should contain a jurisdiction check for the benefit of the client and the attorney. See Appendix V for an example of a jurisdiction check. When the client registers on the VLO website, a simple check for the zip code would notify the attorney that the client is a resident outside his or her jurisdiction. A note would appear to the client which states that the attorney may only be retained to answer legal questions and handle legal work related to the laws of the state for which the attorney has an active law license. The jurisdiction check should not prevent the client from continuing with the registration process, but serves the purpose of providing more than adequate notice of the attorney’s jurisdiction. Through this process, the attorney is provided with a red flag on the backend of the law office to let him or her know that the client resides in a different state and may not have a legal matter that the attorney is permitted to handle.

The unauthorized practice of law in another jurisdiction would occur if an attorney used his or her VLO to draft a legal document that pertained to the laws of another state where the online client was a resident but where the attorney did not

⁸ ABA Model Rules of Professional Conduct, Code Rule 5.5, ABA Center for Professional Responsibility Website, http://www.abanet.org/cpr/mrpc/rule_5_5.html, last accessed January 17, 2009.

have a license to practice law. However, if the attorney operating the VLO were partnering with attorneys and legal assistants on his or her VLO who were licensed in other jurisdictions, then this should prevent the unauthorized practice of law. For example, a virtual paralegal could work on the VLO to draft a Will or other estate planning document for a client a jurisdiction where the virtual paralegal was familiar with that state's estate planning laws. The virtual paralegal would then flag the document for review by the attorney on the VLO who was licensed in that online client's state. The review and approval of that legal document by the attorney licensed to handle that state's laws would permit the virtual paralegal to complete the transaction for the online client without it constituting the unauthorized practice of law in another jurisdiction.

Some states may also have residency requirements for members of their bars. These restrictions may require that an attorney licensed by the state bar must be a resident in that state in order to practice the laws of that state or at least have an office presence in order to provide legal services in the jurisdiction. As more solo and small firm practitioners create virtual law practices, variations of attorney collaboration across multiple jurisdictions will appear. Also, there will be more attorneys seeking to use VLOs to retire or move to other states yet continue to practice law in the states in which they have a law license. These circumstances and the growing availability of technology to practice law online may require state bars to reexamine their residency requirements and the definition of the unauthorized practice of law.

B. Providing Competent Limited Representation

Earlier state bar ethics or advisory opinions regarding virtual law practice may not have foreseen the use of web-based, secure SaaS VLOs as will be evident from the text and comments of the opinions. Most of these rulings may state that communications between attorneys and clients will rarely be extended and most communication will occur by email. This follows along with the concern that it will be difficult to provide competent representation online with limited client contact. Virtual law practice, however, provides for a great deal more personal interaction with clients than the use of email exchanges. A secure VLO does not rely on email, which is unencrypted, to handle any attorney/client communications or transactions. A VLO permits extended communication between attorney and client through the VLO interface.

For example, each client has his or her own homepage where they may store communications between the parties, documents which are uploaded by the client or by the attorney, an interactive calendar, sticky notes with reminders for invoices, deadlines and other billing and client information. Through the use of additional online social networking tools, such as LinkedIn, Facebook, and Twitter⁹, an attorney has the ability

⁹ See LinkedIn, <http://www.linkedin.com>; Facebook, <http://www.facebook.com>; Twitter, <http://twitter.com/>, last accessed September 1, 2008.

to let clients know what he or she is doing on a minute by minute basis. While this may not be desirable in most cases, the ability to form close business relationships through web-based applications is fully available.

Accordingly, concern by a state bar regarding the ability of the VLO attorney to provide competent limited legal representation may be tailored more towards email communication between client and attorney and may not hold true regarding the ability of the VLO software to assist the attorney in identifying conflict of interest issues or providing personalized, competent online representation. As with any traditional law practice, a VLO attorney has the duty to determine, on a case-by-case basis, whether he or she has the requisite legal experience to provide quality legal representation to the client requesting services.¹⁰

C. Establishing the Attorney/Client Relationship



Clearly establishing the attorney/client relationship when practicing law online is key to avoiding malpractice risks. One ethics concern may be that the virtual attorney may create an unintended client-lawyer relationship. This issue is addressed by the use of multiple clickwrap agreements, which require the client to acknowledge and agree to the terms of use of the VLO. Further, it is the responsibility of the attorney to limit and define the scope of the representation following the initial online consultation. This process is no different than if an attorney were to accept or decline representation of a client in person. The scope of representation or decision to decline representation is presented to the online client. If the client accepts the services of the attorney, then he or she is required again for an additional time to acknowledge that they have notice of this arrangement and are agreeing to it through a tailored clickwrap agreement.

In addition to the notice and acceptance process provided to each client, the process itself is audited. The full history of each transaction may be viewed in both the attorney's case view and in an audit log. In the audit log, the attorney may review if there were any overrides conducted by him or herself or another attorney, such as if

¹⁰ See Rule 1.1 of the NC Rules of Professional Conduct: "A lawyer shall not handle a legal matter that the lawyer knows or should know he or she is not competent to handle without associating with a lawyer who is competent to handle the matter. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

the quote was ever by-passed or if the quote was reset and a new quote was provided to the client for another notice and acceptance process. In other words, the technology provides an additional trail documenting the establishment of the attorney/client relationship and this documentation extends beyond the dialogue between the attorney and the client located in the case discussion view.

With the VLO technology, this procedure is required before either party may proceed to engage in business transactions. By this method, the VLO provides more protection for the prospective client than a telephone call, unencrypted email communication or even short in-person office visit. In addition, an attorney may also request a traditional engagement agreement from a client, which may be uploaded to the VLO and returned signed by the client through the same process. While only one process would mostly likely provide adequate notice to the prospective client, the flexibility of the web-based VLO technology allows attorneys to design their own additional methods of protecting themselves from professional malpractice.

1. The Clickwrap Agreement

As with most online businesses offering services, a VLO attorney relies on a clickwrap agreement which online clients are required to review and accept before proceeding. A typical clickwrap agreement provides the online client with notice of the terms and conditions for use of the VLO and the legal services being offered. The online client is required to assent to the agreement by clicking on a button in a dialog box or pop-up window that reads "ok" or "agree." Many clickwrap agreements require that the client scrolls down the entire text of the agreement or checks an additional box, such as one stating "I am over the age of 18", before clicking on the "ok" or "agree" buttons to finalize the agreement. If the online client declines to accept the agreement, he or she has the option of clicking on "cancel" or closing the window containing the agreement. While at first the clickwrap or "shrinkwrap" agreement was viewed as a contract of adhesion, this form of agreement is now accepted as a valid and enforceable contract form, as long as the terms and conditions related to the agreement are accessible at all times by the online client.¹¹

The VLO clickwrap agreement contains the terms and conditions of the attorney's representation to the client, explains the nature of unbundled legal services, defines the scope of representation and may contain other provisions tailored to the attorney's virtual law practice. For example, the online client is required to accept a clickwrap agreement before registering for their own homepage and again when agreeing to the purchase of specific legal services. The virtual attorney should take care to define the scope of legal representation (or clearly decline representation) with each individual client who contacts the attorney through the VLO interface. This process may be

¹¹ See *ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447 (7th Cir., 1996).

handled securely on each client's homepage, and the complexity depends on the legal work the client is seeking.

As more attorneys go online with their law practices, the use of the clickwrap agreement will most likely be a standard on VLOs. While retainer fees, payment arrangements and further definition of the scope of legal representation are communicated to the client through the client's secure homepage, the standard clickwrap agreement for the VLO serves as the legal contract between the attorney and his or her online clients and is a stagnant feature on the attorney's VLO.

The ABA Committee on Cyberspace Law during a panel discussion at the ABA's Annual Meeting 2007 provided these recommendations for forming legally binding online agreements:

1. The user must have adequate notice that the proposed terms exist;
2. The user must have a meaningful opportunity to review the terms;
3. The user must have adequate notice that taking a specified, optional action manifests assent to the terms; and
4. The user must, in fact, take that action.

Attorneys must draft the terms and conditions for use with the VLO websites and clickwrap agreements that conform to their individual practice and the services which they intend to offer online. The ABA Cyberspace Law website has a searchable archive for members which contains many good resources to assist attorneys in researching this topic and drafting their VLO online agreements.¹²

Unique to a VLO, the terms and conditions for use of the VLO website should explain or provide, at a minimum, the following information for the prospective client:

1. Notice of the jurisdiction in which the attorney is licensed to practice law,
2. Nature of unbundled or limited legal services,
3. How and when the attorney/client relationship and scope of the relationship will be defined,
4. Confidentiality policy,
5. How client funds and payment of invoices for legal work are handled online,
6. Email policy,
7. Security of the site, PCI compliance if accepting credit cards,
8. Web tracking, including cookies, information collection and privacy policy,
9. Registration process and the nature of a clickwrap agreement, and
10. Contact information for the attorney operating the VLO and a helpdesk

¹² ABA Committee on Cyberspace Law website: <http://www.abanet.org/dch/committee.cfm?com=CL320000> (accessed on May 13, 2008).

email or contact for technical matters related to the client's use of the website.

Furthermore, each individual solo or small firm practitioner may want to use an additional retainer agreement or other contracting method with clients after registration that conforms to a more traditional contract. The flexibility of the web-based technology allows for the operation of both a clickwrap agreement and additional methods.

For example, the virtual attorney may want to upload a traditional retainer agreement to the online client through the online client's homepage. The client may then sign the contract, scan it to PDF and upload it back to the VLO attorney. If the attorney prefers to have the original signature of the agreement, there is no reason why the attorney may not request that the client snail mail the contract to the attorney before the legal work is commenced. A retainer fee may be paid by the online client through the VLO at any point in the process. The ability of the client to pay this fee is unlocked by the attorney when this step in the process of establishing a new client is appropriate.

D. Protecting Client Confidences



The virtual attorney should take reasonable precautions to protect confidential information which is transmitted between the attorney and the client. Most state bars have rules of professional conduct requiring that communications transmitted from the client to the attorney must be kept confidential.¹³ In this regard, email is not the safest method for attorneys to rely upon to transmit confidential client data. Most email is not encrypted, and therefore not secure. A VLO should have an SSL certificate and provide the client with secure transmission of data. The technology section of this manuscript will examine technology priorities for VLO security used to protect sensitive attorney and client data.

The same technology used by online banking and government tax authorities to provide services is the same level of security that should be used in operating a web-based VLO. With a VLO, the only individuals who should have access to confidential attorney/client information are the attorney and the client. The company hosting the

¹³ Rule 1.6 (a) of the ABA's Model Rules of Professional Conduct states: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation..." http://www.abanet.org/cpr/mrpc/rule_1_6.html, last accessed January 17, 2009.

VLO should keep the attorney's VLO data encrypted even during updates to the software application which protects any attorney/client confidences from being viewed by a third party. By following these guidelines for a virtual law practice, the attorney may be confident that he or she is complying with the reasonable care standards required by the ABA and most state bars regarding protecting client confidential information.

1. Verifying the Client's Identity Online

The Internet facilitates the potential for individuals to commit fraud regarding their true identities. Accordingly, an attorney practicing law online through a VLO should conduct online verification to ensure that clients are who they claim to be. While an attorney cannot ensure that the final use of the legal documents he or she has created never fall into the wrong hands, the attorney may draft legal documents to the best of his or her abilities with the information provided by the online client.

Because the legal services purchased through a VLO may be largely transactional or unbundled legal services, it is often left to the online clients to complete the final steps to execute legal work prepared by a VLO attorney. Detailed instruction regarding proper execution of the documents as well as the assurance that the client may return to the attorney with any questions or concerns until the matter is completed is a good virtual practice rule. In addition to the identity check conducted by the attorney, a notary public assisting the client in executing the legal document will be required to check the driver's license of the individuals signing the documents. Additionally, a VLO attorney may choose to request that the online client upload a copy of his or her driver's license to the VLO so that the attorney may check the client's identification and contact information.

Professional standards of conduct require that attorneys communicate with reasonable diligence and promptness when dealing with clients. Operating a virtual law practice does not mean that an attorney mass generates legal forms in an impersonal manner. Through a VLO, the attorney communicates individually with each online client, providing tailored legal advice, and has methods of verifying the identity of his or her online clients.

E. Storage and Retention of Client Data

The case file organization and document retention in a VLO may actually protect an attorney from the malpractice risks that could be associated with a traditional law practice using basic email as the only form of digital communication with clients. Recent state bar advisory opinions address the fact that not only are attorneys communicating with clients using technology, they are also retaining their clients' data

and files digitally.¹⁴ For example, the New York State Bar's Formal Opinion 2008-1 addressed the attorney's ethics obligation to retain and provide the client with electronic documents related to the legal representation. The opinion stated that the attorney must take affirmative action to preserve any digital communication regarding the representation that may otherwise be deleted or lost from their digital filing system. The opinion also recommended that the attorney discuss storage and retrieval of electronic documents and data at the beginning of the representation.

Attorneys operating virtual law practices are easily able to comply and go beyond what the ethics opinions recommend through the digital storage and recording of the case files inside a VLO. Within a VLO, each communication between the attorney and the client is stored in a separate discussion section of the main case file. Each communication is labeled with the date and time of the transmission as well as the name of the individual who entered the message into the file. Likewise, any files that the attorney has placed in the case file are labeled with the date and time of the online storage as well as information regarding whether that document is a draft or a final legal document. Forms provided for the client to fill out online also contain information regarding the last time the documents were edited and who edited them. Clients are unable themselves to delete anything from their online case files which allows the attorney to properly store data covering the entire representation.

Because most state bars require that attorneys retain their case files for a period of years, all of the data stored in the VLO remains on the hosted system and is subject to regular backups on the server hosting the VLO.¹⁵ In the event that the attorney wants to discontinue his or her use of a web-based VLO, wants to switch technologies providing virtual law practice management tools or wants to leave the practice of law completely, he or she may contact the company hosting the VLO and that company should return all of the VLO data in encrypted format to the attorney for storage and retention. It is recommended that an attorney considering opening a VLO first check with the company providing the virtual law practice technology to ensure that the data collected and stored on the VLO during the course of the online practice may be easily returned to the attorney in encrypted, digital format. Choosing a VLO service provider is discussed in more detail below.

V. Defining the Scope of Representation

¹⁴ The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, Formal Opinion 2008-1, "A Lawyer's Ethical Obligations to retain and to provide a client with electronic documents relating to a representation." http://www.nycbar.org/Publications/reports/show_html.php?rid=794, last accessed January 17, 2009. See also the State Bar of Wisconsin, Professional Ethics Opinion E-00-3, http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin_ethics_opinions&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=48462, last accessed January 17, 2009.

Providing unbundled services online requires extra care by the VLO attorney to ensure that prospective clients understand the scope and nature of the legal representation being offered through the VLO. A well-designed VLO provides notice to prospective clients as well as assurances that these notices have been read and accepted by the client. Additionally, the scope of representation may be communicated multiple times through secure online messages from attorney to client. A traditional limited scope of representation agreement may be uploaded for the client to sign and return to the attorney, either by scanning and uploading to the VLO or by traditional mail or fax methods.

Before offering unbundled legal services, the attorney has the responsibility to explain exactly what services will be provided at what cost to the client. A well-designed VLO operates with this specific process as the foundation for all transactions. Multiple steps in which the client must read and acknowledge the terms and/or provide information to the attorney are required. This lets the attorney track the client's progress in understanding and accepting the services being offered.

With each VLO, an attorney has the ability to tailor his or her virtual practice to encompass a variety of limited legal services, including use of a VLO in conjunction with a full-service law office. Because each practice will differ in the areas of law practiced by the attorney(s) and by the chosen design and use of the VLO technology, the responsibility to ensure compliance with his or her state bar's rules and regulations will remain with the individual practitioner or law firm.

The rules of professional conduct for many state bars will permit an attorney to limit the scope of representation if the limitation is reasonable under the circumstances of the individual case. Accordingly, the attorney must continue to provide competent and thorough representation to the client regardless of the limited nature of the legal services being conducted. Of particular concern with a VLO may be the thoroughness and preparation of unbundled legal services online. Again, the ability of the virtual attorney to provide unbundled legal services online will depend on the area of law he or she practices and the services that he or she decides to handle through the VLO.

For example, an attorney whose practice centers on litigation may use a VLO to generate additional client revenue by answering basic traffic ticket questions while maintaining a full-service litigation practice. The same attorney might use the VLO technology to provide homepages to existing clients that he or she meets with in person and allow those clients to pay bills online, communicate in a more secure method than through email and to use the VLO as an amenity to the full-service firm. However, the attorney may chose not to use the technology to handle his or her litigation clients.

As a different example, an attorney may decide to enter retirement from a full-service law firm by creating a VLO that handles only transactional legal services, such as drafting estate planning, contracts or setting up business entities for clients who do

not want or need to meet with the attorney in-person. The VLO allows this attorney to work remotely or from home allowing him or her to ease into retirement or create a completely new online law practice that allows for a better work/life balance. There are a variety of situations where a VLO may be used to provide unbundled legal services and with each it is possible to combine technology and law practice management to provide quality online legal services in compliance with the rules of professional conduct or other regulations of the attorney's state bar.

Similar to a traditional law office, the attorney must use his or her judgment on a case by case basis when deciding whether he or she may competently and ethically handle a particular matter. If the client's needs would be better suited to a full-service attorney, then it is the virtual attorney's responsibility to refer the client out. This is no different from the responsibility of every attorney – whether practicing virtually or with a traditional brick and mortar law office.

VI. Advertising a VLO

Methods used to advertise a VLO would be the same as used to advertise a brick and mortar law office and comply with the advertising rules set forth by the rules of professional conduct or other regulations of the attorney's state bar.¹⁶ Advertising for the VLO must not contain information that is false or misleading about the attorney or the services offered by the virtual law practice.

Websites and blogs are a popular and effective method of online advertising used by a growing number of legal professionals. Some state bars require that a law practice registers its URL with the state bar for approval. The state bars may check to ensure that the URL name is not misleading to the public about the attorney or the law practice. In most cases, as long as the homepage of the website clearly identifies the attorney or law firm to which the site belongs, then the URL does not have to contain language which specifically identifies the website's owners.

The existence of a VLO is not a direct solicitation to the public for online legal services. A prospective client would have to actively search online for legal services. Given the large number of online attorney listings and directories, it is highly unlikely

¹⁶ Several state bars have addressed attorneys' use of listservs, forums, and other online social networking applications to advertise legal services. To summarize some of these advisory opinions, if the attorney is using methods of online communication to advertise for new clients, the attorney must be careful to provide only general legal advice and avoid creating the expectation of an attorney/client relationship informally by responding to the specific circumstances of an online request for legal assistance. See DC Ethics Opinion 316 (2002), DC Ethics Opinion 302 (2000); Proposed Louisiana Rules of Professional Conduct http://www.lsba.org/2007InsideLSBA/documents/ethics/ProposedLARules7-1_12-2006.pdf; New York Lawyers' Code of Professional Responsibility updated with new ethical considerations relating to lawyer advertising as of December 28, 2007 <http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/LawyersCodeDec2807.pdf>.

that any member of the public who is capable of conducting an online search for legal assistance would be misled by selecting a VLO attorney for an initial consultation out of a crowded online legal marketplace.

Most online clients are familiar with conducting highly sensitive transactions online on a daily basis, including online investing, banking, purchasing and selling goods and services. Furthermore, the steps that a prospective client must take to register with the VLO also ensure that the prospective client is made aware of the nature of the legal services provided online through the clickwrap agreement and multiple notices.

A. VLO Website Content



Complying with the rules of professional conduct and other regulations of the attorney's state bar regarding attorney advertising requires careful scrutiny of the content of a virtual law practice website. The ABA's eLawyering Task Force, ABA Law Practice Management Section and ABA Standing Committee on the Delivery of Legal Services published the *Best Practice Guidelines for Legal Information Web Site Providers* on February 10, 2003.¹⁷ This publication provides guidelines regarding website content that may be applied to a VLO. Many of these guidelines are also written into the rules and regulations of many state bars either under general advertising rules or as separate website advertising rules.

In general, the VLO website should contain adequate contact information to inform the public of the attorney or law firm providing the services and where they are licensed to practice law, and some method of contact, either by email address or telephone number. This information allows the lay public to conduct their own research regarding the source of legal services being offered and to make an informed decision before retaining that attorney or firm.

Any content on the VLO should include the date the content was last reviewed so that anyone reading the site will have a frame of reference. If the VLO is set up as a blog website then the date of publication for the content is not only provided automatically with each post, but may also be archived and searchable as a resource for the public and clients. General content and legal advice included on the website should state somewhere that members of the public should not rely on this advice and should seek the advice of an attorney for assistance with legal needs for their individual circumstances. Providing links to other reliable resources for the public to use in making decisions and finding legal assistance is preferable. The jurisdiction of the

¹⁷ ABA Law Practice Management Section, Elawyering Task Force, ABA Law Practice Management Section and ABA Standing Committee On the Delivery of Legal Services, *Best Practice Guidelines for Legal Information Web Site, Providers* <http://www.abanet.org/elawyering/tool/practices.shtml> (accessed May 13, 2008).

website should be absolutely clear to the public and should be stated in several places throughout the website.

VII. Virtual Legal Assistants

A VLO attorney may at some point consider retaining the services of a virtual legal assistant. A virtual assistant, often shortened to VA, is a professional who provides office administrative and/or paralegal services remotely through the use of technology.¹⁸ These individuals are typically technology savvy professionals who are capable of advising a virtual practitioner as to the most efficient methods of handling the virtual law practice projects that the attorney would like to outsource.



The web-based VLO should have permissions allowing the backend VLO to be accessed by a virtual legal assistant and also allow the attorney to lock those functions of the VLO that the attorney may not want the virtual assistant to have access to. Because of the accessibility of a web-based VLO, the virtual assistant could be located anywhere in the United States or even in another country, depending on the type of work the VLO attorney needs handled. If the legal work involves state specific law, then a virtual assistant with paralegal experience in that state would be advisable. On the other hand, if the project is transcription or other administrative tasks, the virtual assistant's home state would more likely be irrelevant and the focus on hiring would be the virtual assistant's level of experience and recommendations. A virtual legal assistant using the VLO may be retained on a per-project basis or a more permanent working relationship may be established depending on the attorney's needs.

With any virtual assistant relationship, the VLO attorney must comply with their state bar's rules of professional conduct or other regulations regarding management of nonlawyer assistants. Appropriate instruction and supervision should be given to any virtual assistant hired to work in a VLO. One of the safest methods for the VLO attorney to protect him or herself is to keep good digital records of communication of instructions to the virtual assistant from the beginning of the relationship. If the virtual assistant will be working through the web-based VLO application, the attorney needs to emphasize the importance of nondisclosure and security for the VLO clients and that the virtual assistant should closely guard their username and password to their permissions-based VLO access. Again, most professional virtual assistants, especially those with legal training and experience, are more than aware of these issues.

¹⁸ See the e-book: *An Introduction to Virtual Assistance for Businesses*, by Tina Hilton, owner of Clerical Advantage Virtual Assistant Services. <http://clericaladvantage.com/services.aspx> (accessed July 1, 2008).

VIII. VLO Web 2.0 Technology and Security Recommendations

Many of the ethics concerns and malpractice issues discussed above may apply to any form of law practice, whether virtual or traditional. However, good practice management of a VLO requires that the attorney understand the technology behind the operation of his or her online practice. In addition, the attorney needs to consider establishing daily security best practices that he or she uses when opening a virtual law practice. The following section provides technology and security recommendations for the operation of a web-based VLO.

As of the latest revision of this manuscript, a group of companies providing software as a service (SaaS) products to attorneys for the purpose of online law practice management have begun to meet regularly to discuss common interests. The group hopes to set technology standards for legal SaaS products to ensure that legal professionals and the public are protected as methods of virtual law practice emerge and develop. The author of this manuscript is involved in both the ABA's eLawyering Task Force and the legal SaaS group. As the Task Force develops malpractice guidelines for virtual law practice, it may also benefit from the input of the companies developing the actual technology used for virtual law practice. A strong collaboration between the two groups will hopefully ensure that a final set of malpractice guidelines are reflective of both ethics standards in the legal profession and technology and security standards in the information technology (IT) field.

A. Know the Company Hosting the VLO

Operating a virtual law practice does not require an attorney to become an IT specialist. The VLO attorney should find a trustworthy hosting company and other IT specialists to assist in updating the VLO website content, keeping the web-based technology current and handling any security issues that might affect the online business. Because sensitive attorney/client data will be stored online, an attorney with a virtual law practice should make sure that the company hosting the VLO is reliable and that the servers are housed in a location that is secure and not threatened by environmental or other factors that would subject the servers to any long-term outage.¹⁹ For example, a hosting company in Idaho might be preferable to one housed

¹⁹ Some state bars have stated addressed the use of third-party service providers having access to and storing confidential client information. The summary of these opinions has been that the attorney must use reasonable care when selecting a service, but that the attorney may not be required to guarantee that there will be no breach of confidential information through the use of this service. See the State Bar of Nevada's Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 33, February 9, 2006, http://www.nvbar.org/Ethics/Ethics_Opinions_DETAIL.htm#Opinion%2033 and New Jersey Advisory Committee

in Florida, where the next hurricane season has the potential to take out the servers. Also note the hosting company's backup server locations and the security and reliability of those locations.

If the attorney is working with a web-based application to run the VLO, which hosts VLO data, including online document storage, he or she should be familiar with the company's data retention policy. Should that company have financial troubles or come into a disagreement with an attorney regarding the web-based application, the attorney must have the reassurance that all of the law office data stored on that web-based application will be returned to the attorney within a reasonable amount of time. If the VLO attorney prefers the additional security of in-house data retention in addition to the services provided by the VLO hosting company, data contained in the VLO may be available to the VLO attorney to transfer to on-sight digital storage for internal backup or for long-term digital record retention.

If the attorney is storing the majority of his or her law office documents online through a web-based application, he or she should know the hosting company and feel confident about its policies regarding data retention. The VLO attorney should obtain a guarantee from the hosting company that the VLO data will be returned in a readable format within a reasonable amount of time. If the VLO attorney relies on dial-up or DSL internet services to operate a VLO, he or she should have a wireless card ready in the event that the DSL or other services go out temporarily. The other option is to know different physical locations where the attorney may securely access the Internet to conduct VLO business.

B. VLO Data Security & Encryption

To ensure that clients and attorneys have confidence conducting legal services online, the VLO should purchase a Secure Sockets Layer (SSL) certificate from a Certificate Authority (CA). SSL is an encryption protocol which provides for secure online communication between applications. The protocol prevents, among other things, message forgery and electronic eavesdropping. SSL allows for privacy of online communication by using encryption and ensuring that parties engaging in online communication are authentic. Verisign is the most commonly recognized CA which sells SSL certificates for websites, and the Verisign symbol may be one that clients are familiar with. However, there are many other reputable companies which provide the same product at a more affordable price and will allow clients to click on the company logo to view the SSL certificate. It is important for the VLO attorney to ensure that the communication between attorney and client through the website is properly encrypted so that only the interested parties may view this secure data.

on Professional Ethics, Opinion 701, April 10, 2006,
http://lawlibrary.rutgers.edu/ethicsdecisions/acpe/acp701_1.html

With a VLO, all data contained in the system is encrypted and only accessible by the attorney or the client with his or her username and password. As discussed above, the security measures taken to ensure that the VLO data will not be breached by authorized intruders is the most current security available today and is used by online banking and investment companies. With a secure, web-based VLO, if an attorney is practicing law remotely from a laptop or other mobile device and if anything happens to the device, the VLO data remains inaccessible to anyone other than the attorney.



As an additional virtual practice suggestion, the VLO attorney should consider using Mozilla's Firefox for his or her internet browser rather than Microsoft Internet Explorer. Most web browsers are built with the focus on functionality first and security second. Given that IE is the larger target for mal-ware attacks and other security problems, Firefox may be a safer choice. The virtual attorney would be wise to stay aware of security releases from the company that produces the browser that they use. Each browser contains options that allow the attorney to set the levels of security control. The virtual attorney should understand how cookies are being used on the websites he or she is visiting and be able to disable them if necessary. The virtual attorney should consider installing security add-ons such as the NoScript extension for Mozilla²⁰. Many of these security add-ons will provide better control and security over the web browser. If the attorney is going directly to his or her secure VLO through the web browser, the risk is far less than if the attorney is surfing the Internet and opening up multiple browsers on the desktop from URLs with which the attorney is unfamiliar.

C. Securing Mobile Devices

Working remotely provides great flexibility and opportunity for an attorney. The use of mobile devices by attorneys to conduct business remotely is growing as legal professionals realize the increased productivity that comes with a mobile law



practice. The use of mobile devices naturally comes with a word of caution: using mobile devices, such as laptops, blackberries and other handheld devices, to store digital law office data is not typically a secure method because the data on these devices is often not encrypted and depending on the setup the attorney is using, access to the data could be left wide open.

Additionally, should the mobile device be stolen or misplaced, sensitive attorney/client data would be vulnerable, placing the attorney at risk for malpractice. Even with regular backup of the data, the attorney would not have control over the misuse of the information if the mobile device were stolen. Computrace Lojack

²⁰ Mozilla Add-ons, <https://addons.mozilla.org/en-US/firefox/addon/722>, (last accessed June 25, 2008).

provides a software and service that may track down a stolen laptop and in some cases delete the stolen data. A virtual attorney using a laptop to conduct business remotely should consider investigating this additional security check.

A mobile attorney may be tempted to use the advertised Wi-Fi available in many coffee shops and other public places to conduct business. Any activity conducted online while using a shared wireless connection in a public place (called a "hotspot") will be wide open to anyone else using that same wireless access. Viewing a secure website with SSL may be safe, but a wireless eavesdropper could still view any websites the attorney has visited and acquire any login information used on unsecured sites (non-SSL). If the attorney is visiting a website using SSL, such as his or her own VLO, then any communications will be encrypted and not as susceptible to intrusion.²¹ However, unencrypted email and other web pages not using SSL are completely visible to an attacker. Any unsecured ports open on the attorney's computer are also vulnerable to attacks if there is no firewall at the computer level. In other words, the attorney is not exposing the VLO to vulnerability, but he or she may be opening the door for a potential attacker to access their computer. With that access, an attacker could potentially install a keylogger, a form of spyware that logs all of the keystrokes made on a computer keyboard, that could subsequently capture the attorney's passwords for use by the attacker.

A better option for the mobile attorney needing Internet access would be to purchase a wireless broadband card from their wireless Internet provider. Connecting this card to a mobile device avoids the shared "hotspot" area that Wi-Fi relies on and it directly connects the attorney to the Internet in a manner less susceptible to wireless eavesdropping by nearby third parties. With any remote access device, the attorney should install firewalls and antivirus software on their devices and make sure they are correctly functioning.

Note that no matter how an attorney connects to the Internet either by landline, Wi-Fi or aircard all confidential communications should be done over secure protocols, such as SSL, from end to end. Even if a connection is secure from the laptop to the internet service provider (ISP) it is not guaranteed to be secure from the ISP to the end user without additional protections, such as end to end encryption.

²¹ There may also be some interference if the Domain Name System (DNS) is controlled by the attacker. In addition to DNS attacks, there are "packet sniffer attacks". Both methods of interference may be used together or separately. These attacks may be used against HTTPS via DNS spoofing or other means if a false certificate is accepted by the user attempting to connect to the secure site. Almost all browsers have visual indicators to alert the user that this may be happening. However, these "red flags" on the browser only work when the user takes them seriously and terminates the nonsecure session.

D. Securing Email Outside the VLO

When operating a VLO, clients may occasionally attempt to communicate with the attorney through email rather than the VLO client interface. Because email is typically unencrypted, this raises the potential for security problems. Attorneys who are concerned about a breach of security when using email may want to use S/MIME and/or Pretty Good Privacy (PGP) technology to securely communicate with their mail server and their clients, who must also be using the same technology. In practice, this is not practical for the use of a VLO handling a large quantity of online clients.



The best practice method is to have a policy in place for the VLO in which the VLO attorney sends a standard message to the client reminding them that email is not secure and requesting that they log back onto his or her homepage on the VLO in order to transmit the message or document to the VLO attorney. If an attorney has an online presence, clients may also attempt to use other forms of electronic social media, such as instant messaging or Twitter. Again, because these are not secure forms of communicating sensitive data, it is the responsibility of the online attorney to educate the client and request that he or she only discuss legal matters on the secure VLO. Whether an attorney runs a VLO or a traditional law office, clients may attempt to contact the attorney online. If the attorney plans on being accessible in any digital online format, he or she will need to responsibly monitor his or her online presence.

Another safe-guard for conducting business through email is to use a personal email certificate which allows the attorney to digitally sign his or her email. Called S/MIME (Secure/Multipurpose Internet Mail Extensions), this process allows the recipient to verify that the email actually came from the attorney. It also encrypts the email so that only the intended recipient is able to view it. However, S/MIME only does this if the recipient of the email also has S/MIME.

Companies offering digital certificates are called "certificate authorities" (CAs). These digital certificates operate similarly to SSL certificates for domains but in the context of a specific email address. Public CAs offer different levels of certificates. The typical certificate only verifies the owner's identity by connecting them to their email address. If further verification, such as the person's name or business, is required, then

it is recommended that the attorney contact a CA that offers digital notary services or has a public key infrastructure (PKI) service.

Of additional interest when choosing a CA, check to see if the company policy includes posting the attorney's certificate and its information for public reference and verification. Other companies will post serial numbers and certificate status only. The downside of this is that your name and email address may be available for others to view or find when conducting an online search. While the use of a personal email certificate is beneficial for the client and shows the level of security consideration, it does not encrypt or protect email from the client to the VLO attorney.

Attorneys interested in email security and management outside of the VLO may also want to consider Mimecast, a software as a service company²². Mimecast services include online email archiving for 10 years, spam and virus protection and email auditing services that comply with e-discovery and other government regulations regarding electronic data retention. The company has experience working with legal professionals and are able to tailor their services to solo and small firm practitioners. As with a VLO, the use of a web-based, SaaS company, such as Mimecast, would make the virtual attorney's email management system available anywhere he or she could access the Internet.

At times, an attorney using a VLO may communicate with online clients through electronic forms of communication other than the VLO client interface. Therefore, it is important to understand the security of any online presence created by the attorney and to attempt to redirect online clients to use their secure VLO homepage rather than transmitting sensitive data to the attorney through unsecured methods. Clients are often unaware of the dangers of transmitting privileged information via email and once alerted will switch to the VLO client interface. Because the VLO client interface should be simple and as easy to use as the client's typical email system, this should not be a problem for the VLO attorney.

E. Conflict of Interest Checking

Because a VLO has the potential to widen an attorney's client base to the entire state(s) where he or she practices law, it is critical for the VLO to have a good system in place for running conflict of interest checks so that the attorney will comply with his or her state bar's rules of professional conduct or other regulations. The VLO application should allow for comprehensive searches of existing and previous clients, cross checked with prospective clients for any conflicts. This may be done at the beginning of the online client registration process before the VLO attorney has the chance to respond to the prospective client. The VLO application will alert the attorney

²² Mimecast, <http://www.mimecast.com/>, (last accessed June 25, 2008).

to any potential conflicts and allow him or her to make the call based on the information provided by the prospective client regarding the legal services requested.

For example, the VLOTech conflict of interest check built into the application has been set up to search for the names of any party associated with cases selected by the attorney running the check. The feature uses a combination of stemming and phonetic reduction algorithms to check for alternate spellings of prospective client names. The stemming is designed to show the attorney as many possible matches but scores them for relevancy.²³ See Appendix VI. The goal of a conflict of interest check in a VLO is to assist the attorney in avoiding malpractice by checking for conflicts of interest prior to establishing an attorney/client relationship.

F. Categorizing and Linking Online Data Libraries

As with any law practice management system, the VLO data and the ability to retrieve it will only be reliable if it is entered in a consistent and organized manner. Being able to categorize client cases, calendar events, contacts, client files and legal research within the VLO allows the attorney to streamline his or her practice. For example, if an attorney is reviewing a prospective client online, he or she may run a search that not only raises a red flag if any conflicts of interest matters arise but the attorney may review other cases with similar legal matters that he or she has handled. Research completed on behalf of one client may be accessed easily and applied to the newer client, with modification for the new client's individual circumstances. Over time, an attorney may build a VLO library which links cases, legal matters and research so that all of this may be searched and accessed by the attorney online for future use.

G. Ticker system & Calendar

The VLO should contain a calendaring and ticker system to alert the attorney to upcoming deadlines, lessening the risk of malpractice. Items on the VLO calendar might also be made viewable to the client so that the client is kept informed of important deadlines for the case, invoices that are due and other items that the attorney and client have discussed. Not only does this system help the attorney to lessen the malpractice risk of forgetting a deadline, the client may also feel like he or she is being kept up-to-date on his or her legal matter through the use of an interactive calendar and digital sticky notes from the attorney or legal assistant.

H. Metadata

²³ Stemming allows for similar matches, such as “Ric, Rick and Richard,” to be converted to a comparable form for simple cases. Phonetic reduction allows names, such as “Johnston, Johnson and Jonson,” to be compared in order to catch a variant or misspelling. The VLO attorney should use different levels of exactness in a search query when no results are returned.

The VLO allows an attorney to upload and download files with the online client. These documents will most likely contain metadata if the attorney has not taken measures to remove it from the document. Metadata is information contained in the document about the document. For example, metadata would include the names of the document's authors and versions, tracked changes and deleted comments, and other statistics about the document. If an attorney chooses to draft legal documents and upload the files to the online client's homepage on the VLO, the attorney must be aware that the document may contain metadata that could create a potential embarrassment for the attorney or result in malpractice if confidential information contained in the metadata was exposed to a client who was not authorized to view this information.

While the average online client is not going to be actively searching for metadata in the documents they download from their VLO homepage, if a legal document in digital form is provided to opposing counsel or other party involved in a case, the existence of metadata could have serious malpractice and ethical violations for the online attorney. Recent state bar opinions have addressed whether it is ethical for attorneys to review metadata exposed in documents sent from opposing counsel outside the context of the discovery process. For example, the Colorado State Bar's Ethics Opinion 119, "Disclosure, Review, and Use of Metadata," adopted May 17, 2008, and the New York County Bar Association, New York County Lawyers' Ass'n Comm. of Professional Ethics, Op. 738, "Searching for inadvertently sent metadata in opposing counsel's electronic documents," adopted March 24, 2008, both address this issue.²⁴

Because of the potential risk of metadata, it is recommended that the attorney be proactive when sharing documents online. The method of sharing and transferring documents to clients will depend on the virtual law practice that the attorney has set up. Some attorneys use packaged software to generate legal forms and documents. Others may use systems that work with Microsoft Office or OpenOffice.

Microsoft Office has several metadata removal programs that may be used to remove the metadata from their applications. Microsoft Office 2003 has tools included in the program to remove metadata or a download of the Office 2003/XP Remove Hidden Data Add-in Program is available from the Microsoft Office Download Center website.²⁵ This program should be run immediately before uploading the document to the VLO and will remove most, but not all, of the metadata from the document.

²⁴ Colorado State Bar Ethics Opinion 119: Disclosure, Review, and Use of Metadata, adopted May 17, 2008, <http://www.cobar.org/index.cfm/ID/386/subID/23789/CEETH/> last accessed January 17, 2009. New York County Bar Association, New York County Lawyers' Ass'n Comm. of Professional Ethics, Op. 738, "Searching for inadvertently sent metadata in opposing counsel's electronic documents," adopted March 24, 2008, http://www.nycla.org/siteFiles/Publications/Publications1154_0.pdf, last accessed January 17, 2009.

²⁵ Office 2003/XP Add-in: Remove Hidden Data, found at <http://www.microsoft.com/downloads/> (accessed May 23, 2008).

Converting documents to PDF before uploading to the VLO is another option. Word, Excel, and PowerPoint documents may be uploaded to the VLO as a PDF file. Some online clients may not be able to edit the application through Adobe. Therefore, if the purpose of uploading the document is for online clients to make comments, additions or complete a form, then converting the document to .PDF is not the best method. Even with converting the document to .PDF the attorney must enable the security features of the .PDF program, such as those found on Adobe Acrobat. Primo PDF is one example of a free .PDF creator which may be downloaded and installed on a computer to convert any documents that could be printed out from Word, Excel and PowerPoint programs.²⁶ However, this program does not contain additional security features. Nitro PDF Professional, an alternative to Adobe PDF, allows the attorney to digitally sign, certify and secure PDF files before uploading them to the VLO.

Another approach would be to use metadata removal applications from any number of companies, including but not limited to Workshare, Payne Consulting Group, Esquire Innovations, Inc. or iScrub. Annual licenses for many of these programs are relatively inexpensive (\$30-50 for standard protection, to over \$100 for premium) and may be worth the cost depending on the attorney's virtual law practice and the amount of document data exchange handled between the attorney and the online client through the VLO.

Some attorneys may choose to use Open Office, the free open source suite from Creative Commons, and there are metadata removal programs and techniques available for this software suite. 3bview offers a metadata removal program that works with Microsoft Office products and also with Open Office products.²⁷ Even seemingly simple methods, such as converting the document to a Rich Text Format (RTF) to remove metadata will most likely create formatting and layout problems for the online client attempting to open the files from the VLO download center. Regardless of the program used by the attorney, it is his or her responsibility to find a method for removing metadata and preventing the potential malpractice and ethics risks involved in exposing sensitive client information.

I. Alternative Billing Methods

Providing legal services online allows for the flexibility of choosing alternative billing methods. A VLO allows an attorney to choose between the traditional billable hour, contingency fee, fixed fee or a combination of billing methods. Because the online client will be accepting one or more clickwrap agreements and/or other retainer agreements as determined by the VLO attorney before proceeding with retaining the attorney, the billing method will be set forth on the client's VLO homepage. Some attorneys operating a VLO may also choose to list the prices for their legal services

²⁶ Primo PDF, <http://www.primopdf.com/> (accessed May 23, 2008).

²⁷ 3bview, <http://www.3bview.com/3bclean.html> (accessed May 23, 2008).

online or provide a ball-park estimate so that their prospective clients will have an idea of what to expect and budget accordingly when choosing to retain legal assistance.

As an example of how a VLO might handle alternative billing methods online, Virtual Law Office Technology, LLC (VLOTech) has a billing system that provides the option of a fixed fee billing system, among other billing methods. The client is provided with a price quote for the legal services, which may include a range and limit not to exceed. The client may continue to communicate with the attorney through his or her homepage. However, the client is notified that the required legal work will not proceed until the client has accepted the price quote, which is a clickwrap agreement providing notice to the client of the terms of the legal services and that he or she will be responsible for paying for any legal services rendered. The attorney is then notified on the VLO backend law office that the new client has accepted the price quote and the attorney may proceed with asking follow-up questions, uploading a worksheet to the client, or whatever the next step might be to complete the matter.

Once the final product is completed for the client, the attorney posts the answer or legal document for the online client to review and marks it as "final." The online client is then notified that he or she must pay the legal fees to the attorney. The client's work is simultaneously released to the client at the same time that payment is received by the attorney through Paypal or other online credit card processing company. The benefit of this patent-pending process is that the attorney has potentially fewer collection problems from clients. Clients will not be able to take the attorney's work and leave without paying for it. The attorney also has the option of turning off this system and trusting that the client will pay for legal fees as invoiced. The process benefits the client because he or she is made aware from the first transaction on the VLO of the nature of unbundled legal services and the cost for retaining the VLO attorney, which may facilitate a lower or middle-income client's ability to budget for legal services. With a VLO, a combination of online billing options is available and the choice depends on the individual attorney's law practice needs.

J. Online Payments

If a VLO accepts credit card payments from clients, then it must be Payment Card Industry Data Security (PCI DSS) compliant.²⁸ PCI compliance must occur whenever any business stores, transfers or collects credit card information from clients. Failure to comply with these rules, set by the credit card industry, may result in a business no longer being allowed to take credit card purchases, in addition to multiple fines and penalties. It is unlikely that a virtual law practice would handle the number of transactions that require an audit by the PCI DSS Qualified Security Assessors. However, the standards in this area are constantly being changed. The responsibility

²⁸ See PCI Compliance Guide, <http://www.pcicomplianceguide.org/> (last accessed June 17, 2008).

falls to the VLO attorney to keep any online purchases of legal services by credit card compliant with the most current rules and regulations.

It should go without saying that a VLO must also be set up to comply with the trust accounting rules of the attorney's state bar. Because many attorneys operating a VLO will choose to use the fixed fee method of billing, in which the client is provided with and agrees to pay a fixed fee before the services are delivered in full, the VLO attorney may not require a separate retainer from clients. If a retainer is required as part of the initial price quote and must be completed before the VLO attorney proceeds, then those funds must be placed in the VLO's trust account and kept separate from the VLO operating account.

One gray area is the use of Paypal or other credit card processing service to hold retainer fees. The issue is whether the retainer may be run through the credit card processing company even if that company routes the funds to the attorney's trust account rather than operating account. Because the funds would first be transmitted to the attorney's online account at the credit card processing company and then routed to the trust account at the approved federal or state bank, this may be in violation of the trust accounting rules of the attorney's state bar because for a short period of time the funds are held by the credit card processing company.



While this sounds hyper-technical and the funds would end up in the attorney's trust account as required, if PayPal or the credit card processing company in question was not one of the financial institutions approved by the attorney's state bar for the purpose of maintaining trust accounts, then the transaction might be in violation of the Bar's trust accounting rules. This is a question that individual state bars may have to address in a formal ethics opinion as more attorneys provide legal services through VLOs and if they choose to accept online retainer fees. There are a variety of ways that the attorney might choose to set up the payment function of the VLO and his or her compliance with trust account rules would depend on that particular setup. With the use of the VLO billing features and invoicing process to improve efficiency of revenue collection, it may not be desirable for the attorney to request a traditional retainer fee from the online client or if necessary, the VLO attorney could request to receive the retainer through snail mail for direct deposit into the attorney's trust account. In which case, the question of the trust account being attached to the credit card processing company would be moot.

K. Electronic Discovery

Consider that all data transmitted through a VLO has the potential to become electronic evidence in a legal case. Electronic discovery (ED) has crept into every law practice, including solos and small firms. Electronic activities may hang around longer than contracts written on paper and stuck in a file and may be easier to obtain if needed. ED, as with any discovery, must be produced in a timely and proper manner when required. In the case of ED, much of this issue comes down to proper electronic data management and the ability to retrieve the necessary data. Accordingly, ED business standards and best practices are critical for a virtual law practice.

This eBook will not attempt to dive into this topic other than to make the reader aware of the growing use of ED in legal cases. Attorneys operating a VLO should be familiar with ED and its potential impact on their businesses and well as their clients'. Comprehensive information on this topic may be found in *The Electronic Evidence and Discovery Handbook*, by Sharon D. Nelson, Bruce A. Olson and John W. Simek, ABA Law Practice Management Section, 2006 and also at DiscoveryResources.org.

IX. Additional Benefits of Operating a VLO

A. Reforming Attorney Work/Life Balance

VLOs provide an alternative method of practicing law that permit flexible work hours and may be used to create a better work/life balance for legal professionals. VLOs may be used to create alternative working arrangements that may be adjusted and refined as circumstances in the attorney's personal life require. At some point in every legal professional's life, he or she will be contributing to the care of a family member, either financially or with time and either by choice or necessity. Legal professionals of both sexes and multiple generations are not immune to this fact of life.

A recent report issued by the North Carolina Bar Association indicated that work/life balance is a critical issue for young lawyers. "...[T]he electronic age has produced greater demand from clients for lightning turn-around of information, and rising costs have driven up billable hour expectations within law firms. At the same time, work-life balance is increasingly more important to young lawyers entering the profession, who lack the old-school mentality of one career, one employer."²⁹ This trend is not unique to one state and will continue to be an issue that the legal profession must address as larger numbers of



²⁹ N.C. Young Lawyers Division, *Lawyer Effectiveness and Quality of Life Committee Report, Staying Power: Work-Life Balance Initiatives for Retaining Young Lawyers*, 2005.

young attorneys enter the legal workforce. The flexibility of a virtual law office and the many potential uses for the VLO technology may serve as a method of meeting the needs of legal professionals for greater balance in their lives.

Attorneys operating VLOs see the potential for the business concept to reform the work/life balance in the legal profession. The web-based technology permits the attorney to control his or her law practice in a more flexible manner that maintains productivity and makes the management of clients and a law office more efficient. The technology could be used by attorneys who need to take a couple months or a year off from a firm to care for an elderly parent, ill spouse or child. Apply the same concept to legal assistants and paralegals who could use the technology from their homes or other remote location in conjunction with a traditional law office and continue to be productive members to their employers while managing law office administrative tasks, client intake, accounting and other functions found in the VLO software. Accordingly, there are a variety of different applications for the VLO to improve the work/life balance of a legal professional.

B. Going Green: Eco-Benefits of a VLO

Forward-thinking attorneys will recognize the economic and environmental benefits of running a VLO. Through carefully selected technology, a VLO may greatly reduce the amount of waste that a law practice generates by being a paperless office. Many consumers today are choosing who they conduct business with based on that business' sensitivity to current environmental concerns. An increasing number of consumers are interested in reducing their negative impact on the environment and are seeking out professionals who are willing to set positive standards for eco-consciousness.



Attorneys operating a VLO are able to acquire clients online and conduct business through the website without the use of paper and other office supplies and resources. Attorney and client data may be stored online during the course of the transaction and then transferred as a digital file to the attorney's internal digital filing and backup system. Any documents that are not stored online in digital format through the client interface of the VLO may be scanned to PDF by the attorney and stored in digital format on the VLO database or other data storage system. The use of electronic invoicing and online payments for legal services to the VLO may be handled online without the use of paper invoices.

Accordingly, a VLO by nature greatly reduces the amount of office waste and need for paper that a typical law office generates. Aside from the eco-benefits of

reduced waste, the cost to operate a VLO remains minimal and reduces overall office overhead.

X. Conclusion

Because of the mind-boggling speed with which Web 2.0 technologies are evolving, it is possible that several of the technology details discussed in this manuscript may be out of date even before next year. However, the business model of a VLO will continue to be used in some form by the legal profession because the public is demanding more convenient and affordable access to legal services. Offering legal services online through a VLO addresses this market need and provides multiple benefits to legal professionals by allowing for flexible virtual law practice models to develop. As innovative attorneys throughout the country set up VLOs and begin providing web-based legal services, an increased understanding and confidence in the VLO technology and business method will spread within the legal profession and out to the clients it serves.

For more information about virtual law practice in general, please contact Stephanie Kimbro at slk@kimbrolaw.com or see *Delivering Legal Services Online: How to Set Up and Operate a Virtual Law Practice*, to be published by the ABA LPM, Summer 2010 and its companion website: www.virtuallawpracticebook.com, providing updated ethics and technology information related to virtual law practice.

Appendix I Sample Online Client Homepage



Test Site
virtual law office
 Technology, LLC

Payment due. Click here to pay now.

Click here to edit current form.

Click here to see file list for this case.

- [Logout](#)
- [Ask a question](#)
- [My Info](#)
- [Case List](#)
- [Case View](#)
 - [Refresh](#)
 - [Link Case](#)
 - [Manage](#)
 - [View Discussion](#)
 - [View Events](#)
 - [Fill Forms](#)
 - [View Files](#)
 - [View Charges](#)
 - [View Invoices](#)
 - [View Payments](#)
- [Manual](#)

Subject Estate Planning

Status [Pay Invoice](#)

Discussion

Message

[Update Preview](#)

- Stephanie Kimbro quoted: on 06/02/2008 9:54 PM [view](#)

Please accept the price quote in order to proceed.
- Stephanie Kimbro said: on 06/02/2008 9:52 PM [view](#)

Yes, I will accept your price quote for services.
- Stephanie Kimbro said: on 06/01/2008 1:22 PM [view](#)

I charge \$300 to draft the Wills for two individuals. I also have an estate planning package for \$450 which includes

January

				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Please note: Screenshots featured in this Appendix are only as current as the latest revision of this manuscript.

New software features and updates are being added to the technology on a regular basis. Development is driven by the requests of the attorneys practicing law online with the VLOTech system.

Appendix II Sample Case View on Attorney Side of VLO



Test Site

Click here to see recent case info.

- [Logout](#)
- [My Info](#)
- [Search](#)
- [Client Manager](#)
- [Recent Cases](#)
 - [New Cases](#)
 - [My Cases](#)
 - [Other Cases](#)
- [Case View](#)
 - [Refresh](#)
 - [Manage](#)
 - [Link](#)
 - [Verify](#)
 - [Party](#)
 - [Discussion](#)
 - [Events](#)
 - [Forms](#)
 - [Files](#)
 - [Charges](#)
 - [Invoices](#)
 - [Payments](#)
 - [Laws](#)
- [Referrals](#)
 - [Add Contact](#)
- [File Library](#)
 - [Add Resource](#)
- [Form Library](#)

Overview for Case #69

Case Title

Case Title

Legal Category

Legal Category

Status

Case Check

Contact

Stephanie Lynn Kimbro
100 Circle Dr.
Tampa, FL 33602

Client ID: #3 - StephKimbro
Started: 2009-01-15 17:16:22
Subject: Lease Agreement
Email: slk@kimbrolaw.com
Alerts: Off
Uploads: Off

Discussion

Message

January

				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Please note: Screenshots featured in this Appendix are only as current as the latest revision of this manuscript.

New software features and updates are being added to the technology on a regular basis. Development is driven by the requests of the attorneys practicing law online with the VLOTech system.

Appendix III

The Supreme Court of Ohio Board of Commissioner on Grievances and Discipline

Opinion 99-9

Issued December 2, 1999

[Taken from: http://www.sconet.state.oh.us/BOC/Advisory_Opinions/1999/Op%2099-009.doc, last accessed January 17, 2009.]

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: It is proper for an attorney to place an on-line intake form on the law firm world wide web site that enables web site visitors to e-mail legal questions to the law firm and receive responses by e-mail from an attorney for a fee. In providing such on-line legal representation, the attorney should comport with the Ohio Code of Professional Responsibility and the guidelines set forth in this opinion.

OPINION: This opinion addresses a question regarding on-line legal representation of clients through e-mail questions and answers.

Is it proper for an attorney to place an on-line intake form on the law firm world wide web site that enables web site visitors to e-mail legal questions to the law firm and receive responses by e-mail from an attorney for a fee?

As the twentieth century comes to a close, on-line legal services arrive. The potential of on-line services as a method of providing legal representation will be seen in the next century. But, its presence now warrants consideration as to whether the ethical rules governing the practice of law in Ohio permit the rendering of on-line legal advice for a fee.

The requester would like to establish a law firm web site with a feature on the home page allowing web site visitors to e-mail legal questions to attorneys in the law firm. Visitors would complete an on-line intake form asking for their name, address, credit card information, legal question, and password for the attorneys to use when responding to the legal questions. Attorneys in the firm would respond to the questions by e-mail. The attorneys would include a statement that the answer was researched using Ohio law and was reviewed by an attorney licensed in Ohio. The attorneys would charge a flat fee for answering a single topic question. The attorneys would reserve the right to determine whether a question includes multiple topics and would communicate this before charging for or providing the answer. If the attorney needs additional information to answer the question, the attorney would communicate by e-mail. There would be no "real time communication," no telephone, and no in-person communication between the attorney and the person. Upon answering the legal question, the lawyer would not initiate any further contact. If a person wishes to retain the attorney for other services the contact would be at the person's initiative. This on-line legal service would be advertised through the law firm web site and other media such as newspaper, radio, and law firm brochures.

Access to legal services is a fundamental concern of the bar. Ethical Consideration 1-1 of the Ohio Code of Professional Responsibility states that "[a] basic tenet of the

professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence.”

Only seven years ago, telephone legal advice was considered to be a novel method of delivering legal services. In Opinion 92-10, issued April 10, 1992, the Board remarked that “[a]lthough it is not unusual for lawyers to provide legal advice to their clients over the telephone, it seems unusual when this legal advice is given to a caller with whom the lawyer has no previous relationship. The Board advised that

[i]n Ohio it is not improper for a law firm to advertise and operate a dial-a-lawyer service offering legal advice by lawyers to callers over a telephone for a fee. However, there are several disciplinary rules that place ethical restrictions on such dial-a-lawyer services: Disciplinary Rules 2-101, 2-102, 2-103, 2-104, 2-105, 2-106, 3-103, 4-101, 5-101, and 6-101. Such telephone advice constitutes professional legal employment through which the lawyer owes the caller all the traditional duties owed by a lawyer to a client.

Just as telephones may provide a method of delivering legal services, so may computers. A South Carolina attorney with a physical disability sought an opinion from the South Carolina Bar on the propriety of representing clients exclusively through contacts from an on-line service. In Op. 94-27, the South Carolina Bar advised that “[t]he operation of a law office via electronic media does not, in itself, violate any provision of the rules. However the manner in which the practice of law occurs raises several issues of concern.” The opinion mentioned that the rules regarding communication, advertising of services, and direct contact with prospective clients would apply. The opinion also mentioned that geographic limitations of the lawyer’s practice must be identified so that it is clear that the attorney may not practice law except in those states in which the attorney is admitted to practice. In addition, the attorney was advised to obtain sufficient information to make a complete conflicts inquiry, to consider the rules regarding trial publicity, and to consider his ability to engage in privileged communications via electronic mail.

With any method of legal representation ethical guidelines must be met. As to the requirements of the Ohio Code of Professional Responsibility, the Board offers the advice listed below to attorneys who provide on-line legal representation through e-mail answers to e-mail questions from non-attorneys.

Representation must be free from conflict of interest under DR 5-101 and 5-105. Providing legal advice to specific questions by e-mail constitutes professional legal employment and carries with it all the traditional duties owed by lawyer to a client. As an attorney checks for conflicts when a client calls or comes to his office seeking legal services, an attorney must check for conflicts when a client e-mails seeking legal advice. The on-line intake form should provide a way for the law firm to make a conflicts check prior to reviewing the legal question. After the conflicts check the legal question can then be posed to the law firm by e-mail.

In providing answers to e-mail questions a lawyer must act competently under DR 6-101(A).

The confidences and secrets of the e-mail clients must be protected under DR 4-101. For related guidance see Ohio SupCt, Bd of Comm’rs on Griev & Disc, Op. 99-2 (1999) (advising that “[a] lawyer does not violate the duty to preserve confidences and secrets

under DR 4-101 of the Ohio Code of Professional Responsibility by communicating with clients through electronic mail without encryption.”)

Advertising of the on-line legal service must comport with DR 2-101 through DR 2-105.

A trade name for the on-line service cannot be used under DR 2-102(B). The on-line legal services must be advertised under the law firm name not a trade name.

The provision of the on-line service cannot be a joint business effort between an attorney and a non-attorney. Disciplinary Rule 3-103(A) requires that “[a] lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.”

An attorney cannot charge an excessive fee for on-line legal services under DR 2-106(A).

If an attorney cannot answer the e-mail question or if the attorney determines that proper consideration cannot be given through e-mail response the lawyer should inform the client of such. The attorney should not recommend further employment of himself or herself or of a partner or associate of the law firm, unless the e-mail client asks for advice regarding employment of a lawyer under DR 2-103(A) and 2-104.

The attorney must not practice law in a jurisdiction where to do so would violate the regulation of the profession in that jurisdiction under DR 3-101(B). Thus, an attorney should not offer legal advice on-line to clients in other jurisdictions unless permitted by the rules of that state.

The Board is aware of authority that advises against the on-line transmittal of information from prospective clients. In Opinion 97-04 (1997) the State Bar of Arizona advised that lawyers may place on-line intake forms for prospective clients on their web sites, but that prospective clients should not be able to send completed forms electronically because of a possibility of inadvertent disclosures of confidential information. This Board disagrees. For the Board’s view on e-mail communication with clients see Op. 99-2 (1999).

In conclusion, the Board advises that it is proper for an attorney to place an on-line intake form on the law firm world wide web site that enables web site visitors to e-mail legal questions to the law firm and receive responses by e-mail from an attorney for a fee. In providing such on-line legal representation, the attorney should comport with the Ohio Code of Professional Responsibility and the guidelines set forth in this opinion.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney’s Oath of Office.

Appendix IV

Sample Bar Opinion: North Carolina Bar 2005 Formal Ethics Opinion 10

[Taken from N.C. State Bar Website:
<http://www.ncbar.com/ethics/ethics.asp?page=3&from=1/2006&to=6/2006>, last accessed June 21, 2008]

January 20, 2006

Virtual law Practice and Unbundled Legal Services

Opinion addresses ethical concerns raised by an internet-based or virtual law practice and the provision of unbundled legal services.

Inquiry #1:

Virtual law Firm markets and provides legal services via the internet under the name virtual law Firm (VLF). VLF plans to offer and deliver its services exclusively over the internet. All communications in the virtual law practice are handled through email, regular mail, and the telephone. There would be no face-to-face consultation with the client and no office in which to meet.

May VLF lawyers maintain a virtual law practice?

Opinion #1:

Advertising and providing legal services through the internet is commonplace today. Most law firms post websites as a marketing tool; however, this opinion will not address passive use of the internet merely to advertise legal services. Instead, the opinion explores use of the internet as an exclusive means of promoting and delivering legal services. Many lawyers already use the internet to offer legal services, answer legal questions, and enter into client-lawyer relationships. While the Rules of Professional Conduct do not prohibit the use of the internet for these purposes, there are some key concerns for cyberlawyers who use the internet as the foundation of their law practice. Some common pitfalls include 1) engaging in unauthorized practice (UPL) in other jurisdictions, 2) violating advertising rules in other jurisdictions, 3) providing competent representation given the limited client contact, 4) creating a client-lawyer relationship with a person the lawyer does not intend to represent, and 5) protecting client confidences.

Advertising and UPL concerns are endemic to the virtual law practice. Cyberlawyers have no control over their target audience or where their marketing information will be viewed. lawyers who appear to be soliciting clients from other states may be asking for trouble. *See* South Carolina Appellate Court Rule 418, "Advertising and Solicitation by Unlicensed lawyers" (May 12, 1999)(requiring lawyers who are not licensed to practice law in South Carolina but who seek potential clients there to comply with the advertising and solicitation rules that govern South Carolina lawyers). Advertising and UPL restrictions vary from state to state and the level of enforcement varies as well. At a minimum, VLF must comply with North Carolina's advertising rules by including a physical office address on its website pursuant to Rule 7.2(c). In addition, VLF should also include the name or names of lawyers

primarily responsible for the website and the jurisdictional limitations of the practice. Likewise, virtual lawyers from other jurisdictions, who actively solicit North Carolina clients, must comply with North Carolina's unauthorized practice restrictions. *See* N.C. Gen. Stat. A7 84-4. 2.1. In addition, a prudent lawyer may want to research other jurisdictions' restrictions on advertising and cross-border practice to ensure compliance before aggressively marketing and providing legal services via the internet.

Cyberlawyers also tend to have more limited contact with both prospective and current clients. There will rarely be extended communications, and most correspondence occurs via email. The question becomes whether this limited contact with the client affects the quality of the information exchanged or the ability of the cyberlawyer to spot issues, such as conflicts of interest, or to provide competent representation. *See generally* Rule 1.1 (requiring competent representation); Rule 1.4 (requiring reasonable communication between lawyer and client). Will the cyberlawyer take the same precautions (i.e., ask the right questions, ask enough questions, run a thorough conflicts check, and sufficiently explain the nature and scope of the representation), when communications occur and information is exchanged through email?

While the internet is a tool of convenience and appears to respond to the consumer's need for fast solutions, the cyberlawyer must still deliver competent representation. To this end, he or she should make every effort to make the same inquiries, to engage in the same level of communication, and to take the same precautions as a competent lawyer does in a law office setting.

Next, a virtual lawyer must be mindful that unintended client-lawyer relationships may arise, even in the exchange of email, when specific legal advice is sought and given. A client-lawyer relationship may be formed if legal advice is given over the telephone, even though the lawyer has neither met with, nor signed a representation agreement with the client. Email removes a client one additional step from the lawyer, and it's easy to forget that an email exchange can lead to a client-lawyer relationship. A lawyer should not provide specific legal advice to a prospective client, thereby initiating a client-lawyer relationship, without first determining what jurisdiction's law applies (to avoid UPL) and running a comprehensive conflicts analysis.

Finally, cyberlawyers must take reasonable precautions to protect confidential information transmitted to and from the client. RPC 215.

Inquiry #2:

VLF offers its legal services to *pro se* litigants and small law firms seeking to outsource specific tasks. VLF aims to provide more affordable legal services by offering an array of "unbundled" or discrete task services. Unbundled services are legal services that are limited in scope and presented as a menu of legal service options from which the client may choose. In this way, the client, with assistance from the lawyer, decides the extent to which he or she will proceed *pro se*, and the extent to which he or she uses the services of a lawyer. Examples of unbundled services include, but are not limited to, document drafting assistance, document review, representation in dispute resolution, legal advice, case evaluation, negotiation counseling, and litigation coaching. Prior to representation, VLF will ask that the prospective client sign and return a limited scope of representation agreement. The agreement will inform the prospective client that VLF will not be monitoring the status of the client's case, will only handle those matters requested by the client, and will not enter an appearance on behalf of the client in his or her case.

May VLF lawyers offer unbundled services to clients?

Opinion #2:

Yes, if VLF lawyers obtain informed consent from the clients, provide competent representation, and follow Rule 1.2(c). The Rules of Professional Conduct permit the unbundling of legal services or limited scope representation. Rule 1.2, Comment 6 provides:

The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client⁸⁵. A limited representation may be appropriate because the client has limited objectives for the representation. In addition the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

Rule 1.2, comment [7], however, makes clear that any effort to limit the scope of representation must be reasonable, and still enable the lawyer to provide competent representation.

Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely.

VLF's website lists a menu of unbundled services from which prospective clients may choose. Before undertaking representation, lawyers with VLF must disclose exactly how the representation will be limited and what services will not be performed. VLF lawyers must also make an independent judgment as to what limited services ethically can be provided under the circumstances and should discuss with the client the risks and advantages of limited scope representation. If a client chooses a single service from the menu, e.g., litigation counseling, but the lawyer believes the limitation is unreasonable or additional services will be necessary to represent the client competently, the lawyer must so advise the client and decline to provide only the limited representation. The decision whether to offer limited services must be made on a case-by-case basis, making due inquiry into the facts, taking into account the nature and complexity of the matter, as well as the sophistication of the client.¹

Endnote

1. The ABA Standing Committee on the Delivery of Legal Services has created a website encouraging the provision of "unbundled" legal services and assisted *pro se* representation. The Standing Committee believes unbundling is an important part of making legal services available to people who could not otherwise afford a lawyer. The website has also compiled a list of state ethics opinions addressing limited scope representation. See www.abanet.org/legalservices/deliver/delunbund.html

Appendix V Sample Flag for Jurisdiction Check in Online Client Registration



This website has jurisdiction to answer questions related ONLY to North Carolina law.

Please login to continue the registration process.

Your user account has been created successfully.

Enter Username

Enter Password

[Register](#)

[Recover Lost Password](#)

Appendix VI

Sample VLO Conflict of Interest Check

- [Logout](#)
- [My Info](#)
- [Search](#)
- [Client Manager](#)
- [Recent Cases](#)
 - [New Cases](#)
 - [My Cases](#)
 - [Other Cases](#)
- [Case View](#)
 - [Refresh](#)
 - [Manage](#)
 - [Link](#)
 - [Verify](#)
 - [Party](#)
 - [Discussion](#)
 - [Events](#)
 - [Forms](#)
 - [Files](#)
 - [Charges](#)
 - [Invoices](#)
 - [Payments](#)
 - [Laws](#)
- [Referrals](#)
 - [Add Contact](#)
- [File Library](#)
 - [Add Resource](#)
- [Form Library](#)
 - [Add Resource](#)
- [Law Library](#)
 - [Add Resource](#)
- [Export](#)
- [Manual](#)

First Name
 Strictness Level ▼
 Middle Name
 Strictness Level ▼
 Last Name
 Strictness Level ▼
 Suffix
 Strictness Level ▼
 Nick Name
 Strictness Level ▼

Name	Score
Ms Ima Client "Ima"	100
Contract Client	100
Mr. Joc Client	100
SampleNY Client	100
Screenshot Sample Client	19
Ms. Sample ClientA	16
Mr. Test ClientAL	6
Sample ClientMA	6



- [Logout](#)
- [My Info](#)
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- [Client Manager](#)
- [Recent Cases](#)
 - [New Cases](#)
 - [My Cases](#)
 - [Other Cases](#)
- [Case View](#)
 - [Refresh](#)
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 - [Link](#)
 - [Verify](#)
 - [Party](#)
 - [Discussion](#)
 - [Events](#)
 - [Forms](#)
 - [Files](#)
 - [Charges](#)
 - [Invoices](#)
 - [Payments](#)
 - [Laws](#)
- [Referrals](#)
 - [Add Contact](#)
- [File Library](#)
 - [Add Resource](#)
- [Form Library](#)
 - [Add Resource](#)
- [Law Library](#)
 - [Add Resource](#)
- [Export](#)
- [Manual](#)

Step #2: Confirm and Send

Dialogue Type Discussion

Message

Thank you for contacting me. I would be happy to assist you. I charge a fixed fee of \$300 to draft the Wills for two individuals. Once the documents are complete, you will have to have the documents signed by yourselves and two witnesses in front of a notary public. If you are interested in retaining my services, please accept the price quote and we will proceed from there.

Hour(s)

Minute(s)

5

Step #1 : Compose and Edit

Dialogue Type Discussion

Message

Thank you for contacting me. I would be happy to assist you. I charge a fixed fee of \$300 to draft the Wills for two individuals. Once the documents are complete, you will have to have the documents signed by yourselves and two witnesses in front of a notary public. If you are interested in retaining my services, please accept the price quote and we will proceed from there.

Hour(s)

Minute(s)

Appendix VIII

Checklist for Opening a VLO

___ Contact your state bar regarding virtual law practice and offering unbundled legal services online.

___ Discuss your VLO with your malpractice insurance carrier. Ask about discounted rates due to the use of technology to reduce malpractice risks.

___ Register a website domain. Check to see if your state bar requires registration of the URL name.

___ Retain a website designer to create a VLO website. Consider having a VLO website with blog functionality. Blogging on your VLO can be a useful marketing tool and resource for your clients. Make sure your website content complies with any website rules or regulations set up by your state bar.

___ Make sure that any part of your website that handles confidential information is protected by an SSL certificate (https and the browser lock symbol).

___ Establish an account with a credit card processing company to use for your online payments, such as PayPal or your bank. Ensure that this arrangement complies with your state bar's trust accounting rules.

___ Draft the terms and conditions, including a privacy statement, for use for your general website and any clickwrap agreement used for your secure VLO website.

___ Check with your state bar regarding any website or online advertising rules to ensure that your VLO complies with these before you begin any advertising or marketing of your online services.

___ If you will be practicing remotely, review the security of your mobile devices.

___ If you plan on using the VLO in conjunction with other computer software, such as a word processing or separate accounting software, have a data backup policy in place.

___ If you will be using the VLO with existing clients or in a litigation practice, draft a letter or email to clients notifying them to register and use the VLO to keep track of their cases.

___ Decide how you plan on handling client engagement letters, either through the VLO case dialogue and clickwrap agreement or by traditional letter uploaded to the client, or a combination of both methods.

___ Decide which billing method or combination of methods you plan to use. Consider providing sample fixed fees, billable hour rates or a range of costs on your VLO website.

___ If you plan on using the VLO in conjunction with other law office software that is not stored on a secure, hosted system, have a data backup policy in place.

___ Create a backup Internet access plan in the event that you only have one method of connecting to the Internet and it goes out.

Appendix IX How May Different Law Practices Use A VLO?

Please note that new features are developed and added to software as a service products on a regular basis so the functionality of a VLO and integration into different forms of law practice will change rapidly as the technology evolves. The following are only some examples of implementation.

If You Have a Litigation Practice

Online Calendar System – Alert existing client of court dates, remind them to dress up for court, remind them of court room etiquette, provide notice of invoices due, dates when you will be unavailable, and schedule office, telephone or online conferences.

Online Communication – Meet with your clients online and in the courthouse and not in your office.

Online HTML Forms – Collect client information by creating forms in the VLO Form Library for the client to fill out securely online. Use this online data to create forms for court filings or to generate other legal documents.

Upload documents to a client for their review.

Download documents from clients – Allow your trusted clients to upload documents to you for review.

Online Payments – Invoice litigation clients and allow them to pay online by credit card or certified check. The convenience of online payment for clients may mean less collection hassle.

Add revenue to the firm's litigation practice by taking simple traffic court or small claims court matters online and provide unbundled legal services to pro se litigants.

Streamline your practice. Create a File and Law Library of legal resources starting with the first online case and linking the library resources to case files for future reference.

Referral Database – Create a resource of referral contacts with notes and keep record of to whom you referred cases.

If You Have an Established Law Practice

Online Calendar System – Alert existing client of deadlines, invoices due, court dates, dates when you will be unavailable, and schedule office, telephone or online conferences.

Online HTML Forms – Collect client information by creating forms in the VLO Form Library for the client to fill out securely online. Use this online data to create forms for court filings or to generate other legal documents.

Upload documents to a client for their review.

Download documents from clients – Allow your trusted clients to upload documents to you for review.

Drafting – Work with the client and other attorneys to draft a legal document by transferring the file through the secure VLO and communicate about the document in the case file.

Add to the firm's existing client base by tapping into the market for online legal services. Train legal assistants to review and respond to or reject new prospective clients in the VLO.

Add revenue to the firm's practice by providing unbundled legal services to pro se litigants.

Online Payments – Invoice clients online and allow them to pay online by credit card or certified check. The convenience of online payment for clients may mean less collection hassle.

Lower office overhead by reducing paper and office waste.

Streamline your practice. Create a File and Law Library of legal resources starting with the first online case and linking the library resources to case files for future reference.

Create marketing reports to show which VLO advertising methods are most effective.

Referral Database – Create a resource of referral contacts with notes and keep record of to whom you referred cases.

If You Have a Solo Practice

Minimal overhead to run a VLO. No law office lease, limited office supplies needed.

Expand client base to the entire state(s) in which the attorney is licensed allowing him or her to compete with larger firms.

Allows the solo practitioner to experiment with different billing methods or combination of methods.

Add revenue to the firm's practice by providing unbundled legal services to pro se litigants.

Online Calendar System – Alert clients of deadlines, invoices due, court dates, dates when you will be unavailable, and schedule office, telephone or online conferences.

Online HTML Forms – Collect client information by creating forms in the VLO Form Library for the client to fill out securely online. Use this online data to create forms for court filings or to generate other legal documents.

Upload documents to a client for their review.

Download Documents – Allow your trusted clients to upload documents to you for review.

Simplify the Drafting Process – Work with the client and other attorneys to draft a legal document by transferring the file through the secure VLO and communicate about the document in the case file.

Online Payments – Invoice clients online and allow them to pay online by credit card or certified check. The convenience of online payment for clients may mean less collection hassle.

Streamline your practice. Create a File and Law Library of legal resources starting with the first online case and linking the library resources to case files for future reference.

Create marketing reports to show which VLO advertising methods are most effective.

Referral Database – Create a resource of referral contacts with notes and keep record of to whom you referred cases.