

Changes in Legal Services and the Practice of Law (Long, but the most important thread you'll ever read)

Hello all,

Are you experiencing a severe drop in certain practice areas? If so, can you attribute that change to the changing delivery system for legal services?

I have perceived a number of changes about how potential clients view legal services over the past twenty years. The biggest impact has been the availability of information (good and bad) on the Internet. Potential clients appear to be taking a do-it-yourself approach because they feel they can get what they need to from the Internet and from consultations with lawyers without the need to pay. I am hearing similar concerns from doctors who are seeking many more patients self-diagnosing via the Internet and TV commercials. These patients visit a doctor to obtain what they could not otherwise obtain, a prescription. Add to this the introduction of do-it-yourself legal services (e.g., forms) and tools available on the Internet.

Moving forward, it is argued that anything that can be defined by algorithm can be removed from the lawyer function. For example, processing discovery and contract review. I see litigation skills as not amenable to replacement by a computer. But mediation, ADR, and other non-litigation options have reduced the number of cases going to a trial judgment. Without trials we lack appeals, which explain, expand and contract the bounds of statutory law. Thoughts?

I think Carolyn has stated it frequently... lawyers need to adapt.

Sure a computer can sort discovery, but what a computer can't do is determine how valuable piece A is over piece B. The computer can't tell you what evidence you need to ask for, versus what you have, to prove your case.

And those online forms do not, for example, tell you what the pitfalls are of appointing 2 executors to your estate. Or, like here in Ohio, that if you transfer

the title of your house to you and the child you want to leave it to, before you get married, doesn't extinguish dower rights in the property when you die.

Lawyers have to be in the job of informing people that there are things they don't know that they don't know and all the computer generated, DIY won't solve the problem that the person doing that doesn't have a clue is actually a problem.

Erin Schmidt, Ohio

I have gotten many cases because the client went on the Internet and downloaded forms/documents that were not suitable to their cases. They did not have the training to know the difference. When a dispute arose, the agreement had no provision to cover such eventuality. I always tell them that they tried to cut us lawyers out of the deal in the first place and now they have to pay much more than they would have paid otherwise had they gone to an attorney and done in properly in the first place.

Joseph Hughes

That is all true. But we cannot make the population hire our services. The question I pose is what trends are you seeing and how are you adapting? For example:

Are you seeing a drop in certain practice areas because people are going pro se (e.g., family law)?

Are you seeing a drop-in clients moving for trial due to finances, even after the economy has improved?

Are you seeing people opting for some form of ADR resolution based on expense rather than a "peaceful resolution"?

Are you seeing more people accepting a criminal plea (e.g., a change in prosecutor policy)?

William M. Driscoll, Massachusetts

You're asking some very valid questions. It's not part of my practice, but I recently had to suggest to a couple of friends that they may want to pursue their divorces pro se. The cost for a divorce seems to run about

\$40,000 per person around here. Very few people have that kind of money.

Someone asked me, "What's a person to do when they don't have enough money to hire a lawyer?" My response was, either borrow the money, get help from family and friends, or do it yourself.

I'm also aware (it's not part of my practice) of a recent situation in which a lady took a plea to a bogus domestic violence charge because there was an expungement provision, and she didn't have the money to hire a lawyer to fight it.

Mike Phillips, North Carolina

Hopefully people will eventually realize the error of their way. But we cannot make them think differently, particularly if people see us as selling a product (e.g., a carpenter sees all issues resolved with a hammer). But what impact is being made on the practice of law now?

Are lawyers moving their practices away from some of these form practices or are they competing on price?

I receive inquiries based on price all the time. I spent (some huge price) to litigate the case and only expect to pay up to (say \$2,000) to litigate my appeal. The fact that filing fees and transcription eats up a lot of that means nothing. The "appeal" is worth \$X,XXX to that person — even if an appeal filed

under that limitation will be a guaranteed loser. I explain why, but the person truly believes he has stated a fair price — take it or leave it.

If the number of trials decreases substantially such that the number of appeals drops substantially then I will find another practice area. The question I pose is what practice areas are suffering from the impact of a perception that attorneys are fungible and suitable legal knowledge can be obtained from the Internet and picking the minds of several lawyers under the guise of “consultations”?

William M. Driscoll

There have always been a certain number of "do it yourselfers". Prior to the internet there were preprinted forms, wills, deeds, leases, contracts for sale, available at stationary stores or office supply stores. IF properly filled out those were not necessarily bad forms; they weren't customized but were typically drafted by someone with experience and would address most contingencies. The problem then was, people would either fill the stuff out incorrectly or start crossing stuff out and filling stuff in by hand; which resulted in problems in interpretation; or they screwed up the execution.

Nowadays, with the availability of the internet, it's kind of worse; in that you don't know who came up with the dang form; it could be someone very experienced or it could be some looney tune pro se who posts their junk on the net. And of course, people still screw up the filling of the forms.

I get the 'algorithm' argument; and maybe we will reach that point; but GIGO; the difference between a human being and an algorithm is that a human being , face to face, or even over the phone, may be able to detect some confusion or an ambiguous answer; algorithms can't, at least not yet. Occasional, yet recurring scenario I see in estate planning:

Client interview:

Me: you married?

Client, No, I'm not married/I've never been married/ I was married but now I'm widowed/Divorced.

Any of which are usually fine.

Alternative?

Me: you married?

Client, Uh, no, I'm not.

That pause, hesitation, Uhm, or 'look on their face' will have me prod just a TINY bit further.

You sure? You seemed hesitant. Never been married?

Client; Uh, well, yeah, I was married years ago but we split up in 1986, I haven't seen him or her since. I don't consider myself married.

Well, guess what? They're probably married unless spouse has divorced them or has died. Sometimes that's the case; but sometimes it isn't.

Algorithm isn't necessarily going to pick up on that if all it asks is "are you married". I suppose you could draft the questions in a more detailed manner; i.e., "Have you ever been married"? if yes, how did the marriage end? When did it end? But it has to be done right. and that's just one example

As to what you can do about it? A certain percentage of the people are going to DIY no matter what. Can't do much except clean up the mess afterwards, if they're willing to pay you.

Some people can be sold on seeing a lawyer; you sell or market to them; they're willing to pay for human touch and response.

Some people would rather hire a lawyer anyway; good for them.

Now, as you note, there are fewer cases going to trial but I'm not sure how many cases went to trial in the first place. Lincoln supposedly said

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees,

expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.

Certainly, there has been a rise in 'formal' alternatives to litigation; ADR, mediation, arbitration; but I suspect judges encouraged settlement in the past. So, I'm not sure how many fewer cases are making it to trial; it's tough to tell, given that in the past, a certain number of cases may never have even made it to the filing of a lawsuit.

Ronald Jones, Florida

Your examples raise the access to justice problems faced by the masses stuck between indigent and super rich. The average person may not fund a funeral on a moment's notice, but they will somehow come up with the money they feel adequately represents a final resting ceremony.

I have had family law clients in for consultations who had no money for a lawyer. They sought a reduced "indigent" fee. Some of these people owned expensive homes with little mortgage. Others drive expensive, new vehicles to the consultation and sported the latest (expensive) trendy items for themselves and their children (e.g., clothes, jewelry, cellphones). They believe that they simply could not come up with money for a lawyer without impacting their desired lifestyle.

Is dropping the price of services the answer? We can do more "law," but without the funding to keep the doors open we do no law. How are lawyers addressing this issue? Are lawyers adding or changing practice areas, if so how?

William M. Driscoll

I don't have a solution. My response was simply observations I've made in recent weeks. As far as finding the money is concerned, one of the two people

I mentioned is a now-single mother who makes less than \$50,000 per year. She drives a 2003 automobile. Under what theory can she ever afford \$40,000 in legal fees for a divorce? Most of her (and her husband's) assets were exhausted trying to deal with the husband's issues that ultimately caused the divorce.

It's going to be interesting to see where divorce law is in ten years.

Isn't divorce probably the most likely litigation the average person is likely to see? Maybe when single-payer healthcare becomes the law of the land, single-payer legal services will, too.

Mike Phillips

You are asking about specific steps we can take.

First, yes, there is a certain type of case that simply is not worth hiring a lawyer for. The lawyer may think it's worth being hired but the client may not think it is worth hiring one. Example, uncontested divorces with no children. When I started out I was trying family law; I quickly found out that few people were willing to pay me if there were no kids and little property involved. As one guy put it "Why should I pay you \$XXXX to handle this when I can go to the courthouse and buy the packet for \$87?" I didn't have a real good answer except "it would save you time, grief and it's more likely that I would not screw it up". But, fine.

Dropping rates; I've always been on the 'cheap' side for probates and estate planning. I charge somewhat less for estate planning than most attorneys do locally; I definitely charge less than most local attorneys do for probate. Many attorneys will expect to be paid on a percentage basis of the estate (in Florida it's basically 3%). I will regularly bring probates in for half of that or less in some cases. I usually charge by what I do; it's usually not terribly more complicated or involved for me to probate a \$600,000 estate than a \$100,000 estate; I might 'bump' my fee up a bit on a larger estate but I won't demand a percentage under most circumstances.

I had one estate recently, intestate, went to nieces/nephew and a sister of decedent; it was about \$600k; i quoted a modest, but what I considered reasonable fee; they hired me. I did the work and a bit more than I anticipated; nothing very complicated but I had to address a couple of issues and ran a tiny bit over my quote; I emailed PR and said we need to wrap this up, and it will cost \$XXXX; I then said, somewhat defensively, I know I originally estimated \$X but we had other issues, so it will be \$Y but bear in mind, had you gone to a lawyer who charged on a percentage basis the fee would have been \$18,000; (3% of 600K inventory value) She emailed me back and said, fine, no problem you were very good and I realize you did additional work; then she wrote, yes, I know about the percentage fee, I talked to three other lawyers before you and they all quoted me \$18000 on the percentage: I choose you because you billed on per task basis. So, that's how I wound up with that case.

I don't believe in a 'race to the bottom' being the cheapest lawyer out there, but competing on price is a strategy; if you can make money then why not compete on price?

Obviously, some people want the cheapest: I get that; I'll get calls and quote them a fee; bearing in mind the amount at stake; sometimes the amount is so small that I can't do it. I turn down the cheapest ones; on the other hand, if I can bid a bit cheaper and get the business, I'd rather do that than not get a case at all. It's kind of a fine line; and it depends on your experience; what's it take to do this and make money?

Ronald Jones

Thanks for your reply. I can see that the "question" I posed is a bit obtuse. Your answer, if I may, addresses where I was going. Let me give it a try with this.

You started out handling family law cases. You found a limited number of potential clients who could afford to pay a reasonable fee. You decided to move to a more productive practice area (e.g., financially or preference). You changed to a probate practice.

Given the “realities” of today, what practice areas are now less desirable, which are more desirable, and why? Are there similar attributes to each category? Is it based on price? Is it based on the number of people seeking a non-attorney option? Is it based on perceived value to the litigant? For example, the no house no child divorce may still have a retirement plan at stake which the litigant did not think about.

I am trying to envision a “likely” future of the law, perhaps for an article.

William M. Driscoll

Let me throw some questions back at you

How many family law attorneys do full discovery whether or not the case actually needs it?

How many family law attorneys push their clients to make unreasonable stances to garner more fees?

How many family law attorneys wait until the last minute and the bills have piled up to start having frank conversations with their clients about settlement and costs?

Lawyers have a lot to lay on our shoulders for why people look to go pro se. It is because lawyers have nicked and dined people to death, done things solely because they think they should or a CYA that costs the client more (rather than a discussion, disclosure, and consent), because lawyers (not all) do things like charge \$0.45 for each letter they send to pay for postage, and because lots of lawyers do not start talking alternatives and such until the client starts saying they can't pay.

I start from the get go, the initial meeting. I outline what each step of the case is likely to cost. Yes, I break it down to the petition and supporting documents will be this much, attending the first status conference is this much, discovery this much, pre-trial this much, trial prep, this much, trial this much. And as those costs are likely to change, based on new information, I update my client on what those costs will be.

I have frank discussions with my clients on whether or not discovery is needed, and if it is needed what level of discovery it will be. And if it is extensive, how my client can lower costs (by say obtaining certain records themselves then have me do it through discovery). Which means I have clients that choose to provide me with 3 copies of every exhibit instead of paying me to photocopy and prep them all before trial. And I have clients that pay me to travel to other courts to obtain certified records instead of them doing it. But the option is the client's.

I don't see much difference between settlement and trial because I have never seen that really be driven by the economy. rather it has almost always been driven by emotion.

And ADR is a hard one because many places have required mediation now a days. Family law is full of that and plea deals, while cost is a factor, is usually driven by risk vs reward.

Of course, people will cite expenses for why they have a lawyer withdraw and go forward pro se etc. or why they start out pro se. But again, lawyers tend to sell ourselves as expensive and exclusive with only 1 way to move forward.

Erin M. Schmidt

Here is another example to add to Ronald's example.

Do you currently have a relationship with person x?

Guess what a frequent answer to this in specific domestic violence situation is - nope no relationship at all.

Well, except for the kid they have to together and share custody/visitation of. But you actually have to read a different part of the statutes to know that counts as a relationship.

Erin M. Schmidt

Those are a lot of answers that have nothing to do with money.

For example, family law can just not be desirable, because the people getting divorced can just be awful

Or for example, Social Security has continued to make new rules and changes that make it more cumbersome to represent folks.

But the future of law or your practice is what you want to make of it. If you want to make a practice of taking care of all the DIY/Pro Se folks loose ends after the divorce, you can do that (and I have written blog posts and done some info graphs on that specific topic). If you want to work only with specific complicated child support issues, you can do that.

If you want to work on Fridays and Saturdays holding a create your will day in which you charge \$100 per person to create a simple will, you can do that. If you want to hold a create your will day in which you charge \$100 per person to create a simple will, you can do that. If you want to hold a create your will day in which you charge \$100 per person to create a simple will, you can do that.

It is solely a matter of how creative you want to get and what you want to do.

Erin M. Schmidt

First, low dollar value cases are unlikely to be worth pursuing, but they almost never have unless you have some sort of "hook" and automation. I.E. it is difficult to make money off of many consumer law cases, though some people manage to do so (Wendell Finner and Amy Clark come to mind). I never managed to figure that out beyond making some money off of FDICPA violations (which kept my office open a few times when I first opened): You need some sort of fee shifting statutes and actual collectability. Though, I suspect no one ever got really rich off of those types of cases (which is a shame; Wendell is absolute gentleman and Amy is an absolute doll but there it is).

Second, High dollar cases will generate revenue. Say what you want about uncontested divorces with no kids and little property; if there's money involved, they should hire lawyers. I was very tangentially involved recently in a divorce case out of Palm Beach; the lawyer representing H I didn't know, but the lawyer representing W was with a certain AmLaw 100 firm I've litigated against in the past, and I've seen their bills; don't know what they charged in

this but I'm sure it was mind boggling; it involved the "horse set" as it were and my client is a member of that set. Because I filed a notice of appearance, I wound up on the service list; if you file a notice of appearance for Eservice in a case in Florida, good luck, you'll never get off of it so I got copies of everything. Interestingly enough, to address your point, it was a very contentious divorce initially and wound up being settled at mediation. So it never made it to trial.

The other cases; the ones 'in the middle', I really, really think it comes down to Sales. To pitching to the potential client and getting them to close the deal. I've discussed this before but not recently, mainly because some people react badly. This is not a personal attack, this is not an ethical issue but to be blunt: IF you are a lawyer in private practice you need to sell yourself; you need to learn how to close the deal. Lots of lawyers, and I'm not naming anyone in particular, but lots of them seem to think that it should be self-apparent to a potential client why they need to hire a lawyer; it isn't, at least not in most cases. You need to show the value of your services to the litigant; yes; it comes down to perceived value. Why should they hire a lawyer and why should they hire you?

I had a potential case involving my own real property; I called a local attorney and asked him who the best guy was in the field in our locality; he gave me a name and number and I called the attorney and briefly explained what the situation was; he said \$5,000 retainer. Which I didn't necessarily think was unreasonable; but then I asked him, "What does that \$5,000 get me?" And he acted like I slapped him in the face. He really took umbrage at my asking what services I was getting; he wasn't used to explaining that. I wasn't trying to be insulting or hostile but if I'm ponying up money, I want to know what I'm getting. A better tack for him would have been "I need \$X amount up front and for that I'll do Y". He wasn't used to selling himself.

You need to show the client what you can do for them; and get them to say yes. Some people hate this analogy; but when you're in 'selling' mode you are a car salesman; you need to get the client to sign and give you money. How you do that depends on you, and the client and the case; it may depend on the sophistication of the client as well. But if it becomes apparent to you that either the case is not worth pursuing, maybe it's low dollar, maybe it's a loser;

or that client is unwilling to pay what you want, you end the interview. Politely but firmly, don't waste any more time on the interview. Being able to evaluate whether you can make money off the case is a skill; it can be learned but it is not necessarily easy at first; believe me, I wasted lots of time trying to sell to people who weren't buying when I started out.

As far as the sales pitch itself goes, you make a good point, no kid divorce, but there may be a pension plan at stake. If you can get them in the office, maybe you can get one of them to hire you; but getting them in the office is the problem. Likewise, in my probate practice, IF I can get them in the office and IF they need a probate, I have an absurdly high closing rate; probably 98, 99%, very few times do people walk away from me where they need a probate. Fortunately, for me, in Florida, in most cases, judges expect estates to have attorneys; outside of a few limited cases we have no pro se, self-represented estates.

But you still got to get them in the office. Which is why I do my website and blog: I talk about things that come up and people might google

www.flawyer.us

I can't guarantee getting everyone in here but I KNOW that it generates inquiries, based on specific posts.

I do think a GOOD website/Blog is an absolute necessity, at least for 'consumer' type law. And it also generates inquiries from lawyers as well.

Ronald Jones

You make excellent points, particularly in the need for an attorney to be able to close the deal. On that topic, to what degree do you feel the move toward virtual law offices will negatively impact closing the deal? A corollary situation regards national practice, where the client will not be physically present at a consultation. Why do you feel a person would hire someone they cannot shake hands with?

William M. Driscoll

The ebb and flow of different practice areas is one of the reasons I have not specialized my practice as narrowly. Some weeks everybody is calling about estates and probate, other weeks it is all about real estate, others are business entities, others are civil litigation matters. If the phone is going to ring a lot, I try to take on what I can manage.

Automation and algorithms and AI don't really impact the clientele calling here. Competing on price alone is a race to the bottom, so I won't do that, even if my fees for certain things are much lower than the typical. Once I set a price, I stick with it. A consumer or business can accept or decline. I try to keep the boat loaded here but not sink it. If enough accept to keep me busy, I must not be too far off in pricing.

Darrell G. Stewart, Texas

If something is important to a client, they can generally find the money, in the instance you describe. For those consumers, it is a matter of choice and value whether they hire a lawyer, not whether they can do so. Any consumer can spend more than they earn. Forgoing the Starbucks run several times a day can accumulate some cash, and so can other lifestyle changes. If a client wants to use a lawyer and values that service, funds can be obtained. In the circumstance you describe, the consumer does not find value in the service or they would fund it. I would rather those potential clients go elsewhere, as they frequently are problematic in other areas.

Darrell G. Stewart

Erin makes an excellent point.

I always try to think of the "end game" and an 'exit strategy'. What do you want to accomplish? Is it obtainable? If it's not obtainable I either disabuse client of that or get out of the case. No, in a 50/50 partition suit, the judge is NOT going to 'give you the whole house". You will get your disproportionate share of expenses and costs set off by your use but it's going to be 50/50 split subject to some adjustments. Which means, IF the other side makes a reasonable offer you really need to consider it; or be ready to take months and years and spend thousands, maybe tens of thousands of dollars in my fees, costs, hiring three commissioners, maybe hiring a magistrate; if the other side makes an offer at least look at it in light of what you are fighting about.

Take it to trial? Fine. You can have the facts and the law on your side but still lose. and then have the judge ask you to write the opinion (I had a case where judge ruled against me, OP was pro per, judge initially asked me to write opinion and when he saw the look on my face he said "uh, never mind, I'll do it") you can take an appeal but even if you win, odds are it's going back down to the same judge that ruled against you if it's remanded for further proceedings. And it costs money and takes time; man does it take time, to handle an appeal. If there's a reasonable settlement, consider it; don't just weigh it against what you think you should get but what you are likely to get minus costs, expenses, fees, and risk that you might get less; plus, how long it will take you to get there. You might die; I might die and you'll need a new lawyer; OP might die and we wind up litigating against an estate; OP might get in financial trouble and wind up bankrupt or in jail or whatever. Look at the end game.

What the H are you fighting about? Had a probate, I got elective share reduced by a couple of hundred thousand dollars, took the decedent's waterfront homestead away from his widow (initially it had passed as TBE to her so she owned it in FSA; by the time I was done she was a 87 YO widow with a life estate with remainder to my client). What's my client obsessing over? Dad's pocket watch and some painting. You need a come to Jesus meeting with the client in that case. I wasn't going to spend my time fighting over a \$100 pocket watch. But there are lawyers who would and bill for it.

Ronald Jones

Again, excellent points made. Certain lawyer practices should drive their popularity and business down, but surprisingly they maintain those practices and still get clients and keep the doors open. Some of those people actually flourish. Go figure.

I get your point that the economy is much less of a factor once counsel is hired. But do you feel that the post-2008 downturn has changed the way people view hiring a lawyer? Are there areas of practice that will suffer as a result? Are there areas that will remain or increase in pursuing counsel?

You mention SSDI work. My question has always been why a person would not hire an attorney at the outset, at at least after the first rejection. I found that it is not necessarily the person's condition but the presentment of that condition that makes the difference. An experienced SSDI attorney make the difference. Yet people still try to avoid paying of the twenty-five percent (of a low maximum) to a lawyer while they pursue benefits unsuccessfully for an extended period of time. Do you feel it is a knowledge or pennies issue on the side of the claimant?

William M. Driscoll

Let me come at the issue from a different direction. A person who is neither poor nor rich has a legal problem. What factors would likely be outcome determinative as to hiring some attorney to handle the matter for them?

Certainly there is a risk/reward component. Hiring a lawyer to pursue a \$50 debt collection does not make sense. But how about criminal defense or contempt where the risk is, say, thirty days in jail? Why is it that a restraining order defendant represents themselves and then seeks appellate counsel after the order is issued against them?

How has the risk/reward calculation changed, which necessarily affects the desire for legal counsel? Perhaps the best example is in the family court where

the number of self-represented litigants have increased dramatically over the past twenty years. Do you feel the decision to hire counsel would change if the other party is represented?

Some feedback I have received from trial counsel is that litigants want to “save money.” For example, client’s deciding not to fund discovery because they feel it is a needless expense (e.g., deposition or additional discovery).

Massachusetts allows LAR (Limited Assistance Representation) services in certain courts. Do you feel it is good policy for non-lawyers to litigate cases in a manner where attorney only work on the portion of a case that the litigant feels warrants a professional’s work? The argument for is that some lawyer involvement is better than none.

William M. Driscoll

Ohio rules on limited scope require the attorney to make the determination if 1) The case is appropriate for limited scope rep and 2) if the claimant is capable of handling the parts they want to handle and 3) that the limited scope will not hurt the client

Erin M. Schmidt

There will always be changes in any industry. You just have to adapt to the changes. Don't be a Toys-R-Us.

Nick A. Ortiz, Florida

I have not found that physical presence (being in the same room) is necessary to get a client or close a deal. I have represented numerous out of state companies who were referred to me, and hired me after a phone discussion. I also routinely negotiate and close real estate deals without seeing the other

side. So generally, I do not think that a virtual office would negatively impact closing a deal.

I do, however, think it's important to get on the phone occasionally with your client (and the other side in a deal) and not just rely on email. There is a real difference in understanding how a person thinks when you talk to them versus reading emails.

With respect to the issue of whether a client can DIY - I emphasize to clients that part of my "job" is to take the burden off of them in dealing with the minutiae and the procedures, and to direct them to the important issues that require their attention. I try to make their life easier. That's really not something that a form or website can do.

Caroline A. Edwards, Pennsylvania

What Caroline said.

I don't meet with a lot of my clients in person. I work from home, most of them know that, and they don't have an issue with it. I have lost 1 client in almost 15 years who didn't like that. Whatever. I do call them regularly, and I email them regularly. And if I send an email and I don't think they understood it, I pick up the phone and call them.

I also tell clients they aren't paying me for anything that they couldn't do on their own. Answering a debt collection lawsuit? The Judicial Council of CA puts out a form. Settling a PI case? I settled thousands when I was an adjuster without an attorney involved. People can do it. People pay me because then I worry for them - they don't have to worry. A form will never replace my worrying.

Jonathan Stein, California

Has anyone dropped certain legal services because they are no longer profitable? I do not mean, for example, bankruptcy because the economy is

turning around. I mean something along the line of less call for the service because, for example, too many people are moving pro se or technology is rendering the service no longer viable?

William M. Driscoll

I think some of it depends on your practice area and types of clients. There's lots of probate clients I never meet F2F; on the other hand, the estate planning types, they seem to generally want to meet me.

Ronald Jones

Very true - plus, I think it makes a difference if someone is used to working with lawyers.

Caroline A. Edwards

To echo what both Jonathan and Carolyn said: I haven't had a "real" office in almost 10 years. I have met a client in my home office exactly once in that time. For the kind of work I do (mostly software licensing and trademark prosecution) it's seldom necessary. Frankly, a client who insists on meeting me in person, at my office or otherwise, is a red flag in my line of work--it almost always signals a client who needs a lot of handholding and who will likely look for ways to argue over the bills.

Kevin Grierson, Virginia

This is a great discussion and frankly, I wish that there were more opportunities to discuss the changes in law practice with lawyers who are

actually practicing law as opposed to "recovering" lawyers who are promoting products or programs on innovating a law practice.

I agree with Bill that much has changed since 2008. Not only has the recession made consumers more frugal with expenditures, but they also have other costs - college tuition for those with kids, and retirement savings for older clients - since few companies offer pensions anymore. 2008 also led to the layoff of 14,000 associates, followed by a glut of lawyers entering the job market meaning that more folks are trying their hand at solo practice at a time when clients had finally become more comfortable using Legal Zoom or even online court forms to DIY.

Because of this, whereas clients once hired lawyers for wills or divorces or incorporations without asking questions, now, lawyers have to justify their value. And if we're being honest, there are some cases where that's not always possible. There are also a number of tools that could probably replicate some of the advice that a lawyer would give. Here's an example.

On one of my FB groups, a lawyer recently posted about an estate case that she reluctantly took because it was low value and would require a lot of work. After interviewing the beneficiary, the lawyer realized that the death had resulted from an on the job injury so she sued and obtained \$40k in benefits. She was also able to collect liability insurance at policy limits at the restaurant where the decedent had tripped and fallen (which led to her death) . The lawyer was then able to use these benefits to set up a trust for the decedent's sister who had special needs. Initially, I thought wow - that is great lawyering - something that a machine could not do. But then I got to thinking, why couldn't a machine just go through a checklist with people to identify potential claims?

I think there will always be a need for some lawyers - but not as many and for more specialized areas. The trick is to find what will work but also to understand that these changes are coming.

Carolyn Elefant. District of Columbia

Bankruptcy does not go away. The economy is not improving at all levels and is useful regardless of the economy.

Mitchell P. Goldstein, Virginia

That is good to know.

Let me offer a scenario for consideration. Suppose the economy tanks and a lawyer adds a bankruptcy practice to their offerings. Is there a point where that lawyer may decide to stop offering bankruptcy services? If so, what are the factors that would lead to that decision assuming the lawyer enjoys the practice of bankruptcy?

For example, in about 2005 the bankruptcy code changed. I understand that a number of lawyers dropped their bankruptcy offerings. I also understand that there was a huge uptick in bankruptcy filing thereafter, followed by a drought.

One could place bankruptcy on the back burner or drop the practice all together. I am trying to understand the factors that cause one to drop the bankruptcy altogether. In a macro-sense, my question seeks replies from for all practice areas.

William M. Driscoll

I left private practice for many reasons. So, I'll start there. Bankruptcy is not something to dabble in. I was very good at it (self-promotion here).

The changes in the law made it apparent that it was not for dabblers. Some people left because of the changes in the law. No matter how good or bad the economy is, people will always need to file. The competition may heat up. In that case, you just have to have a niche within it. Adding consumer law helps as well and other areas that may overlap or that your client pool may need.

Mitchell P. Goldstein

If a practice area is a good fit, my reasons for dropping it altogether would be: it is a very small percentage of my practice and the effort needed to keep current on the law is proportionately not worth it; I have other areas of practice that I enjoy more, and want to put my focus on developing those areas. Generally, I don't think dabbling in a practice area is a good idea, so if it got to the point where I was not putting in the effort to keep up with the law, I would drop the practice area.

Caroline A. Edwards

Couple of examples:

Bankruptcy; I did chapter 7's from when I opened; it wasn't a huge part of my practice but it wasn't all that terribly demanding, at least once they moved the creditors hearings from Jax (6 hour round trip) to Ocala (20 minutes each way). And it generated revenue. When BRA passed, changing the law, placing a bit more onus on the attorney and having to update my software, I made decision to drop it; mainly because it was a relatively small part of my practice.

Second example: in 2008 when we had the downturn in the RE market, I knew several attorneys who had been making a very good living doing RE Closings; They were doing more than a dozen, maybe more than a score of them a week; It takes some automation, it takes some staff but if you've got enough of them, you can make money. And then, Bam, the closings dried up. What do you do at that point? Some of them went into foreclosure work on plaintiff side, but that can be tough when competing with your 'big' foreclosure mills (you can also lose your license if you run one of those foreclosure mills): you can move into defendant's side work on foreclosures but it can be tough making a living on that, if they don't have the money to pay mortgage they may not be able to pay you (you can get creative on this, decide to have them pay \$X per month each and every month; but you can also lose your license on this).

Or, you find another area of work entirely. I know lots of lawyers who simply wound up in new areas of law.

Ronald Jones

Two practices I left:

My first law firm used to do a LOT of residential RE closings. Around the time I left the firm, Virginia decided to let title companies do closings, and while it's now not unheard of for attorneys to do the closings it's not something to build a practice on any more, as the volume isn't there and the margins are much thinner than they used to be.

I got out of patent work a few years ago, in part because it is a very demanding practice in terms of keeping up with the rules (which the Patent Office changes around every 6 months or so) and it wasn't a big enough part of my practice to justify the amount of time I was spending to stay current.

Kevin Grierson

It seems like a lot of nonlawyers are practicing law-UPL in various areas of law more than ever. In immigration law, these clerks called Notarios are really getting many of the Latino population in trouble. In addition, I understand that there are a lot of agencies (comprised of nonlawyers) that also engage in other areas such as divorce, business areas, personal injury and other areas as well. I know that state laws vary on these UPL people. I am lacking data, but I am sure that it is having a tremendous negative effect on law practice?

John Kang, Nevada

When Virginia determined by statute that RE closings were not UPL, it probably put any number of attorneys out of business (or at least out of the RE closing business). I don't have stats but I'd be very surprised if there were

many attorneys in Virginia with RE closings as a substantial part of their practice any more, and if they are, I'm sure the margins on the work are razor thin. I'm pretty sure the title company charged me less than \$200 to close my last refi (which was over 10 years ago).

Kevin Grierson

Very interesting thread. It's difficult for me to have a bird's eye perspective on this as I've pretty much had to take the world of law as I've found it (in flux, with way too many lawyers...though the old timers assure me this belief is basically a cliché among new lawyers). As a newish attorney I've found I pretty much have had to go where the business is. I wanted to do primarily an estate planning and probate practice, and I'm doing alright with that, but I've also had to pick up the occasional bankruptcy case and I also am pretty heavy into contract litigation (neither of which I necessarily planned on doing in law school, but the right opportunities presented themselves, and you go to war with the army you have rather than the one you want).

It's pretty clear to me that lots of areas are getting phased out by LegalZoomification. Wills/trusts are pretty hard hit. Like Mr. Jones says, a lot of people will just DIY. Of course, then those DIY'ers usually end up paying a ton more in probate, so it may be a wash (though I'd greatly prefer to just draft the estate plan from the start than untangle a mess post-death; even if I can charge more for the untangling, it's way more work for me and stress for the client).

Like others have already said, litigation and more in-depth legal analysis work (appeals, evaluation of complex discovery, etc.) will likely never be able to be done by software, at least until the point we have self-aware robots becoming lawyers or something else sci-fi'ish. I don't think we will see *Blade Runner: Law Edition* in our lifetimes. "I've...filed things...you people wouldn't believe. Emergency appeals at 11:59 pm the day before the deadline...I watched pro se Complaints get set on fire in the judge's chambers. All those...documents...will be lost...like interrogatories in the mail. Time to file a joint motion for dismissal."

<<https://www.youtube.com/watch?v=NoAzpa1x7jU>>

I think a lot of people incorrectly view software as a panacea. Modern software is still only as good as its inputs. Those inputs can be very, very good, but a computer program still can't really "think" yet beyond the bounds of its programming. It's easy enough to write a program to guide somebody through drafting a Power of Attorney (set rules, relatively few variables). It's almost impossible to write a program to guide someone through a trial or even a simple hearing (fluid rules and innumerable, ever-shifting variables).

Finally, I think another major shift is in the whole face to face aspect. I believe this is a generational thing. I don't know if the younger people all just have terrible social anxiety or what, but our lives seem to revolve around as little human contact as possible. Most restaurants now let you order food ahead and then go in and pick it up from a shelf without ever having to interact with a person. Stores have self-checkout kiosks.

Almost all of our commerce is now done online, and a box magically appears on our doorsteps. I've definitely found the younger crowd (which I am counting as early 30's and lower) prefers e-mail or texting to phone calls or face-to-face communication. Come to think of it I kind of hate phone calls myself (I still prefer face to face interaction, at least for initial consultations); it's too easy to miss body language and facial cues over the phone.

Here's an anecdote about how the practice of law has changed: I just had my first kid last week. I took that week off and didn't schedule any hearings for the rest of the month. As of tonight, I am pretty much caught back up and running at 100%. I was able to do everything from home while my kid slept. I can do all my documents on my laptop, I can e-file them online.

Everything I need is in Dropbox and I can make all my calls through Google Voice right on the computer. The only times I have to physically be somewhere is when I have to go to court or meet a client face to face at my office. Apparently, Florida is also testing out doing video hearings remotely, so I predict within the next few years I won't even have to physically drive to the courthouse anymore. I could be totally wrong on this, but I really, really doubt a new lawyer who just had their first kid in the 1980's barely had their workflow interrupted and was back up to speed a week later. It's a brave new world.

Bryce James Davis, Florida

Congratulations, Bryce! We were all wondering last week at the lunch in Orlando... :-)

Andrew C. McDannold, Florida

For landlord-tenant law, tenants have always believed a form and good faith negotiations are all they need, until it isn't. 9 times out of 10, it's too late by time they call me.

That hasn't changed even though 85% of landlords have attorneys. They call me for out of court matters because the landlord or the tenant ignore their initial letters.

For your second questions, many clients settle, especially the lower wage earner in a marriage. Many people cannot finance a divorce from the beginning to the end.

Paula J. McGill

As far as shaking hands and closing the deal, in the beginning of my landlord-tenant practice, most of the small landlords were in California, Florida, New York, and Texas. They moved from Georgia and rented their houses.

I never saw those clients unless a trial was needed. The same situation occurred 13 years ago when I handled DirecTV litigation. Half the defendants DTV sued in Georgia were out of state. Most of those, I never met in person.

Paula J. McGill

I was lucky. I went to law school before it got so expensive and I retired before the combination of outsourcing, non-lawyer options, AI options, and the opening of the law to all through the Internet. Now, a career in the law would not be something I would recommend to my grandchildren if they were old enough to take that course. (Actually, my grandchildren haven't entered grade school, let alone college.)

I am proud to have been a lawyer, and although I retired many years ago I still value my ABA and Texas Bar membership. Still, I have zero interest in practicing law again.

The biggest thing that has happened since I was a practicing lawyer is that lawyers lost their role as the priesthood being the emissary between the general public and the law.

Similarly, when I began computing, I would hand my cards of program instructions to an emissary that would put those cards into the huge computer card reader, and I would get the computer printout later. When I was in grad school, I could put the cards into the computer card reader myself, but there still was a delay. Now, I have a Mac Pro and a MacBook Pro that both have more power than I could have imagined possible when I was in college or grad school.

With the full distribution of case law to the Internet and the increased savvy general public, the role of high priesthood has gone. Lawyers still serve a vital role in our society but we have lost our role as the sole keeper of legal knowledge.

Frankly, the changes have benefited society as a whole, but they have not benefited us.

Ernest Schaal, Japan