

**INNOVATIONS IN
THE DELIVERY OF
LEGAL SERVICES:
Alternative and
Emerging Models
for the Practicing
Lawyer**

*By the American Bar Association
Standing Committee on the Delivery
of Legal Services*



CONTENTS

Foreword

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Innovations in Established Mechanisms

Lawyer Referral and Information Services	4
Legal Service Plans	4

Recent Innovations

Collaborative Lawyering	5
Distance Lawyering	6
Holistic Lawyering	7
Micro-niche Practices	8
Networked Practices	9
Online Case Matching	10
Outreach Models	11
Preventive Law	12
Subsidiary Marketing	13
Unbundled Legal Services	14

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This booklet makes references to specific programs, services and practices in order to illustrate various methods of delivering legal services. However, neither the American Bar Association, nor the ABA Standing Committee on the Delivery of Legal Services make or imply any endorsement of these models.

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FOREWORD

In 1983, the American Bar Association's Special Committee on the Delivery of Legal Services published a booklet entitled *Model Lawyers Guide to Legal Services*. The purpose of the booklet was to acquaint lawyers with "experimental legal service delivery mechanisms."

Many of the mechanisms addressed by the Committee nearly 20 years ago have become institutionalized and serve as mainstays in the delivery of personal civil legal services today. Alternative dispute resolution has gone far beyond the neighborhood conflict resolution centers discussed then. Lawyer referral and information services have prospered within many bar associations, with the help and assistance of the ABA Standing Committee on Lawyer Referral and Information Service. Likewise, group and prepaid legal services have advanced through the resources of the ABA Standing Committee on Group and Prepaid Legal Services and the American Prepaid Legal Services Institute. Clinical legal education was described then as a recent phenomenon and small claims courts were viewed as the wave of the future. Obviously they have met our expectations as these mechanisms serve to direct business to lawyers and better meet the legal needs of the public.

Other mechanisms did not fulfill the Committee's prophecies. Judicare, law collectives and for-profit legal clinics did not prosper and have, with a few exceptions, disappeared. But today, in their place, we find many newer delivery models worth advancing and exploring. In another 20 years some of these methods will certainly be more commonplace. Others will no doubt join prior experiments in obscurity.

Before examining newer innovations in the delivery of legal services, this updated booklet looks

at more recent developments in some of the mechanisms that were advanced 20 years ago. We then look at new—and sometimes not so new, but somehow different—ways that lawyers are providing their services. Many of these innovations are being advanced through technology. Some could not exist without the Internet. Others use technology merely to make them more efficient and to better advance their ideas. We discuss ten innovative practice models here. With no sense of priority, they are presented in alphabetical order.

Today, the hope of the ABA Standing Committee on the Delivery of Legal Services, like its predecessor from the early 1980s, is that this information will encourage lawyers to further explore ways to better provide their services, better serve clients and better resolve disputes according to the rule of law.

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INNOVATIONS IN ESTABLISHED MECHANISMS

Lawyer Referral and Information Services

Lawyer referral and information services are maintained by state and local bar associations in order to refer callers to a lawyer in their community who is capable of handling their legal needs. LRIS panels began over 50 years ago. Today, there are over 300 services sponsored by bar associations. A directory of LRIS programs is available at www.abanet.org/legalservices/Iris/directory.html.

In addition to a general panel of lawyers, LRIS programs often maintain specialty panels to match potential clients with lawyers who have substantial experience in various areas of the law. More recently, some programs have expanded these panels to include reduced fee panels, to match lawyers with potential clients who do not qualify for legal aid yet cannot afford a lawyer, and unbundled panels, providing legal services to clients who want only limited assistance from a lawyer.

LRIS programs have also advanced with the use of technology. Many programs have created web sites so that potential clients can input their information and access referrals online. In some jurisdictions, people can obtain a referral from their local LRIS through www.ilawyer.com.

More information about LRIS programs is available from the ABA Standing Committee on Lawyer Referral and Information Service, at www.abanet.org/legalservices/Iris/home.html.

Legal Service Plans

Legal service plans can involve simple arrangements for free or discount legal services to members of a group or more elaborate prepaid programs similar to health insurance coverage, where participants pay a fixed monthly or annual fee in order to be able to obtain certain legal services. Legal service plans are often sponsored by employers or unions and are available to employees as a benefits option, along with health, dental and life insurance.

Although the benefits under legal service plans vary from one provider to another, basic benefits generally include telephone or office consultations, review of legal documents, will preparation and actions to resolve minor disputes. Some plans offer further benefits, such as representation in family law issues, bankruptcy and real estate transactions.

The number of persons eligible to receive benefits and legal service plans of all types has grown significantly in the past few decades. For example, in 1983, it was estimated that about five million people were enrolled in prepaid legal service programs in the U.S. By 1995, that number had grown to 18 million. Lawyers who are interested in learning more about prepaid plans should contact the American Prepaid Legal Services Institute, at www.aplsi.org.

Distance Lawyering

In a traditional law practice, the interactions between the lawyer and client take place over a desk or conference room table. With the advent and widespread availability of the Internet, however, the opportunities to interact have expanded, sometimes resulting in the delivery of legal services to clients the lawyer never even meets in-person. The Internet allows practitioners to overcome geographic constraints and provide their services to people who either would not be able to reach them or could only do so inconveniently.

Distance lawyering tends to center around transactional matters, but it may include online dispute resolution. Some of the first examples of distance lawyering involved immigration services, where clients and potential clients did not have ready access to lawyers. For example, the law firm Siskind, Susser, Hass & Devine has maintained its web site at **www.visalaw.com** since 1994. Among other things, the firm offers telephone consultations, which are scheduled by email, and information through a chat room. The law firm Velie & Velie provides services through its web site, **www.onlinevisas.com**. Information is provided to potential clients. Visa applications are then available, with online client intake forms and provisions for payment. The site also includes a case

status component, where a client can enter a user name and password to check up-to-date information about his or her individual case.

Sometimes distance lawyering is used in conjunction with the more traditional features of practicing law. For example, the Burlington, Iowa law firm Beckman & Hirsch offers free simple wills on their web site, at **www.iowalaw.com**. Using document assembly technology, site visitors answer a series of questions that then results in the creation of their wills. However, to assure that the wills properly reflect the client's intent, the individuals must come to the firm's office to execute them.

In other instances, distance lawyering allows the firm to operate the legal process completely online. The Bermuda law firm Appleby, Spurling & Kempe has created a web site, **www.justaskinc.bm**, where clients can incorporate in Bermuda solely through Internet interactions.

The convenience of distance lawyering can extend to dispute resolution, where online forums serve as alternatives to the land-based courts. Examples of these include **www.cybersettle.com** and **www.clicknsettle.com**. Other examples of online forums can be found at the Consumer's Guide to Legal Help on the Internet, at **www.findlegalhelp.org**.

Holistic Lawyering

Holistic lawyering is analogous to holistic medicine. Just as a holistic medical provider treats all aspects of a patient suffering from a particular medical illness, a holistic lawyer addresses the whole person and not just a client's particular legal issue.

According to the founder of the International Alliance of Holistic Lawyers, this process challenges the client to determine his or her responsibilities in the legal matter. The lawyer asks hard questions to determine how the conflict arose and what deeper meaning it represents. For example, instead of trying to get the DUI defendant "off the hook," the holistic lawyer will confront the client about the possibility of substance abuse and encourage the client to take steps necessary to address the symptom, learn from the

experience and take measures for self-improvement. In this respect, it is a client-centered approach, rather than a system-centered approach. It is also a process that focuses on the long-term benefit to the client, rather than the immediate accomplishment of a short term legal "cure."

Holistic lawyers are associated through the International Alliance of Holistic Lawyers, which began in 1991 and has approximately 640 members. The Alliance maintains a membership directory, sponsors an annual conference and provides a holistic lawyer referral service.

For more information about holistic lawyering, including several articles, see www.iah.org.

Micro-niche Practices

In the 1970s, many lawyers became more specialized in the services they offered. Some states and private accrediting entities began to offer credentials that certified lawyers as specialists if they met a set criteria including experience, training, peer review and sometimes, testing. The ABA developed a list of areas for specialization, including fields such as civil litigation, family law, bankruptcy, immigration and tax law. Although only a small percentage of lawyers are certified as specialist, the idea of narrowly focusing a practice in a limited area and developing an uncommon expertise has grown. Some lawyers and firms have now gone beyond specialization and have developed micro-niche practices.

Lawyers with micro-niche practices have several advantages. When lawyers specialize, they develop expertise in their areas and are able to provide those focused services more expeditiously and cost-effectively than lawyers who are less familiar with the subject matter. Lawyers with niche practices have flattened the learning curve. Also, these lawyers stand out as the go-to resource in their niches. Other lawyers often find it beneficial to make referrals rather than compete with the niche experts. Changes in the ethics rules permitting the division of legal fees

between lawyers have also stimulated these referrals.

Potential clients see that micro-niche lawyers do not have significant competition. Therefore, client development for micro-niche practices can be less burdensome. Of course, a niche practice has to be broad enough to sustain the practice. The use of the Internet can help expand the geographic limitations and make a niche practice more viable.

Some micro-niche practices are subsets of a larger field of law. For example, lemon law, such as that provided at www.lemonlaw.com, is a narrow aspect of consumer law. In other practices, the niche may be defined by the client's demographics. For example, a Chicago law firm includes a practice area of gay, lesbian, bisexual and transgender services, at www.lplegal.com/Practice_Group_1011899048886_1011886873815.html. More commonly, niches are merely specialties that center on a subject matter from the consumer's point-of-view, rather than from the law firm perspective. For example, mobile home law, www.mobilehomelaw.com, bicycle law, www.bicyclelaw.com, and bug law, www.buglaw.com, all provide niches for those in need of legal services involving these specific subject matters.

Networked Practices

Large law firms that provide corporate and institutional legal services have participated in legal networks, such as Lex Mundi and Terralex, for decades. Networks provide their members with continuing legal education, a resource to exchange information and a mechanism for mutual referrals between firms that practice in different jurisdictions. For a list of networks, see <http://marketing.lp.findlaw.com/networks.html>. With rare exceptions, lawyers providing personal legal services in small firm or solo settings do not have access to comparable networks. However, the Baltimore-based Civil Justice, Inc. has emerged as a model to network lawyers working with personal and community legal issues.

This project originated at the University of Maryland, as part of the Law School Consortium. The Civil Justice Network, www.civiljusticenetwork.org, now serves as a consortium of solo and small firm lawyers who want to advance public interest through personal civil representation of under-served members of their community.

The network charges a small membership fee and provides a variety of resources designed to reduce the

lawyer's costs of delivering personal legal services, reductions that can be passed on to clients and create more affordable services to a wider pool of potential clients. These resources include a mentoring program so less experienced members can consult with lawyers who have handled similar cases. The network also offers practice management assistance, reduced prices on support services such as online research products, law firm marketing services and a free client referral service.

Online networking facilitates the client referral service, as well as a member's private listserv. The listserv is designed to enable the members to support and benefit from the experience and work of each other. For example, the network enables lawyers to represent clients who have been victims of predatory lending practices. Some of the network lawyers may not be experienced in this area, but have the resources of the network to enable them to provide the representation.

Networked practices serve as another example of the experimentation in the delivery of legal services. It is an experiment facilitated by technology.

Online Case Matching

Instead of waiting for clients to find a lawyer, through advertisements, referral services or other marketing tools, what if the lawyer could go to a web site with potential clients who have cases and are seeking a lawyer to offer his or her services. That's the idea behind online case matching. People with a legal problem go to the web site, give a summary of the problem and wait for lawyers to contact them with arrangements for their representation. If the client likes what a particular lawyer has to say, they make a match. It's similar to online offers for products and services such as hotel accommodations and airplane tickets.

The online case matching model has been used for corporate legal services, personal legal services and even pro bono legal services. At eLawForum, www.elawforum.com, corporations can craft and then post RFP's seeking legal representation for their business needs online. Participating law firms then respond. If there are any questions, the corporation and law firm can communicate through a message board. Upon receipt of the responses, the corporate client can select a firm for the engagement. Similarly, LegalMatch, www.legalmatch.com, provides the opportunity for individuals and small businesses to receive offers for legal services from the lawyers

who participate in this service. The individual posts anonymous information about the legal matter. If a lawyer expresses interest in providing the representation, the individual can examine the lawyer's credentials online before making a decision.

One of the first web sites to use online case matching was the California-based Public Counsel Law Center, www.publiccounsel.org. The Center encourages lawyers to participate in pro bono representation by posting descriptions of the legal problems of people who need representation. The online volunteer database is divided into subject matters such as community development, children's rights and homelessness prevention. It also includes a section for potential volunteers who are not lawyers.

Like other innovations, online case matching is one of the experimental delivery mechanisms that have become viable because of the Internet. However, several launches of case matching services have not been sustained and the success of this mechanism remains to be seen. Some jurisdictions have questioned the ethical compliance of various case matching arrangements. Lawyers who participate in case matching services should be certain that the methodology is in compliance with their state ethics rules.

Outreach Models

In the 1970s, some lawyers opened legal clinics and storefront offices in neighborhoods, shopping malls and, sometimes, even kiosks within department stores. These outreach efforts brought legal services to the places where middle class clients were, rather than requiring the potential clients to come to the firm's office. Law offices had been located centrally and near the courthouse, but not necessarily close to the homes of the working class. While neighborhood storefront offices are still common, some outreach models have created even greater accessibility to lawyers and legal services.

Outreach models are being advanced in a variety of ways. For example, the Superior Court of California in Ventura County has outfitted a 35 foot mobile home into the Mobile Self-Help Legal Access Center. Similar to a library's "book mobile," the center includes computers, video stations, books, pamphlets and instructional materials. The center is staffed with volunteer lawyers and court personnel as it visits communities within the county.

Another non-profit outreach model is the AARP-sponsored Self Help Office (SHO). These offices are housed in churches in Washington, D.C. and use

AARP volunteers to provide hands-on assistance to computer-based information designed to address a variety of legal issues. The SHO volunteers help walk-in clients prepare and send complaint letters, make referrals to social service agencies and prepare documents for small claims court. For more involved legal matters, clients are referred to lawyers staffing AARP hotlines.

An example of an entrepreneurial outreach model is the coffeehouse staffed by lawyers ready to provide customers with legal information. Legal Grind, Inc., www.legalgrind.com, is a Santa Monica, California-based neighborhood storefront coffeehouse that provides "coffee and counsel" for the cost of consultation with a lawyer. The concept is to provide people who are not used to working with lawyers an opportunity to discuss their issues with a lawyer in a relaxed atmosphere. After the consultation, and the coffee, customers can retain the lawyer they've met, take the information and find another lawyer, or solve the problem themselves.

Outreach models take legal services a step closer to those who need the services.

Preventive Law

While the rule of law is supported by litigation, with disputes resolved in the courts after the various positions have been advocated, this process is reactive and takes place only after disputes have emerged. But the core of preventive law is dispute avoidance—solving the problem before it even becomes a dispute.

Preventive law has ancient roots, for example within dispute resolution mechanisms of indigenous people. However, Louis M. Brown championed the concept throughout the second half of the 20th Century in America. Brown advanced notions of risk management as he developed a legal audit for corporate services and worked with organizations such as AARP to develop and advance the legal check-up for individuals. These were similar to the health care model of a periodic medical check-up.

Lawyers who adopt principles of preventive law are oriented toward improving the overall well-being of their clients, like holistic lawyers and function more as problem-solvers than as combatants in the litigation arena, like collaborative lawyers.

Forrest Mosten was mentored by Louis Brown and has written and lectured extensively on preventive law. He suggests these practice tips for lawyers dedicated to preventive law practices:

- Learn the options to litigation in your community, both within and outside the courthouse;
- Make sure you have advised your clients about ADR options and make sure they acknowledge it;
- Sign an ADR pledge and post where clients can see it;
- Provide resources such as brochures about ADR methods in your waiting room;
- Make the prevention of future legal problems a core value of your practice;
- Include mediation clauses to resolve future disputes in settlements and agreements;
- When examining a client's legal problem, look for unmet legal needs;
- Give personal legal wellness checkups to clients when they first come to the office and throughout the relationship;
- Never consider a case closed and continue to monitor the legal health of your clients; and
- Take a client checkup yourself.

Today, concepts of preventive law are advanced through the National Center for Preventive Law, at California Western School of Law, www.preventivelawyer.org. The site includes many resources and articles for those interested in developing preventive law practices.

Subsidiary Marketing

Lawyers frequently think of legal services as an insular need. If a client is going to file for bankruptcy, seek a divorce or write a will, he or she probably needs a lawyer. Yet a bankruptcy is the legal solution for the inability to pay bills, whether as the result of unforeseen costs, the loss of a job or just poor budgeting. A divorce is the legal part of redefining a family and may also involve needs for mental health or substance abuse counseling, financial management and real estate transactions. In other words, the role of the lawyer is only one part of the needs of those going through transitions. When lawyers think about their role as a part of the whole, they can become involved in programs where their services are a subsidiary of the entire need.

Lawyer directories and referral services are often important parts of the services provided by those involved in programs to assist people in transition. For example, the Lilac Tree, an Evanston, Illinois

program, is designed to provide a variety of needs for moderate income women going through divorce. The program sponsors workshops on financial management and counseling needs. It also maintains its own lawyer referral list. Similarly, the website Split-Up, **www.split-up.com**, which primarily markets financial divorce software, includes directories of mediators, financial planners, accountants, appraisers, investigators, support groups, investigators, psychologists, therapists, and business evaluators, in addition to lawyers.

Ethics rules prohibiting lawyers from dividing professional fees with those who are not lawyers prevent joint business ventures, or multi-disciplinary practices. However, lawyers are typically able to participate in directories and other marketing mechanisms that enable them to be viewed as one part, albeit an important part, of the needs of those in transition.

Unbundled Legal Services

In law practices serving corporate and institutional needs, the corporate client will consult with the law firm to determine what services it wants. A legal service may involve several aspects and the client works with its lawyers, as a team, to address the tasks and meet the needs. This model enables the client to have some control over the case, its costs and its resolution. Lawyers providing personal civil legal services are more likely to provide all of the services from beginning to end; “from soup to nuts.” But this dynamic is changing somewhat, particularly in domestic relations matters, where the lawyer provides services on an unbundled basis.

To understand unbundling, consider all of the tasks that a lawyer performs as part of his or her representation. Take those tasks apart. They include counseling, drafting or document preparation, investigation/discovery, negotiations, advocacy/litigation, and possibly appellate work. Instead of automatically providing most, if not all, of these tasks, the lawyer who unbundles may provide some or a combination of them. In some cases, people may only want legal coaching. After an explanation of the process and issues, they may be in a position to pursue the matter without further representation. In other situations, people will need an advocate to frame and advance their positions. When the lawyer is willing to unbundle services, the client is more involved in the process and empowered to make decisions about

his or her outcome and consequences.

A hotline providing legal advice and brief services is an example of unbundling. Whether operated through legal aid, as a facet of a prepaid legal service or as a stand-alone entrepreneurial endeavor, the hotline model typically focuses on the tasks of giving legal advice and, sometimes, preparing forms.

Some lawyers have been reluctant to pursue unbundled practices because of concerns about their accountability and ethical compliance. However, some states are adopting rules that very specifically permit types of unbundling. In fact, ABA Model Rule 1.2 explicitly permits a lawyer to define the scope of legal representation with his or her client. Whether or not a state has adopted specific rules, unbundling retainer agreements can provide some protection. For a list of agreements, see www.unbundledlaw.org/retainer_agreements/sample_retainer.htm.

For more information about unbundling in general see:

- Unbundling Legal Services: A guide to delivering legal services a la carte, by Forrest S. Mosten, at www.abanet.org/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10001&storeId=10251&productId=-12487&categoryId=-3708
- The Pro Se/Unbundling Resource Center, at www.abanet.org/legalservices/delivery/delunbund.html and
- Changing the Face of Legal Practice: Unbundling Legal Services, at www.unbundledlaw.org/.