

Suggested Minimum Requirements for Law Firms Delivering Legal Services Online.

Background

On February 10, 2003, the American Bar Association House of Delegates approved a set of best practices guidelines for legal information web sites that were developed jointly by the *ELawyering Task Force, ABA Law Practice Management Section and ABA Standing Committee On the Delivery of Legal Services*. The purpose of these guidelines was to improve the quality and accuracy of legal information published both by law firm web sites and non-law firm legal information web sites. These guidelines can be found [here](#).

Since then, innovative law firms have sought to deliver legal services directly to clients through their web sites or to set up what some call - “virtual law offices.” Unlike a simple law firm site that may have just a description of a firm’s practice, biographical information about the partners and employees of the firm, and some legal information, a “virtual law firm” is characterized by access by the firm’s clients to a password protected and secure web space where both the attorney and client may interact and legal services consumed by the client. Some of these legal tasks may include the delivery of online legal advice, legal review of documents that have been received by the client from another party, discussions between the lawyer and the client, and the creation, assembly, and review of legal documents and forms. Examples of law firms that are delivering legal services online include: <http://millionisdivorce.com>; <http://www.kimbrolaw.com>; and <http://www.mdfamilylawyer.com>. As more law firms become interested in adding a “virtual” dimension to their practice, there is increasing interest in making sure that the “practice” meets requirements for the delivery of legal services on-line directly to clients.

These minimum requirements are designed to help lawyers resolve these questions so that their “virtual practices” comply with the applicable professional rules of conduct. Since every state develops and enforces its own rules for the legal profession, these requirements will be advisory only.

The following draft requirements provide a framework for further discussion and are likely to evolve over time as more law firms move their practices online and encounter novel and unique situations that are not anticipated by rules that were aimed at law firms purely operating in the physical world.

Suggested Requirements

Law firms that wish to deliver legal services on-line should meet the following requirements:

1. **Web Site Architecture:** The basic structure of a law firm web site that offers legal services online requires a secure client web space that is accessible only with a user name and secure password. Without such a mechanism it is difficult or impossible to comply with the rules of professional conduct that deal with UPL, client confidentiality, establishing the lawyer/client relationship, and conflict of interest issues.
 - a. **Ethics Issues:** The Rules of Professional Responsibility are not revoked just because you are delivering legal services online and through the law firm’s web site. Mechanisms such as the following must be put in place:
 - b. Conflicts of Interest still must be checked.
 - c. The law firm must not violate UPL rules and must serve only clients who are residents of the state where the firm is authorized to practice, or clients who have a matter within the state where the law firm is authorized to practice. A procedure must be in place to verify that the law firm is authorized to provide service to the client.

- d. If the state has residency requirements, then the attorney will have to comply with those by adding a statement to their site that informs the public that there is no physical law office in that state or that the attorney resides in a state other than the one in which he or she is offering services.
2. A **disclaimer** should be published on the site that makes UPL limitations clear.
3. A **Terms and Conditions Statement** should be published on the public section of the site that describes precisely limitations on services, the requirements to establish a lawyer-client relationship, and disclaimers related to the creation of the lawyer-client relationship. It should make clear that any legal information that appears on the web site is not legal advice, and that a lawyer/client relationship must be established before any legal services are provided.
4. The client must accept and agree to a **retainer agreement** outlining the scope of legal services at the time they become a client. The acceptance of the retainer agreement establishes the lawyer/client relationship. The attorney should not provide legal services until the lawyer/client relationship is established.
 - a. If the jurisdiction in which the law firm operates has “client-identification” rules, these rules must be complied with even though the client is an “on-line” client.
 - b. Retainer agreements may be handled in different formats online whether that is through a traditional click-wrap agreement, sending a traditional engagement letter for signature and then uploading it into the client’s online file, using a digital signature service on a letter, or creating an online HTML form that requires the client to click to accept each provision of an engagement letter that is then stored in their file.

Marketing Rules: The law firm web site must comply with the marketing rules incorporated into the state’s Rules of Professional Responsibility that apply to the law firm. This usually requires a disclaimer that the public section of the web site is a form of advertising. Usually a disclaimer must appear in the footer which indicates that the law firm’s public web site (the “front-end”) is a form of advertising and information contained herein should not be relied on for legal advice.

Note: A “best practice” would be adherence to the ABA’s Guidelines for Legal Information web sites.

5. **On-Line Payment of Legal Fees:** Payment of legal fees on-line by credit card will have to comply with the state rules that govern attorney trust accounts.
 - a. If the method of collecting online payments is such that the attorney is collecting and storing credit card information on their virtual law practice, it must comply with federal regulations, such as PCI Compliance.
6. **Protecting Client Confidences:**
 - a. All data that is transferred online between the law firm’s web site and the server must be encrypted.
 - b. Third-party hosting providers should have policies and procedures in place for security breaches, data theft, privacy and other concerns.
 - c. The contract with the hosting provider should make clear under what circumstances the provider’s staff has access to client files and also make clear that if the vendor’s staff is accessing client data for technical reasons, they are functioning as agents of the law firm as if they were the law firm’s internal staff.

- d. A procedure should be in place that guarantees the security of the firm's client data, provides for redundant back-ups, and offers a procedure for exporting the data on behalf of the law firm at the request of the law firm.

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[There is another set of issues that a law firm must consider when selecting a hosting provider for the provision of a "Software as a Service" This subject is beyond the scope of this discussion of minimum requirements.]

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7. The law firm should consider securing various certifications that confirm the security and the privacy policy of the web sites, such as the Hacker safe NORTON Safe seal and the Truste Certificate. These are examples. There are other alternatives which vary in cost. This would provide notice to the consumer that the law the secure portion of the law firm's web site complies with industry standards for security.

We are confident that as law firms respond to the needs of clients who want to deal with attorneys on-line, they will adapt to delivering services in ways that are consistent with the legal profession core professional values. Reactions to the draft requirements outlined above would be most welcome. We also welcome participation in the eLawyering task force. If you are an ABA member, you can sign up for our email discussion list by visiting <http://www.abanet.org/abanet/common/email/listserv/listcommands.cfm?parm=subscribe&listgroup=LPM-ELAW>.

Appendix: (To be Completed).

1. Sample Retainer Agreements for On-Line Delivery of Legal Services.
2. Sample Disclaimers