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*Celebrating 70 Years*

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# The Future of Immigration Law Practice

A Comprehensive Report



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## A Comprehensive Report

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the AILA Practice & Professionalism Center

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## A Comprehensive Report

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# Foreword

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In June 2015, I appointed AILA's first-ever Future of Immigration Law Practice Task Force. This special task force brings together experienced AILA leaders, who have served as chapter and committee leaders, to explore the forces shaping the future practice of immigration law. These forces include evolving practice technologies, emerging non-lawyer practitioners, shifting consumer needs, the effects of legal ethics on practice innovation, and new attitudes in lawyer regulation.

I believe it is important for AILA to provide members with information and resources to help them succeed in immigration practice today and tomorrow. We owe it to our clients, the communities we serve, and to ourselves as practicing lawyers.

The task force, led by Chair Xiomara Hernandez, spent much of last year immersed in understanding the growing body of literature about these market forces impacting the future of the legal profession. The task force heard from a variety of national experts who have studied and written about these emerging issues within the legal marketplace. The task force, then, began the work of synthesizing and focusing their information on the practice of immigration law.

The cumulative result is the following series of six articles, each taking a detailed look at the primary market forces affecting the future of immigration law practice. The articles are detailed in order to give AILA members a broad look at the changes that are happening across the practice. The task force has stopped short of making sweeping recommendations so that members can engage in a dialogue as to how AILA can best help members achieve their preferred future.

So please read, engage, and inspire. Remember, the best way to predict the future is to create it.



A handwritten signature in cursive script that reads "Victor D. Nieblas Pradis".

Victor D. Nieblas Pradis  
*President, American Immigration Lawyers Association*  
May 2016

# Preface

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Like many immigration attorneys, I spend most days representing clients, consulting with potential clients, meeting with existing clients, responding to phone calls and emails, reviewing the work of my staff, drafting documents and generally trying to run a profitable business and keep up with the constant changes in our practice area. All the while I am also striving for that elusive work-life balance about which we hear (though it certainly seems like a myth!). Many of us are so busy being lawyers that we do not have time to notice the changes happening around us.

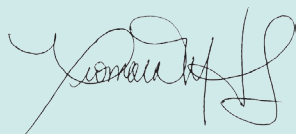
When I first learned about AILA's Task Force on the Future of Immigration Law Practice, I thought it would be an interesting and noteworthy initiative to lead. However, I was completely unprepared to discover how out of touch I was with all the changes that are occurring in the legal marketplace today.

For example, online immigration services providers are a potential alternative to attorneys for many consumers. Why? Because consumers are changing. They are now more tech savvy and sophisticated than ever before, and many are comfortable with online services. The fact is that technology is dramatically changing how consumers acquire legal services and how lawyers practice law. But technology is not the only thing that is impacting our practice area—the regulation of lawyers and non-lawyers is also evolving. Lawyers continue to be heavily regulated, while non-lawyers—especially online providers—are not. In addition, there are efforts to allow non-lawyer practitioners to provide legal services in some states. Is the availability of alternative providers a solution to the “justice gap” for individuals who either cannot afford or access attorneys due to geographic limitations, or do these providers pose a significant threat to consumers and immigration lawyers?

Our profession is at a crossroads. We must decide whether we will continue to practice law as we have always done or whether we will instead acknowledge the change that is happening and begin to offer innovative new ways to deliver legal services. Should we embrace new technologies or remain satisfied with the status quo? Do we engage in the debate over changing lawyer regulations? Do we enter into the debate to create and regulate non-lawyer providers? Do we have a further role in closing the justice gap in immigration? How can we attain a positive work-life balance?

This report contains six articles to inform you about some of the most important changes that are occurring in the legal marketplace today, and how those changes are already or will impact the manner in which we practice law. Our purpose is not to determine a course of action; AILA's leadership will ultimately determine actions the association will take. It is my hope that these articles will engage and inform the busy immigration lawyer about important trends happening around us so that we may participate together in productive discussions as to how we can create our preferred future. Moreover, we purposely did not create an Executive Summary. The issues are too important to be compressed into bullet points. Your future is too important to take that shortcut.

Some see change as difficult and negative, while others see it as opportunity. After reading these articles, how do you see it?



Xiomara Hernandez  
*Chair, AILA Future of Immigration Law Practice Task Force*  
Miami, Florida

# Authors and Acknowledgements

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## **AILA Future of Immigration Law Practice Task Force**

Xiomara Hernandez, Chair  
Alan Diamante, Los Angeles, CA  
Camille Mackler, New York, NY  
Clayton E. Cartwright, Jr., Columbus, GA  
Daniel Sharp, Los Angeles, CA  
Karol Brown, Seattle, WA  
Kirby Joseph, Aurora, CO  
Lisa York, Denver, CO  
Meghan Moore, Wyoming, MI

## **AILA Practice & Professionalism Staff**

Reid Trautz, *Director*  
Susan Timmons Marks, *Associate Director*  
Maheen Taqui, *Associate*  
Melissa Rolffot, *Associate*

## **Special Thanks to Our Editors and Reviewers**

AILA National Staff: Robert Deasy, Betsy Lawrence, Lisa Waters

*and*

Kenneth C. Dobson, New York, NY  
Ruby Powers, Houston, TX  
Marshall Cohen, Atlanta, GA  
Vic Goel, Reston, VA  
Matthew Burnett, New York, NY

**Caveat:** The information provided in this Report reflects the views and information of the Task Force and not the AILA Board of Governors.



# The Changing Immigration Consumer

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The companion articles of this report discuss how the future of immigration law practice is being affected by a multitude of conflicting forces, including revolutionary technology, stagnant rules and regulations, and new opportunities for non-lawyer practitioners. This article, in contrast, identifies the human element that is often overlooked, but is just as powerful a force: the immigration consumer.

The immigration consumer in many respects is an immigrant. And, the term “immigrant” engenders various perceptions and misperceptions. Some Americans respond amiably, while others react with discontentment. Some consider immigrants to be strong and courageous, while others perceive them as poor and vulnerable individuals who take advantage of American benefits. Some visualize an elder Indian woman wearing a sari, while others see an NBA superstar like Dirk Nowitzki.

Immigrants are much more than the word represents. Immigrants are teachers and students, mothers and fathers, employers and employees. They are imaginative three-year-olds and fifteen-year-olds celebrating their quinceañeras. They are scientists and activists, medical students and renowned singers. They are smart and talented, willful and defiant, business savvy and adaptable. And immigration attorneys see this every day in their law practices.

For decades, immigration attorneys have been the gatekeepers for immigrants, defending and advocating for their rights and needs, helping reunite family members, allowing participation in study and exchange programs, securing employment, and fighting for asylum claims. Likewise, immigrants have relied on immigration attorneys for their knowledge and expertise to navigate the complexities of U.S. immigration law in hopes to one day attain their American dream.

In recent years, however, the tide has shifted. The need for knowledge, expertise, and a valiant advocate still exists, but now a greater focus is placed on accessibility, availability, and cost. Today, immigration consumers, as all consumers, are utilizing the technological platforms they use for work and entertainment to access a wealth of information, making them more knowledgeable about the

This article is one of six in a series prepared for the AILA membership by the Future of Immigration Law Practice Task Force. The article series provides foundational information and analysis on the future of immigration law practice, and is meant to provoke thought and reflection about the future of your practice and career, as well as our profession and association. Readers are encouraged to pursue additional research on matters of particular interest. These are issues on which individual members and AILA as an organization must act as we develop our preferred future.



immigration process, among other things. In fact, legal theorists forecast that the next generation of legal consumers will continue to employ new and ingenious technologies to find the answers they need within seconds.<sup>1</sup>

Why are consumers of immigration services changing, and how are they changing? We begin this article by framing the changing landscape and identifying the current consumers of immigration services. We then discuss the trends driving consumer change, including the impact of communications and technology and the global movement towards a networked lifestyle. Next, we address the trends impacting the immigration marketplace and how innovation is causing disruption. Finally, we conclude with whether alternative approaches can enhance accessibility to legal services and why consumers may turn towards these methods.

Understanding the consumer of immigration legal services is key to building and maintaining a strong practice into the future. Without understanding who immigration consumers are, there are no clients; without clients, there is no business and without business there is no immigration practice.

## The Changing Landscape and Current Consumers of Immigration Services

The practice of law looked very different a decade ago—consumers asked their friends and family members for recommendations or searched the Yellow Pages for attorneys. They called a phone number, made an appointment, and hired the attorney whose office was most conveniently located near their home or workplace. Every minute spent on the client’s case was documented and listed on the client’s bill. Each month, the client’s bill was carefully reviewed to ensure that the time spent matched the tasks performed. The interaction and processes between lawyer and client evolved slowly, leaving the profession and the professional largely unchanged.

Recently, however, signs of change are showing in the marketplace. Digital documents now compete with paper; fixed fee arrangements outpace hourly fees; lawyers no longer are limited to the walls of their office; and clients come from almost anywhere in the world. As immigration attorneys become more technologically advanced, so do their clients. And as clients increasingly engage in all areas of the global marketplace, they are expecting a higher level of ingenuity from their legal services provider. This wave of consumers is aptly putting pressure on efficiency, transparency, and cost-effectiveness for the services they are paying for, or they are turning to alternatives to meet their legal needs.

*they are expecting a higher level of ingenuity from their legal services provider*

Some of the most common immigration-based matters that attorneys handle include family-based, business immigration, asylum and removal, and DACA eligibility. The clients of these categories, and others, require a different set of approaches that are unique to their individual experiences and abilities.

For example, consumers of family-related immigration services cover a diverse spectrum of the population. Some clients are young, educated, and highly technical; while others are aging, illiterate, or unable to speak effectively in English. The most common family immigration case is marriage-

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1 See generally, Jordan Furlong, **THE EVOLUTIONARY ROAD: A STRATEGIC GUIDE TO YOUR LAW FIRM’S FUTURE** (Attorney at Work, Digital ed. 2013)





based visas. Because many people marry in their 20s and 30s, a significant sub-population of this group is also dubbed the termed “digital natives,” as they have grown up with technology and the Internet. “Digital natives” are not only comfortable with online ordering and delivery, but often prefer it in many situations.

Business immigration clients cover a different segment of immigration consumers, ranging from small mom-and-pop shops to large technology powerhouses. These consumers require ongoing innovation, responsive communication, and efficient delivery of services. The technology industry in particular will continue to recruit global experts to stay on the cutting edge of technological development. Foreign nationals make up a growing proportion of math and engineering students in the United States, who are in high demand in this economy. These consumers of work visas and permanent residency applications have provided immigration attorneys with a profitable base and a constant stream of business.

*Some will likely have a technological device and will be capable in communicating via social media*

In contrast, asylum seekers, refugees, and those in removal proceedings make up the largest underserved population of immigration consumers in the United States. Newly arriving to the United States, many in this category may struggle to communicate effectively in English; however, that does not mean they are incompetent. Some will likely have a technological device and will be capable in communicating via social media.<sup>2</sup> Besides the standard

legal representation, this population requires support, compassion, and strength from their legal services provider, as many do not have family and friends to whom they can turn to for guidance.

In June 2012 the Deferred Action for Childhood Arrivals (DACA) program was announced. Within three years of the program, roughly 665,000 people were granted DACA.<sup>3</sup> Studies have found that DACA approval has resulted in an increased wage of approximately 45%, greater educational opportunities, and increased spending on products like cars.<sup>4</sup> Deferred Action has clearly increased this community’s economic and political clout. For this population, social media and an effective online presence are critical. DACA recipients are much more likely to use the Internet to shop, communicate, and research legal questions. Because this population grew up in the United States, most speak fluent English and have the same level of technological skills as their American counterparts of a similar age.

The desire to immigrate to the United States will undoubtedly remain constant, however, the sophistication and composition of immigration consumers will continue to change and advance.

<sup>2</sup> We have seen the remarkable success of communicating and sharing of information on a closed Facebook group with women who were detained at the South Texas Family Residential Center (STFRC) in Dilley, TX and other family detention centers around the country. While addresses and phone numbers have been known to change for some of the women, their Facebook profile remains the same, allowing them to access a constant flow of confidential and reliable information.

<sup>3</sup> Tom K. Wong et al., *Results from a Nationwide Survey of DACA Recipients Illustrate the Program’s Impact*, Center for American Progress (July 9, 2015), <https://www.americanprogress.org/issues/immigration/news/2015/07/09/117054/results-from-a-nationwide-survey-of-daca-recipients-illustrate-the-programs-impact/>

<sup>4</sup> *Id.*



## Trends Driving Consumer Change

In the last decade, leading tech companies were the primary influencers in the marketplace. Companies like Apple, Google, and Facebook drove consumers to what they think they needed and what was available to them.<sup>5</sup> Early adopters and industry experts determined which ideas and products were good and which were inadequate. And, consumers played into their hands, succumbing to mass marketing, promotion, and the desire for the next shiny new thing. Yet as the speed of technology adoption continues to increase, and swift access to the public becomes the norm, the role of early adopters and industry experts become less important. Consequently, with limitless access to products, services, and information, consumers are becoming the driving force in the marketplace and influencing the way other consumers respond to products and services.

*with limitless access to products, services, and information, consumers are becoming the driving force in the marketplace and influencing the way other consumers respond to products and services*

At the same time, through technology and vast accessibility, consumers of all socioeconomic backgrounds are becoming more empowered,<sup>6</sup> and this is changing people's lives. Routine Google searches have replaced most calls to attorneys for basic immigration-related information. Family-based clients have met their foreign-born spouses through online dating services. And, globalization has created incentives for foreign businesses of all sizes to enter the U.S. market, and for U.S. businesses to develop ties abroad.

### Internet and Communications Technology

*84% of Americans use the Internet now, compared to just 52% in the year 2000*

The Internet has drastically altered the experience of consumers around the world. Pew Research Center, a nonpartisan fact tank, studied the Internet access of Americans over a 15-year period, from 2000 to 2015. The study found that approximately 84% of Americans use the Internet now, compared to just 52% in the year 2000. The study also revealed that there has been a significant rise in Internet

usage among all age, class, community, and racial and ethnic groups. The age group of 65 and older was found to have the lowest level of Internet usage. Remarkably, however, this population also reported the greatest change over the 15-year period, from 14% in 2000 to 58% in 2015.

In 2008, Pew Research Center began offering this survey in Spanish as well as in English to better document the trends in the Hispanic community. Pew acknowledged that “[m]ore recently arrived Hispanic immigrants are more likely to have limited English ability, have lower levels of income and formal education, and have less internet experience than other Hispanics living in the U.S.” Considering the full Hispanic community, in 2015, 81% of the Hispanic population residing in the United States reported to using the Internet. In comparison, 78% of African Americans, 85% of the white community and 97% of Asians reported using the internet.<sup>7</sup>

*in 2015, 81% of the Hispanic population residing in the United States reported to using the Internet*

5 Ericsson ConsumerLab, *10 Hot Consumer Trends 2016: An Ericsson Consumer Insight Summary Report* (December 2015), <http://www.ericsson.com/res/docs/2015/consumerlab/ericsson-consumerlab-10-hot-consumer-trends-2016-report.pdf>.

6 Andrew Perrin and Maeve Duggan, *Americans' Internet Access: 2000-2015*, Pew Research Center (June 26, 2015), <http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/>

7 Pew Research Center, *supra* note 6.



On a global scale, Ericsson ConsumerLab, a leading research center based in Stockholm, Sweden, studies the behaviors and values of consumers around the world, surveying and documenting the way hundreds of thousands of people think, act, and use technology in everyday life.<sup>8</sup> Their most recent report, *10 Hot Consumer Trends*, illustrated insights and trends about consumers in 40 countries, and identified new ways that consumers are engaging with companies online. Through social media, user reviews, opinion sharing, petitions, and instant crowd activities, the report underscored the fact that consumers are gaining market strength in numbers. The data presented in both the Pew and Ericsson studies highlights the ubiquitous nature of Internet usage, and further reveals that a significant number of immigration law clients are using the Internet to approach information.

Even still, it is important to acknowledge that each individual has a unique set of abilities and restrictions based on their generation, the communities they come from and the sum of their experiences. While a majority of the world is becoming interconnected, there are still some who are resistant or do not have the resources to access this lifestyle. According to the Ericsson ConsumerLab report, 18% of worldwide consumers do not partake in the connected lifestyle; this group consists primarily of females in the 40 to 59 year old age range. The highest proportions of these un-networked consumers are found in Indonesia and the Ivory Coast. Although this group is not connected socially, many have mobile phones and are likely connected technically.<sup>9</sup> Many also indicate a desire to become more socially networked, and believe there are advantages to doing so.<sup>10</sup> Along the same lines, the first global generation that grew up with the Internet is now in their early to mid-30s. While they actively use the Internet and communications technology, their habits and behaviors differ greatly from newer generations. For instance, 16 to 19-year-olds watch over three hours of YouTube daily and spend a larger amount of time on their smartphones than on any other device. In comparison, 30 to 34-year-olds devote much less time on these same activities.<sup>11</sup>

### ***Connectivity Leading to a Networked Lifestyle***

The move towards a networked lifestyle is rapidly becoming mainstream across the world. In a separate study published by Ericsson titled *The Networked Life*, 82% of consumers are actively using the Internet and connectivity to shape their lifestyles. What does this mean? “As consumers spend more time online and use digital services, their perspective on life changes, leading to a networked lifestyle.”<sup>12</sup> Consider that 46% of consumers are active on more than one social network, and that 34% participate in the sharing economy for cars, rooms, bikes, and other goods and services. Even more striking, 38% believe that user reviews are more beneficial than expert reviews. And, almost half of respondents think that technology will have a democratizing effect on education.<sup>13</sup>

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8 Ericsson ConsumerLab, *supra* note 5.

9 *Id.*

10 *Id.*

11 *Id.*

12 Ericsson ConsumerLab, *The Networked Life, How connectivity is shaping consumers' lifestyles: An Ericsson Consumer Insight Summary Report* (November 2015), <http://www.ericsson.com/res/docs/2015/consumerlab/ericsson-consumerlab-the-networked-life.pdf>

13 Ericsson ConsumerLab, *supra* note 5.



One successful platform that people around the world are using to advocate for important issues and to connect with others is the “crowdspeaking” phenomenon of ThunderClap. ThunderClap’s model was initiated by a simple observation of an Occupy Wall Street protestor using a microphone—the objective was clear, to amplify the message for others to hear, engage and react. Through ThunderClap’s platform, individuals and companies can elevate a unified message at the same time through various social media channels, including Facebook, Twitter and Tumblr. In doing so, interested individuals can participate in concerted activism that expands beyond their local community to engage with issues of importance to them. To date, Thunderclap messages have reached over 3.5 billion people in over 230 countries and territories, and over three million people have donated their social reach to influence others.<sup>14</sup> Campaigns range from the Alzheimer’s Association’s message of *End Alzheimer’s #SaveLives* that has reached over 1.1 million people to *FREE Legal Documents!*, a message directed primarily to the LGBT community which has had a social reach of 51,000 people.<sup>15</sup> When comparing the reach of Thunderclap’s campaigns to the attendance of informational sessions held by attorneys and nonprofits to educate immigrant communities, it is easy to see the significant impact that connectivity has on the global population.

The profound impact of the networked lifestyle can also be seen with the Arab Spring movement in 2011, the DREAMers’ relentless advocacy for Deferred Action in 2012, the Syrian refugee crisis taking hold in European countries, and the ongoing fight to end family detention in the United States.

The primary benefit of a networked lifestyle is the accumulation of the group’s collective intelligence which is achieved by the constant flow of information. “This comes from an implicit trust placed in online communities when it comes to information research, reviews or finding new products to buy. This lifestyle is inclusive in nature, because it increases in strength as more people start adopting it.”<sup>16</sup> As illustrated above, these figures are not limited to the United States, but are part of a global transformation. When considering immigration consumers, recognizing the changes globally is just as vital as understanding what is happening in the United States.

Looking ahead, the physical lives of consumers will merge more and more with the online world. The Ericsson ConsumerLab report highlights interesting consumer projections on artificial intelligence, virtual reality services, virtual medical emergency assistance, smart home devices, internal technology devices, and much more. These innovations are all trends that consumers’ envision will materialize fairly soon.

You might think to yourself, “What do these trends have to do with immigration law practice and the clients I serve?” To put it bluntly, a lot. So often, attorneys focus narrowly on the clients in front of them, not paying attention to the full picture or recognizing that their clients are individuals beyond the immigration context. The world is changing, goods and services are changing, and consumers are changing. Shouldn’t the practice of immigration law also change?

14 See Thunderclap, *Bringing the Thunder*, Thunderclap.it, <https://www.thunderclap.it/casestudies>.

15 See Thunderclap, *End Alzheimer’s #SaveLives* by Alzheimer’s Association, Thunderclap.it, <https://www.thunderclap.it/projects/39277-end-alzheimer-s-savelives?locale=en>, Thunderclap, *FREE Legal Documents!* by Rainbow Law, Thunderclap.it, <https://www.thunderclap.it/projects/37-free-legal-documents?locale=en>.

16 Ericsson ConsumerLab, *The Networked Life* *supra* note 12.



## Trends Impacting the Immigration Marketplace

In the previous section, we discussed the trends driving consumer behavior; in this section, we address the forces influencing the legal landscape. Innovation involves thinking through new ideas, developing processes, and using information and technology to create improved solutions to common problems. The last century brought many technological breakthroughs and made the life of lawyers easier and more efficient. Xerox introduced the copying machine that revolutionized document creation. Soon thereafter, auto-correcting typewriters and word processors with memory chips further enhanced the ability to produce more words on paper, which was a benefit for lawyers who trade words for a living. The fax machine, and later email, enabled attorneys to send documents to other attorneys in an instant without postage and delivery fees. And mini-tape recorders enhanced the production of documents created each day by staff members. Some lawyers embraced these new-fangled, time-saving devices and innovations, while others continued to dictate to secretaries writing shorthand. Competition eventually drove out those less efficient and less productive members of the bar.

### *Innovation and Technology*

*consumer needs, and not the technical brilliance of an innovation, will determine whether an innovation will be disruptive or sustaining*

With regard to the future of immigration law practice, innovation is not just about benefiting the law firm structure; it strikes to the core of the legal industry—the clients. In *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, Professor Ray Worthy Campbell examined how innovation in the legal marketplace will continue to dominate consumer demands and needs.<sup>17</sup> Professor Campbell pointed out that “consumer needs, and not the technical brilliance of an innovation, will determine whether an innovation will be disruptive or sustaining.”<sup>18</sup>

A sustaining innovation has the potential to make existing products in the market better. These advances can be a critical breakthrough, but the structure of the market does not change.<sup>19</sup> Online legal research has proved to be a sustaining innovation, although it was a disruption when it initially entered the market. Before the 1970s, there was a significant disparity between the services provided from large firms and those from small firms. It was difficult for solo and small practices to compete with big, financially well-equipped firms, as they did not have the capacity or the resources to sustain a large print library. Without a large print library, smaller practices were at a disadvantage in representing clients. Clients, particularly those with limited finances, were constrained in their access to counsel. The entry of online legal research provided greater accessibility to primary law, cases, statutes, regulations, and court rules. This innovation leveled the playing field among firm sizes and gainfully impacted legal clients. Initially, this was not seen as a welcomed innovation by large firms, as it disrupted their landscape and shifted their dominance in the legal marketplace. But over time, as online legal research providers improved in availability, accessibility, and cost, attorneys of all firm sizes benefited, thus advancing their practices.

17 Ray Worthy Campbell, *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, 9 *New York University Journal of Law and Business* 1 (2012)

18 *Id.* at 10.

19 Ray Worthy Campbell, *supra* note 17



Disruptive innovations, on the other hand, do change markets.<sup>20</sup> Professor Campbell noted that an innovation is disruptive when new consumers come to the marketplace in ways not anticipated by players in the field. Those most affected by the disruptive innovation are people who would not otherwise be consumers.<sup>21</sup> This revelation signifies a segment of the population who may, at some level, require legal guidance but will not hire an immigration attorney, for one reason or another. However, with the new innovation, these individuals will be more willing to seek the assistance they need.

*Those most affected by the disruptive innovation are people who would not otherwise be consumers*

Consider Uber. Founded in 2009 in San Francisco, Uber disrupted the taxi industry and redefined the way billions of people get from one place to another.<sup>22</sup> Now the term “Uber,” and not “taxi,” is synonymous with getting a ride. While the company still faces legal backlash from some taxi companies and governments around the world, Uber has risen to markets in 58 countries and over 300 cities worldwide. Uber’s success is a result of recognizing the disadvantages of taking a taxi and constructively addressing the needs of the consumer. Uber does not just offer a service, instead it collects, tracks and reacts to the data it gathers from drivers and riders to continually enhance the overall customer experience. From those who had never before hailed a taxicab to those who only preferred luxury car services, billions of people around the world are now active consumers of this revolutionary application.

*nearly half (47%) of consumers would be more likely to retain the services of a firm that offered the convenience of online access to legal services and documents*

In 2010, a study conducted in the United Kingdom by YouGov, yielded that nearly half (47%) of consumers would be more likely to retain the services of a firm that offered the convenience of online access to legal services and documents over a firm that did not offer such capability.<sup>23</sup> Further, the research supported the notion that consumers view online services as a way to reduce costs and they would change service providers for that reason—43% stated they would be willing to explain their matter online if an alternative firm offered a reduced fee. As we are seeing now, Avvo, Rocket Lawyer, Visa Now, and others are catering to the needs of these consumers’ and are disrupting the traditional mode of legal services.

The ABA Law Practice Magazine featured an article with Mark Britton, founder and CEO of Avvo, on the “uberization” of law. Mr. Britton discussed the rise of “end-to-end,” also known as “E2E,”<sup>24</sup> which seeks to eliminate middle layers to optimize performance and efficiency. The concept of E2E merges technology and digital channels from one end online, to genuine human interaction at the other end, offline, making the experience for the client simple and seamless. Services like Uber, Redfin, and AirBnB essentially strip the middleman down to the click of a button, with consumers receiving more accurate and transparent information in return. The concept of E2E reflects the trends reported in the Ericsson studies above—consumers are not only engaging with companies online, but are also embracing the concept. Comparatively, in the legal arena, RocketLawyer boasts “Helping 20

20 *Id.*

21 *Id.*

22 Max Chafkin, *What Makes Uber Run*, Fast Company (Sept. 8, 2015, 6:30 AM), <http://www.fastcompany.com/3050250/what-makes-uber-run>.

23 Pam Andrews and Rebecca Green, *Over Half (56%) of Consumers Expect Good Law Firms to Offer Legal Services Online*, Prweb.com, May 7, 2010, <http://www.prweb.com/releases/2010/05/prweb3970654.htm>.

24 Patrick A. Wright, *The Uberization of Law*, **LAW PRACTICE MAGAZINE**, July/August 2015, at 49, 49.



million people. Just like you.”<sup>25</sup> Though the figure cannot be substantiated with other sources, it is still remarkable that one legal platform is able to assist such a sizeable population, especially when compared to the volume of clients a typical law office expects to see in its lifetime.

### *Delivery of Legal Services*

Traditional law practices have been built to provide a problem-solving service to clients, much like doctors and engineers.<sup>26</sup> A client meets with an immigration lawyer, and the immigration lawyer then uses her years of experience and legal knowledge to assess the situation, diagnose the issue, and develop a pathway to achieve the best solution. The immigration lawyer and client then work closely together hoping to achieve that solution. This business model relies on the attorney to provide competent advice tailored to the individual client, and the client to pay the attorney for her time. It allows the immigration lawyer to work with unique and interesting cases while also employing standardized processes to increase efficiency. This form of service delivery has been engrained in both consumers and lawyers since the beginning of time. According to Campbell, “To flourish, the service provider needs to know how to do things the clients cannot do more cheaply by themselves.”<sup>27</sup> Previously, this was not an issue. In recent years, however, technological innovation has provided greater information for minimal cost. As a result, consumer inquiries, that at one time may have led to initial consultations, are now easily searchable on the Internet and answers are provided “more cheaply,” albeit the information may not always be accurate. Consumers now are more likely to do initial legal research and analysis on their own, thus demanding more value for their money when contacting an attorney.

*technological innovation can provide greater information for minimal cost*

The delivery of legal services is not the same as a cab ride; however, understanding that the delivery of products and services is changing and acknowledging the impact on the immigration marketplace will allow attorneys to be well-positioned for the next five to ten years.

## Enhancing Accessibility to Legal Services through Alternative Approaches

The very essence of how consumers obtain legal services is changing. The perception that lawyers are expensive is not new. In Malcolm Mercer’s article *So Many Lawyers, So Many Unmet Legal Needs*, he states, “Many legal issues are not being addressed because getting legal advice is costly and time-consuming.”<sup>28</sup> Further, the American Bar Foundation maintains that “[b]road agreement exists that many people in the United States—particularly the poor—who need assistance handling civil justice issues do not obtain it.”<sup>29</sup> Several studies, including one from the American Bar Foundation, reflect that the cost of legal services, among other factors, has created a large proportion of unmet needs;

25 See RocketLawyer, About Us, Rocketlawyer.com, <https://www.rocketlawyer.com/about-us.rl>. In our research, we attempted to substantiate the 20 million reference but were unable to find other reliable sources.

26 Clayton M. Christensen et al., *THE INNOVATOR’S PRESCRIPTION* 6 (McGraw-Hill Education; 1<sup>st</sup> ed. 2008).

27 Ray Worthy Campbell, *supra* note 17.

28 Malcolm M. Mercer, *So Many Lawyers, So Many Unmet Legal Needs*, *LAW PRACTICE MAGAZINE*, July/August 2015, at 47, 45.

29 Am. Bar Foundation and Nat’l Ctr. St. Cts., *Increasing Access to Justice Through Expanded ‘Roles Beyond Lawyers’: Preliminary Evaluation and Classification Frameworks*, April 2015, [http://www.americanbarfoundation.org/uploads/cms/documents/rbl\\_evaluation\\_and\\_program\\_design\\_frameworks\\_4\\_12\\_15.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/rbl_evaluation_and_program_design_frameworks_4_12_15.pdf).



*only one-fifth of people with civil justice issues seek the assistance of a lawyer or the like*

despite the number of lawyers present in the marketplace, only one-fifth of people with civil justice issues seek the assistance of a lawyer or the like.

Although access to justice has always been a priority for the legal industry, expanding access to those excluded from the market has been a challenge. And, while underserved communities lie at the heart of this predicament, broadening the scope to include all potential

consumers of immigration services can provide a well-rounded, holistic understanding as to why unmet needs continue to exist in accessing legal services from lawyers.

Traditionally, consumers of immigration services were limited in their means of retaining an attorney. Some contacted their family and friends, while others found a lawyer in their geographic location. This, of course, left many—especially those in rural areas and in certain ethnic communities—unable to find adequate counsel to help them with their immigration matter. Technological innovation has lifted some barriers by enabling consumers to locate a larger pool of attorneys and allowing attorneys to more easily connect with clients. Still, the rising cost of living, economic downturn and personal financial stressors prevent many competent and capable individuals, who are well above the poverty line, from affording an attorney.

This common dilemma opens the door for innovation benefiting both consumers looking for alternate approaches and competitors looking to fulfill their needs. Can alternatives to lawyers significantly enhance accessibility of legal services? In this section, we attempt to explain why some consumers prefer self-lawyering, online platforms, and non-attorney legal professionals as alternatives to retaining an immigration attorney.

### ***Self-Lawyering***

A British scholar once wrote, “A man who is his own lawyer has a fool for a client.” However, with the constant flow of legal information available to consumers today, this notion may seem dated.

For anyone who makes a large purchase, the inherent question is, “Is the need worth the cost?” Community online forums, easy access forms, or the willingness of a family member or neighbor to help can at first make the complexities of immigration law seem easy to navigate. For others, the sum of the required costs—such as government application fees, biometrics, filing fees, and traveling expenses—can make them reassess the need to pay for an attorney.

What is self-lawyering? Self-lawyering is the notion that an individual can represent herself to the fullest extent possible. The individual can research information about an issue, find a solution, and possibly even carry it out. Self-lawyering enables consumers to have the power to determine how much or how little they can accomplish on their own. Though lawyers may think self-lawyering is plagued with problems, consumers find they have greater control and can manage their expectations of both cost and quality. To go one step further, consumers find serious drawbacks to traditional legal services, including a lack of accessibility, transparency, and decision-making power, plus cost. While these issues may not seem threatening to attorneys, these lingering problems leave consumers looking for other alternatives.

Self-lawyering or the do-it-yourself client has become more common in recent years, although not new. This concept is not just supported by consumers or tech companies, it is also being reinforced by state judicial systems and regulators. Steps are being taken both statewide and globally to address the rise of self-lawyering. In Connecticut, a pilot program called Limited Scope Representation





was launched by the state's judicial system in January 2014. This program is designed to make family court easier to navigate for those representing themselves.<sup>30</sup> There are now up to 40 states that allow similar practices. These programs have not only helped alleviate some of the pro se issues that the courts are seeing, but have also promoted more pro bono work among attorneys in these areas. Similarly, in the United Kingdom, a report commissioned by the Legal Services Board forecasted that self-lawyering is the future. The report also found that access to justice would be enhanced if consumers of legal services are empowered to handle more of their own legal affairs.<sup>31</sup>

*Steps are being taken both statewide and globally to address the rise of self-lawyering*

Many attorneys do not have a strong presence online and see no need to establish a robust online presence if a steady stream of business from other sources is available. However, from a potential consumer's perspective, the opposite is true. When a question or issue arises, no matter how trivial or substantive, the first action that the individual will employ is to access the Internet. The consumer's dilemma of sorting through the multitude of search results heightens if only a few results include lawyers and their websites. For example, the scant results from a Google search on "help with a fiancée visa" makes it difficult for an individual to locate a lawyer that meets their needs. Instead, the search will yield top results for rapidvisa.com, YouTube videos on how to self-file a fiancée visa, a one-stop site such as Path2USA.com, or hundreds of other non-lawyer results.

*In turn, consumers create their own how-to blogs and videos to help other consumers in similar situations*

Similarly, searches for lawyer reviews precipitate ambiguity and uncertainty when there is an absence of trustworthy reviews and relevant price points. As noted by the Ericsson report, *The Networked Life*, "56% state that it is easier to find products and services on the internet than through friends and family; the highest in the U.S. (71%)."<sup>32</sup> The limited availability of attorney information hinders the group's collective intelligence that guides decisions on whether to retain a specific lawyer. The absence of discernable information on the experience of a lawyer in a specific immigration matter or the

process (what is involved, how difficult it will be, the price, and the actual cost for everything involved) leaves many unanswered questions for consumers, increasingly turning them towards other options or provoking them to figure the process out for themselves. In turn, consumers create their own how-to blogs and videos to help other consumers in similar situations.

If a consumer manages to locate and schedule a consultation with a lawyer, the next problem that arises is the lack of control the client has in the situation. When a client meets or speaks with an attorney for the first time, they often find that the information the attorney is sharing is similar to what they found when researching the topic online, and leaves them questioning the attorney's consultation fee. Additionally, it may seem that the attorney is speaking in circles, neither providing assurances nor a clear path forward in achieving the desired outcome. The client's decision-making power is often reduced to whether or not they want to retain that specific attorney; the lawyer controls the cost, course of action, and the work to be completed, often leaving the client in the dark as to what is

30 State of Connecticut Judicial Branch, Notice of Limited Appearance Pilot Program, Jud.ct.gov, <http://www.jud.ct.gov/external/news/press366.htm>.

31 Legal Services Consumer Panel, Legal Services Board of England and Wales, *2020 Legal Services: How Regulators Should Prepare for the Future*, November 2014, [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/2020consumerchallenge.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2020consumerchallenge.pdf).

32 Ericsson ConsumerLab, *supra* note 16 at 9.



happening. Eventually, as noted by Malcolm Mercer, some consumers find that paying for a solution may be more financially or emotionally draining than the problem itself. For these consumers, it is easier to resolve the situation on their own rather than hire an attorney.<sup>33</sup>

Though more often an issue of cost rather than accessibility, corporate consumers of immigration services are also beginning to invoke the DIY model to some extent. Using robust and expert systems, companies and businesses that would previously outsource their business immigration work to a skilled and seasoned practitioner can now employ in-house counsel (with paralegals) to take on the more routine and standardized tasks.

We have seen do-it-yourself concepts take hold in other areas, disrupting that industry's marketplace. When the first online travel agency emerged on the Internet in the mid-1990s, many people were skeptical of it, including the travel agents. At that time, entering credit card information on a booking site may have seemed preposterous. Two decades later, websites like Priceline, Orbitz, and CheapTickets dominate the industry. Other sites such as TripAdvisor fill in the gap by enabling travelers to gain valuable insight and information on how to plan a trip specific to their needs. A report by CNN in 2013 found that the number of travel agencies in the United States dropped 60% within a twenty-year period.<sup>34</sup> What prompted this shift? The consumers. Consumers found that using online sites produced not only better prices, but also more efficiency, transparency and convenience. In addition, as we noted above, consumers started heavily relying on others' reviews to make informed decisions for themselves through collective intelligence.

*When the first online travel agency emerged on the Internet in the mid-1990s, many people were skeptical of it, including the travel agents*

### ***Alternatives to Lawyers***

Not everyone is a do-it-yourselfer. Some find their matter more complicated than previously anticipated, some prefer paying to get the work completed, and some want the assurance from a trained individual. In the past, these dilemmas would encourage the consumer to walk straight into an attorney's office; however, as online legal services and non-attorney legal professionals become permanent fixtures in the legal industry, consumers now have alternative options to meet their legal needs.

As discussed earlier, online immigration services are a disruptive technology. This new model of delivering legal services competes with the traditional model of a brick-and-mortar law practice. The companion article, *Online Legal Services: Do They Help or Harm Consumers?* delves into how these new technologies could impact potential immigration clients. Attorneys are understandably uncomfortable with the emergence of these new services. Even after years of being on the market, attorneys remain skeptical and unconvinced of the benefits to consumers and view the offerings of such providers as the unauthorized practice of law. From a consumer's standpoint, the benefits of these online providers initially outweigh the cons—especially for those consumers who would not otherwise retain a lawyer.

<sup>33</sup> Malcolm M. Mercer, *supra* note 28.

<sup>34</sup> Rebecca L. Weber, *The Travel Agent is Dying, But It's Not Yet Dead*, CNN.com (Oct. 10, 2013, 6:20 am ET), <http://www.cnn.com/2013/10/03/travel/travel-agent-survival/>



*A 60-second search on Avvo.com, in comparison, can provide a potential client the answers they need*

A client may use an online legal provider for many reasons. For the younger generation, the classic attorney-client relationship of a traditional law setting does not fit the mobile, on-the-go lifestyle that many consumers expect from other industries. For others who cannot afford legal services, online services offer an alternative at a more reasonable cost. Others believe they do not need to retain a lawyer for his full fee, and feel competent to complete some of the work themselves. And still other consumers have difficulty finding an attorney near their residence or work, as legal service providers are not distributed equally across all geographic communities. A 60-second search on Avvo.com, in comparison, can provide a potential client the answers they need, yielding clear results on how long the process will take, an exact price of how much it will cost, and a guarantee that the consumer will receive a response within a day. Few attorney websites provide such assurances. Attorneys can argue that it is difficult to offer definitive answers and that the rules and regulations prohibit this; however, consumers would dispute that based on the attorney's years of experience, knowledge about the subject, and skills in carrying out the matter, a level of assurance and transparency should be provided to the client at the outset.

In *Rethinking Regulation and Innovation*, Professor Campbell provides greater insight as to why consumers would select an inferior service such as LegalZoom compared to a competent attorney:

At a fundamental level, the form legal document is inferior to the services of a competent attorney. The attorney can use specialized expertise to evaluate the client's needs, and can deliver not only a properly written document but also the correct document for the particularized needs of the client. On the other hand, even given uncertainty about selecting the correct form or filling it out properly, form legal documents may be the best available solution for those unable to afford the services of an attorney and incapable of drafting their own legal documents. Form legal documents thus represent a potentially disruptive way to provide a useful—if inferior—solution to consumers unable to afford an attorney.<sup>35</sup>

To sum it up, in the legal marketplace, as Mr. Britton points out, “There is a lack of transparency, affordability and access.”<sup>36</sup> Online legal service providers, on the most basic level, provide these assurances to consumers.

The accessibility of non-lawyer practitioners is another controversial debate within the legal profession. From a consumer's perspective, Accredited Representatives (AR) and Limited License Legal Technicians (LLLTs)<sup>37</sup> provide a practical and more affordable alternative to attorney representation.

Some have compared the work of accredited representatives and LLLTs to nurse practitioners (NPs). According to the American Association of Nurse Practitioners, “[Nurses Practitioners]... are a proven response to the evolving trend toward wellness and preventive health care driven by consumer

35 Ray Worthy Campbell, *supra* note 19 at 12.

36 Patrick A. Wright, *supra* note 24.

37 In 2012, the Washington State Supreme Court (WSSC) responded to the access to justice crisis in that state by allowing a limited license to non-lawyers to practice law. According to the WSSC, the authorization for LLLTs to engage in certain limited law-related activities, “holds promise to help reduce the level of unmet need” for low-income people who have “uncomplicated family-related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome.” For a more detailed discussion, see the companion article *The Present and Future State of Non-Lawyer Practitioners*.



demand.”<sup>38</sup> An extensive report demonstrates that NPs have consistently proven to be more cost-effective providers than physicians. Similarly, LLLTs bring a related option to the legal world, attempting to make legal services more accessible to people who cannot afford a lawyer. While these legal professionals cannot represent clients in court, they can consult and advise, complete and file necessary court documents, help with court scheduling, and support a client in navigating the often-confusing maze of the legal system.

Compared to online legal service providers, non-lawyer practitioners offer a low-cost alternative to consumers who still want to physically see and meet the person handling their legal matter. Whereas younger generations will go online to look for an answer, Baby Boomers and Generation Xers may prefer to receive assistance in person, and will more willingly turn to these practitioners. In addition, several states are recognizing the benefit of non-lawyer practitioners for their underserved communities and are looking to close the access to justice gap by allowing training and licensing.<sup>39</sup> As the knowledge base and competency of non-lawyer practitioners increase over time, those who cannot find the assistance they need online will also turn to these trained professionals to assist and resolve their legal matters.

## Conclusion

As multiple studies have shown, consumers of all socio-economic backgrounds are becoming more empowered because of revolutionary technology.<sup>40</sup> Technology, which can be as complex as printing a spoon, or as simple as conducting a Google search on how to prepare for a citizenship interview, is transforming people’s lives. Yet technology is not the driving force of change; consumers are. Consumers decide which technologies thrive, survive, or go out of business. And today, consumers have more influence than ever before in how they access and consume goods and services, including immigration law.

One thing is clear: The tide is shifting for the immigration law consumer. While the desire to immigrate to the United States has remained unchanged, the sophistication and composition of the immigration consumer has, in most instances, drastically evolved. To remain relevant and competitive the immigration bar must meet the demands of our changing consumers. By meeting these demands, immigration lawyers can continue to fiercely advocate for the rights of their clients and uphold the quality and justice of immigration law and policy.

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38 American Association of Nurse Practitioners, report on Nurse Practitioner Cost-Effectiveness, <https://www.aanp.org/aanpqa2/images/documents/publications/costeffectiveness.pdf>.

39 Other states that are following Washington State in seeking ways to expand non-lawyer training and licensing in high-need areas include California and New York, among others.

40 Andrew Perrin and Maeve Duggan, *supra* note 6.





# Ethics and Innovation: Do the Rules of Professional Conduct Support or Impede Innovation in the Delivery of Legal Services?

The legal profession, steeped in tradition and slow to innovate, is under growing pressure to more quickly evolve the delivery of legal services for more Americans. It is estimated that 60% of consumers who could use legal services cannot access or afford them.<sup>41</sup> Over the past 25 years, office computers and technology have helped lawyers improve the efficiency of office functions and client communications, yet the basic method for offering and delivering legal services has changed very little. Furthermore, the changes in technology have not reduced the cost of the delivery of legal services, nor allowed lawyers to serve a greater percentage of the American public.<sup>42</sup> Many within the profession are calling for greater “access to justice” for those who need it.<sup>43</sup> Further, American consumers, who are familiar with buying goods and services on the Internet, are now looking for legal services there as well. Although more lawyers and non-lawyers are offering legal services online,

41 Deborah Rhode, *Access to Justice* (2004).

42 Technology may have an impact in helping lawyers reduce their costs of doing business, but those savings have not appeared to cause a reduction in the price of legal services. Whether technology has kept prices from increasing is possible; however, that has not made legal services more affordable and accessible to more consumers.

43 See ABA Commission on the Future of Legal Services Issue Paper, October 16, 2015: [http://www.americanbar.org/content/dam/aba/images/office\\_president/delivery\\_of\\_legal\\_services\\_completed\\_evaluation.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/delivery_of_legal_services_completed_evaluation.pdf)

This article is one of six in a series prepared for the AILA membership by the Future of Immigration Law Practice Task Force. The article series provides foundational information and analysis on the future of immigration law practice, and is meant to provoke thought and reflection about the future of your practice and career, as well as our profession and association. Readers are encouraged to pursue additional research on matters of particular interest. These are issues on which individual members and AILA as an organization must act as we develop our preferred future.



many lawyers eschew this move, often calling such services unethical or “unauthorized practice.”

Throughout this time of technological change, our Rules of Professional Conduct have essentially remained the same. The ABA promulgated the Model Rules of Professional Conduct in 1983, and since then, 49 states and the District of Columbia have adopted them in whole or in part. The ABA has completed several extensive formal reviews of the rules over the past 30 years, yet very little about them has been changed. In addition, while state versions of the rules have minor differences, the variations are only a matter of degree.

There is no doubt that ethics rules are an integral part of the legal profession, and exist to promote and protect many worthy objectives, including consumer protection and meaningful access to justice. However, as we face the continuing evolution of immigration law practice, it is time to examine the current ethics rules and the regulatory structure by which we are bound in order to start a meaningful conversation about the future of immigration law practice. Do current rules impact innovation, competition, and growth? Is the legal profession too regulated? If the rules do have an impact, should they be expanded to apply to all legal services providers, or eliminated so that the immigration bar retains a competitive and innovative edge in the changing market?

*as we face the continuing evolution of immigration law practice, it is time to examine the current ethics rules and the regulatory structure by which we are bound*

This article attempts to examine these questions so that immigration attorneys can meet the needs of consumers in a competitive and evolving legal market.

## Background

Law is a heavily regulated profession. Legal ethics rules—generally titled the Rules of Professional Conduct in all states except California—guide the behavior of attorneys in nearly every aspect of practice. In addition, attorneys in all states are regulated by the rules of their state supreme courts or by statutes enacted by their state legislatures. State statutes often define the unauthorized practice of law and related penalties, while other court rules set forth disciplinary structures and bar guidelines. Immigration attorneys today face an even more complex interaction of state ethics rules, federal laws, and regulations. They are bound by their own state’s Rules of Professional Conduct, as well as by the Federal Rules of Practitioner Conduct, which pertain to practice before the Executive Office of Immigration Review.<sup>44</sup> Identical rules exist for lawyer conduct before the Department of Homeland Security.<sup>45</sup> Sometimes, the federal rules overlap with the state rules; other times, they are seemingly contradictory.

Before we can truly assess the effect of regulation on the innovation of legal services, we need to examine how legal services are presently delivered to see if regulation might have an impact.

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44 8 CFR §1292.3

45 8 CFR §292.3



## The Current Model of Delivering Legal Services

When consumers seek out a lawyer, it is because they have a problem that needs to be solved. They bring the problem to a lawyer, and the lawyer works with them to develop and then achieve that solution.

Almost all lawyers use the same business model to deliver these services. They work out of an office that contains the tools (and often the workers) they need to attract and engage clients, communicate with clients, administer the client relationship (through paperwork, billing, etc.), and develop solutions to clients' problems. While law firms take different approaches to client service, forms of communication, billing rates, and the like, the same model is almost always used: A client engages the firm to solve a legal problem, and the lawyer and law firm do the work with the tools and workers they have in the office, get paid, and send the client on their way.

Professor Clayton Christensen calls this the solution shop model. Christensen, best known for his book, *The Innovator's Dilemma*, has studied business models and their impact on innovation in the marketplace. According to Christensen and his widely accepted research, there are three business models in which businesses deliver their services:

1. Value Chain: Raw materials enter the business and are transformed into a finished product for sale. This model is applicable to industrial businesses and to some service delivery businesses, from carpet-cleaning companies to Google Translate.<sup>46</sup>
2. Solution Shop: Consumers come in with unique problems needing a solution tailored to their individual needs. Lawyers fit this model, as do doctors. Like a doctor's prescription, a lawyer's solution is valuable only if the evaluation of the underlying client/patient problem is correct.
3. Value Network: These businesses connect people and products in order to provide value. Included in this model are online businesses such as eBay and Angie's List, as well as banks and package delivery companies.

All businesses fall into one of these three models. Law practices almost universally fall under the solution shop model. Clients come to attorneys seeking solutions to their legal matters. Lawyers meet individually with each client, learn the facts that are specific to the case, review the laws applicable to the client and the situation, and then create and implement the best solution for the particular situation. With slight variations, almost every law firm or practice in America falls into the solution shop model.

Why do almost all lawyers use the solution shop model? Is it the best one? The most profitable? Or, is it a model that is essentially forced upon them? Do lawyers fail to use other forms of service delivery because they won't, or because they can't?

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46 See Note 7.



## Switching to a New Business Model

It can be very difficult for businesses to move from one business model to another. Successful businesses become tied to their workflow processes, favored vendors, marketing methods, and consumer expectations, making switching business models seem unattractive, burdensome, and potentially dangerous. Why mess with success?

However, resistance to change does not mean change is not viable. Businesses can and do revise their processes, change vendors, reinvent their marketing materials, and work to adjust client expectations. So why haven't lawyers changed their business model to meet the needs of more consumers? If there is more money to be made, or more people to be helped, why haven't lawyers—who are very smart people—already done it?

Professor Ray Worthy Campbell has studied this issue and concluded that the ethics rules greatly impact the choice to use the solution shop model to deliver legal services. In his article, *Rethinking Regulation and Innovation in the U.S. Legal Services Market*,<sup>47</sup> Campbell argues that the legal ethics rules dictate the delivery model:

*The rules are best seen not as defining a product at all, but as mandating a particular kind of method for addressing the job the client wants done*

The rules are best seen not as defining a product at all, but as mandating a particular kind of method for addressing the job the client wants done.

Understanding the various generic value configurations helps make clear what is going on—the regulatory scheme tracks and imposes the solution shop value configuration. It contains requirements to make sure lawyers are able to meet the expectations of this model. The regulatory framework mandates that lawyers deliver their services according to this model. Lawyers practicing law cannot simply sell products or create networks; they must incur the overhead and meet the implied obligations of the solution shop configuration.

The regulatory scheme's prescription of the solution shop value configuration impacts innovation vastly more than any one regulatory requirement. Modifying or eliminating specific regulations will have limited impact so long as lawyers are committed to the solution shop model. So long as lawyers are controlled by the underlying architecture of the solution shop configuration, tweaking individual rules will amount only to painting the trim.<sup>48</sup>

A review of several common ethics rules helps to bring this impact into focus.

### **Advertising Rules**

It was almost forty years ago that the U.S. Supreme Court struck down bans on lawyer advertising to allow attorneys to more fully communicate with potential clients about the availability of legal services.<sup>49</sup> Still, advertising rules are arguably some of the most constrictive ethics rules faced by immigration attorneys. ABA Model Rule 7.1 prohibits a lawyer from making any false or misleading

47 Campbell, *New York University Journal of Law & Business*, Vol. 9, Fall 2012.

48 See also Gillian Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control Over Corporate Legal Markets*, *Stanford Law Review* (2008).

49 *Bates v. Arizona State Bar*, 433 U.S. 350 (1977).





communications about the lawyer or the lawyer’s services,<sup>50</sup> and ABA Model Rule 7.2 places restrictions on lawyer advertising.<sup>51</sup>

State advertising rules do not always mirror the ABA rules directly, and certain states have adopted advertising rules that are even more restrictive. For example, New York requires attorney advertising to be labeled as such in the advertisement.<sup>52</sup> Michigan and Nevada both require that records of advertisements, including where and when the ads were used, be kept for two years.<sup>53</sup> States such as Florida, Nevada, Kentucky, and Texas require attorneys to submit most advertisements to an advertising review committee (with a payment, no less) for approval before they can be released publically.<sup>54</sup>

As technology evolves, so does legal services marketing. Law firm websites have grown from a marketing nicety to a marketing necessity in less than a decade. Social media has become a virtually inescapable way—and a golden opportunity—for law firms to attract business. Social networks such as Twitter, Facebook, LinkedIn, Google Plus, and Instagram, among others, are now considered key tools by many immigration lawyers to build and gain brand recognition and market legal services. Attorneys interact with current clients, potential clients, other attorneys, and the general public on these social media sites daily. These “new” marketing avenues are not untouched by ethics rules. Some states regulate law firm websites as advertisements that must be pre-approved by the bar.<sup>55</sup> Another has considered a blog to be an advertisement.<sup>56</sup> The California State Bar has issued an ethics opinion as to when a tweet is an advertisement subject to ethical restraints.<sup>57</sup>

Navigating myriad advertising rules, especially in light of social media and other Internet-based marketing opportunities, can be daunting. It takes time, money, and effort on the part of the lawyer or law firm to comply with all applicable rules. For example, the Florida Bar has published a handy 126-page guide to help lawyers comply with all the rules, regulations, and recent amendments.<sup>58</sup>

The result of all of these advertising rules is a restriction on an attorney’s ability to take advantage of the true scope of available marketing opportunities. Take Twitter as an example. In states that require an Attorney Advertisement disclaimer or notice to be included in each advertisement, how does a lawyer include that information in a 140-character “tweet,” when each character is so valuable? While a law firm may not be able to tweet about its services or its success in a particular case without ethical reprisals, other businesses are not so limited.

*The result of all of these advertising rules is a restriction on an attorney’s ability to take advantage of the true scope of available marketing opportunities*

50 Model Rule 7.1: A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

51 Model Rule 7.2(a): Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may (1) pay the reasonable costs of advertisements or communications permitted by this Rule.

52 New York Rules of Professional Conduct Rule 7.1(f).

53 Michigan Rule of Professional Conduct Rule 7.2A; See also <http://www.nvbar.org/lawyeradvertising>

54 Texas Disciplinary Rules of Professional Conduct, Part VII ; Florida Rules of Professional Conduct Rule 4-7.19; Kentucky Bar Advertising FAQs.

55 These states include Kentucky, Texas, and Nevada, among others.

56 *Hunter v. Virginia State Bar ex rel. Third District Committee*, 285 Va. 485, 744 S.E.2d 611, *cert. denied*, \_\_ U.S. \_\_, 133 S.Ct. 2871 (2013).

57 California Ethics Opinion 2012-186.

58 Handbook on Lawyer Advertising and Solicitation.



If history is any guide, we can expect the list of digital marketing tools and opportunities to continue to grow in the coming years, begging the question whether the current ethical framework for attorney advertising rules is sustainable.<sup>59</sup>

### ***Unbundling Legal Services***

The ABA has long encouraged the unbundling of legal services as a valid practice. ABA Model Rule 1.2(c) allows lawyers to limit the scope of representation so long as the limitation is reasonable under the circumstances and the client gives informed consent.<sup>60</sup> In 2013, the ABA passed a resolution encouraging attorneys to consider limiting the scope of representation so as to increase access to legal services.<sup>61</sup> Most states have rules either mirroring ABA Model Rule 1.2(c) or rules substantially similar to Model Rule 1.2(c).<sup>62</sup>

*Unbundling allows a consumer to pay only for the legal services he or she wants*

Unbundling is a way to deliver legal services at a lower cost to consumers. Not every consumer wants or can afford a full-service representation by a lawyer. Unbundling allows a consumer to pay only for the legal services he or she wants, and limits the lawyer's obligations to the client to that specific set of agreed services. In order to meet the needs of immigration legal services for consumers

who may want less than full service, and at a lower cost, unbundling may increase and/or become a necessity for immigration law practitioners.

However, there is an inherent contradiction in applicable regulations facing immigration attorneys that may hinder this trend. While the applicable governing state rules may ethically permit limiting the scope of legal services, federal regulations found at 8 CFR §1003.102 can be read otherwise. 8 CFR §1003.102 states:

“A practitioner should carry through to conclusion all matters undertaken for a client, consistent with the scope of representation as previously determined by the client and practitioner, unless the client terminates the relationship or the practitioner obtains permission to withdraw in compliance with applicable rules and regulations.”  
8 CFR §1003.102(q)

The same section of the regulations requires that attorneys file a Notice of Entry of Appearance as Attorney when that attorney has engaged in “practice or preparation,” as those terms are defined by the regulations. 8 CFR §1003.102(t). The definition of “preparation” provided in the regulations leaves little room for argument that any attorney consulting on an immigration matter and performing any substantive work has engaged in preparation:

The term *preparation*, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a

59 In 2012, law firms spent more than 75% of their marketing budget online. (2012 Legal Market Survey Report, Avvo & LexBlog)

60 ABA Model Rule 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer.

61 [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/lr\\_resolution\\_and\\_report\\_108.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/lr_resolution_and_report_108.authcheckdam.pdf)

62 American Bar Associate Unbundling Fact Sheet, [http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/20110331\\_unbundling\\_fact\\_sheet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/20110331_unbundling_fact_sheet.authcheckdam.pdf)



notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure. 8 CFR §1001.1(k).

Perhaps, however, the Department of Homeland Security understands the limitations inherent in these regulations. USCIS, in Form I-864 dated July 2, 2015, now allows attorneys to indicate whether they represent the sponsor beyond the preparation of the affidavit. A note under this section states that if the attorney represents the sponsor beyond the affidavit, a G-28 must be submitted. Presumably, an attorney preparing an affidavit of support will have studied the facts of the case and the applicable laws and determined whether the sponsor qualifies. In this case, where “preparation” has occurred, it would seem that no G-28 is required.

Notably, the Executive Office for Immigration Review (EOIR) recently promulgated a rule amending its regulations. Specifically, the new rule amends regulations relating to the representation of an individual in custody and bond proceedings before EOIR by allowing a representative to enter an appearance in custody and bond proceedings without such appearance constituting an entry of appearance for all other removal proceedings.<sup>63</sup> This is a fairly dramatic departure from the previous rule, which in effect meant that once an attorney submitted an appearance on a case pending before EOIR, he or she was the attorney of record for all proceedings until an immigration judge approved his or her motion for withdrawal.

Practically, how do the restrictions in the regulations allow immigration attorneys to unbundle legal services? Perhaps a client wants the attorney to advise him as to eligibility to naturalize and to complete the N-400, but does not want to pay the attorney to file the application or monitor it while it is pending with USCIS. 8 CFR §1003(t) does not seem to allow this. If the attorney then files the G-28, Notice of Entry of Appearance of Attorney, should it be withdrawn after the receipt is received?

Immigration attorneys arguably unbundle all the time, namely by giving a single consultation about a limited area of immigration law (*e.g.*, an attorney consults with a client regarding his eligibility for H-1B nonimmigrant status, but does not give advice as to eligibility to immigrate through family members). But is this the limit to what attorneys can unbundle? Given the nature of individuals seeking immigration legal services, it may be that unbundling further than the consultation is not “reasonable,” as required by Model Rule 1.2. Limited English language ability, lack of understanding or knowledge of U.S. law and procedure, and having been a victim of crime are all factors that influence the ability of a potential client to give “informed consent” according to Rule 1.2.

Until then, there remains a split between state ethics rules that allow unbundling, and the Federal Rules of Practitioner Conduct that do not. Thus, despite the desire of immigration attorneys to comply with consumer requests to unbundle their services, USCIS and EOIR rules effectively prevent them from changing the scope of most representations.

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63 See final rule *Separate Representation for Custody and Bond Proceedings* published Dec. 7, 2015.



## ***Confidentiality of Client Information and Communication***

Lawyers are well-versed in the requirement to keep client information, data, and documents confidential. In an effort to maintain client confidentiality while providing full and zealous representation, lawyers have created office systems and procedures to secure and maintain information and documents. From locked and alarmed offices to staff confidentiality training, and from encrypted online documents to guarded public discussions, lawyers take great care in maintaining confidences to the full extent mandated by ethics rules.<sup>64</sup>

Lawyers are also required by ethics rules to maintain reasonable communications with clients.<sup>65</sup> While beneficial, this rule also places a burden on lawyers. We cannot place unreasonable restrictions on the client's ability to communicate, and we are required to communicate in certain circumstances. We must promptly provide information to a client, consult about the means to attain the client's objectives, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

To meet the ethical obligations pertaining to confidentiality and communication, attorneys must have the systems and, frequently, the personnel to help maintain that mandated level of communication. A law office or attorney must be able to communicate and accept communications, including telephone (via voicemail or a receptionist), email, mail, and overnight delivery services. This now may also include communicating via social media. These forms of communication must be confidential, so attorneys must take steps that are not usually required of other businesses to protect information as it comes and goes from the lawyers and the law firm.

The requirements imposed by the rules directly impact the cost of doing business as a lawyer. Lawyers have continually worked to implement cost-effective systems and processes that can reduce their cost of communicating with clients, but whatever systems the law firm implements must still comport with the communication requirements set forth in the rules.

*The requirements imposed by the rules directly impact the cost of doing business as a lawyer*

## ***Competence***

Lawyers in 46 jurisdictions are required to complete up to 15 hours per year of continuing education (CLE) to stay current on the law and legal issues. This requirement costs lawyers up to 15 hours per year of productivity, not including the time needed to travel to the CLE classroom and complete the paperwork to prove the mandated attendance.

Competence is also relevant to malpractice claims. Lawyers who do not meet a minimum standard of care are subject to lawsuits for such failures. If they don't deliver legal services to a minimum standard, they can be held liable for the outcome. In a malpractice claim, that can lead to a financial settlement or judgment. Other professionals, such as doctors and architects, can be sued for malpractice, but non-attorney businesses that offer legal services cannot, which puts attorneys at a significant disadvantage.

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<sup>64</sup> See ABA Model Rule 1.6 and state versions thereof.

<sup>65</sup> See ABA Model Rule 1.4 and state versions thereof.



We are not advocating for a reduction of CLE requirements or exemption from malpractice liability, we merely point out that CLE requirements and competence standards have a business cost that isn't applied to non-lawyers or to many other small businesses. At some level these costs are passed along to the consumer in the form of higher fees. Those seeking more moderate fees for consumers must acknowledge these requirements and address these issues as the delivery of legal services evolves.

### ***Conflicts of Interest***

Lawyers cannot represent every client who walks in the door. Ethics rules require that certain steps be taken to avoid a positional or representational conflict with an existing or former client.<sup>66</sup> In certain cases, this means a loss of business. In addition to the loss of potential income, attorneys have the burden of implementing and maintaining a conflicts-checking system to identify potentially conflicting matters. Non-attorney providers of legal services are not bound by these conflicts rules, freeing them to channel resources into marketing or other innovations that could give them an advantage in the market.

### ***Safekeeping Property***

A hallmark of the legal profession and a lawyer's ethical responsibilities is the duty to safe keep client property.<sup>67</sup> At a minimum, safekeeping property requires one or more separate trust accounts opened in the lawyer's name, and usually a bookkeeping system in which to track client funds held in trust. A number of state rules mandate lawyers to follow specific, detailed bookkeeping processes in order to meet their ethical requirements.<sup>68</sup> This is in addition to the requirement to keep their own records for their business operating account.

Solo practitioners or small firms may so fear being disbarred or suspended for not properly handling trust account funds that they hire bookkeepers and accountants to make sure they are properly handled. In many instances, lawyers would rather be paid after they do their work (and take the risk of not being paid) rather than take fees in advance that then must be placed in a trust account.

### ***Fee Sharing and Non-Lawyer Partners or Investors***

Lawyers are currently prohibited from sharing legal fees with non-lawyers, with few exceptions.<sup>69</sup> Lawyers cannot compensate non-lawyers who are not employees for referring cases except for advertising fees and similar activities.

ABA Model Rule 5.4 also prohibits non-lawyers from investing in firms and having control of a law firm. All jurisdictions except the District of Columbia and Washington have adopted this rule; D.C. and Washington permit such investment. In the absence of outside investment, U.S. law firms must seek financial contributions from their partners or use debt financing to pay for firm operations and expansion. Firms are not allowed to seek venture financing or sell shares of the firm to increase available capital lest they run afoul of ethics rules meant to protect the independence of attorneys in their practice of law.

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66 See ABA Model Rule 1.7 Conflicts of Interest and state versions thereof.

67 See ABA Model Rule 1.15 Safekeeping Property and state versions thereof.

68 See Rule 1.15 for Alabama, Colorado, Delaware, Illinois, Indiana, Massachusetts, North Carolina, and Virginia, among others.

69 See ABA Model Rule 5.4 Professional Independence of Lawyer and state versions thereof.



*The inability to seek outside capital to fund law firm operations and expansion will impact the profession's ability to both expand and innovate*

This regulatory limitation has worked well for decades, and continues to work for some small firms. However, as globalization comes to the legal profession, the ability of large firms seeking to open multiple offices and/or merge with other large firms throughout the world with existing capital or debt financing is stymied. Moreover, a number of small firms seeking to make large investments in innovative software or different models of legal service delivery are not able to do so because of the cost. The inability to seek outside capital to fund law firm operations and expansion will impact the profession's ability to both expand and innovate.

### ***Practice Across State Lines***

Immigration is one of few areas of law that allows attorneys to practice across state lines, maintaining an office in one (or two or three) states and representing clients and businesses across the country. This is a tremendous advantage, as it significantly increases client base and the potential reach of online marketing efforts.

However, the multiple and differing rules currently in place make it difficult for immigration attorneys to leverage their unique situation. Although they may be similar, no state's ethics rules exactly mirror another's. Therefore, attorneys must adhere not only to their home state's rules and the federal ethics rules, but must also be familiar with, understand, and follow the ethics rules for any state in which they practice, or potentially even advertise.<sup>70</sup> This clearly impedes immigration attorneys from taking advantage of their unique ability to practice across state lines.

## **The Impact of Regulation on the Delivery of Legal Services**

Clearly the rules have an impact on the method and cost of doing business as immigration lawyers:

- Attorneys cannot take full advantage of the wide variety of technology-based marketing options.
- Attorneys have extra costs and the burden of seeking approval of advertisements and websites.
- There are costs associated with keeping client information and documents confidential, especially storing information in the cloud.
- Minimum communication obligations can add to the workload of attorneys and law firm employees, as well as to the costs of maintaining various communication systems.
- Complying with continuing legal education requirements can be burdensome and costly.
- Lawyers can be held financially responsible for not properly delivering competent client service.
- Conflicts rules prevent attorneys from taking full advantage of the fruits of their marketing and networking efforts.

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70 See, Dobson, *The Law of Outlaws: Rules and Jurisdiction When Establishing an Out-of-State Practice Under Rule 5.5 (D)(2) AILA Document No. 15051403*



- Attorneys must maintain separate bank accounts for client funds they hold, and must follow specific guidelines to administer those accounts to meet professional standards, often using bookkeepers to maintain the account and account records.
- Attorneys are limited as to entering partnerships with non-lawyers to deliver legal services.
- Inconsistent rules among states add a significant burden and cost to lawyers desiring to offer their services in multiple states.

Although the rules are not identical in each state, they are similar enough that their impact on the delivery of legal services across the United States is the same. The rules push lawyers to deliver similar services, primarily taking the form of Professor Christensen’s solution shop model, and limit their ability to innovate. Attorneys are scared to branch out for fear of violating ethics rules and receiving reprisals from disciplinary committees. Risk is an inherent element of business; however, whereas a non-lawyer may risk only financial loss, an attorney branching out risks far more. Run afoul of legal ethics rules and you risk not only business and money, but also your livelihood and ability to practice law.

In addition, the rules increase the cost of doing business. The time (126-page manual on advertising rules, anyone?), effort (attorneys must know their state’s rules and all federal rules well enough to follow them both at all times), and actual money (don’t forget the special software needed to keep track of IOLTA funds) required to keep abreast of and in compliance with ethics rules make it nearly impossible to make changes that could result in the delivery of lower cost legal services. Until there is a movement to change the Rules of Professional Conduct or the regulatory scheme as a whole, it will remain extremely difficult for lawyers to make changes that consumers and other lawyers are demanding.

*Until there is a movement to change the Rules of Professional Conduct or the regulatory scheme as a whole, it will remain extremely difficult for lawyers to make changes that consumers and other lawyers are demanding*

## Moving Forward—Partial Changes

If the delivery of immigration legal services is going to evolve to meet the changing marketplace, then the rules that govern immigration lawyers must be changed to allow lawyers to deliver services. At present, there is some movement toward revising lawyer regulation.

### ***Advertising Rules***

In 2015, the Association of Professional Responsibility Lawyers (APRL)<sup>71</sup> completed a two-year study of lawyer advertising rules, and released its report on the current state of those rules. They concluded:

Based on the survey results, anecdotal information from regulators, ethics opinions, and case law, the Committee concludes that the practical and constitutional problems with current state regulation of lawyer advertising far exceed any perceived benefits associated with protecting the public or maintaining the integrity of the legal profession, and that a practical solution to these problems is

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71 Formed in 1990, Association members represent other lawyers in disciplinary proceedings, and represent and advise lawyers and law firms on ethics and professional responsibility, risk management, legal malpractice, and the law of lawyering.



best achieved by having a single rule that prohibits false and misleading communications about a lawyer or the lawyer's services.<sup>72</sup>

The report focuses particularly on Internet advertising and technologies:

The legal profession today is an integral part of the Internet-based economy, and advertising regulations should enable lawyers to effectively use new on-line marketing tools and other innovations to inform the public. The sharp increase in mobile technology and Internet marketing options have resulted in borderless forms of marketing and advertising. Virtual law practice and web-based delivery of legal services, as well as the public's increased reliance on and use of the Internet and mobile technology, mandate a reexamination of how the legal profession views lawyer advertising and what can or should be effectively regulated.<sup>73</sup>

We agree that attorney advertising rules should be significantly revised. Lawyers should not need a 126-page handbook to help them understand regulatory limits. There are a few states that are trying to address the need for clearer advertising guidance. For example, the New York State Bar Association issued the Social Media Ethics Guidelines in 2015,<sup>74</sup> and was the first state bar organization to do so. However, far more needs to be done, and significant changes to attorney advertising rules are warranted.

### ***Unbundling Legal Services***

Attorneys need to be able to meet the needs of consumers as they actually are, not as the rules presume they should be. Lawyers should continue to offer full service engagements to clients, but should also be prepared to meet the needs of consumers who are comfortable with limited services. The biggest obstacle at present is the inconsistency between the Rules of Professional Conduct and the Federal Rules of Practitioner Conduct. EOIR and DHS should adopt the standard of ABA Model Rule 1.2, or alternatively, provide clarity to immigration providers as to the level of unbundling allowed by the federal regulations.

### ***Changing Rule 5.4—Professional Independence of a Lawyer***

Since 2007, law firms in the United Kingdom have had the ability to seek outside investors to fund growth and operations without being accused of fee-sharing. With such capital investment, small law firms can grow into regional or national firms, and large firms can grow into global firms. With this source of funding, immigration law firms may be able to invest in technology and improvements that can reduce costs and change the mode of the delivery of legal services, ultimately allowing the firm to serve more people.

Non-attorneys are already reaping the benefits of this type of financial arrangement. In 2015, non-attorney Avvo secured an investment of \$71 million to help it launch and market Avvo Legal Services, which offers direct legal services in a variety of areas, including immigration.<sup>75</sup> Avvo will use a good deal of that funding to market this new product, especially in search engine marketing, and

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72 APRL Lawyer Advertising Report at 3.

73 *Id.* at 5.

74 <http://www.nysba.org/socialmediaguidelines/>

75 <http://stories.avvo.com/media-resources/press-releases/avvo-closes-71-5-million-series-e-round-led-by-technology-crossover-ventures>





immigration law firms will find it difficult to compete with the marketing heft that Avvo wields. At the end of the day, permitting non-lawyers to invest in immigration firms may be more helpful than harmful to lawyers and the consumers they serve.

## Moving Forward—Reinventing the Regulatory System

Changes to individual rules would no doubt help lawyers innovate and remain competitive in the evolving market. However, while changes to individual rules are welcomed, it may be that lawyers and consumers would benefit from a regulatory system that is as innovative as the marketplace itself. What if, instead of implementing smaller changes here and there, the legal profession scratched the entire current regulatory scheme and replaced it with a better, more modern and fluid framework?

The Nova Scotia Barristers Society is doing exactly that by eliminating individual lawyer regulation and discipline. In 2013, based on a comprehensive study, it began to alter its regulatory framework to align with newly defined strategic priorities that are responsive to the current legal practice trends and issues facing legal practice. The new regulatory system aims to transform regulation and governance in the public interest, encourage and accommodate new business models, and enhance access to justice and affordable legal services for all Nova Scotians.<sup>76</sup> The new system also “involves new ways of engaging law firms to achieve outcomes.”<sup>77</sup> The foundation of this new regulatory model is entity regulation. Rather than be “complaints-based,” where individual lawyers are disciplined for falling short of established ethical standards, entity regulation focuses on law firm processes, culture, and behavior based on the various types and sizes of the practice. This new framework, formally referred to as “Proactive Management Based Regulation” (PMBR), requires law firms to take enhanced responsibility for meeting program objectives. It is moving away from disciplining lawyers after the fact (i.e. reactive) to proactively pushing all law firms to take some responsibility for improving the quality of lawyering. In short, the lawyers in Nova Scotia believe that regulating law firm culture, in addition to individual lawyer behavior, is a better way to influence cultural change, and could assist in reducing complaints against lawyers while also promoting greater professionalism and client protection.

As of November 2015, the Society has developed a structure for its proposed Management System for Ethical Legal Practice (MSELP), and a draft self-assessment process for ensuring compliance. Discussions continue among lawyers and regulators to improve the proposed structure and processes before a pilot program begins.

In Australia, entity regulation has existed for more than a decade, and has resulted in a 66% reduction in the number of complaints against attorneys. Law firms subject to the PMBR believe it has helped them improve management systems within the firm and to deliver legal services to their clients.

Reform advocates within the profession, including Deborah Rhode and Gillian Hadfield have suggested other regulatory structures to stimulate innovation and access to justice, but those are not yet being implemented by any bar.<sup>78</sup>

76 <http://nsbs.org/sites/default/files/cms/publications/society-record/srvol32no2fall2014.pdf#page=31>

77 [http://nsbs.org/sites/default/files/ftp/ERU\\_Newsletter/2015-06-24-IBATransformingRegulation.pdf](http://nsbs.org/sites/default/files/ftp/ERU_Newsletter/2015-06-24-IBATransformingRegulation.pdf) at 3.

78 Hadfield, G. and Rhode, D., How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering, *Hastings Law Journal* (Forthcoming); conference draft at [http://c.ygcdn.com/sites/ncbp.org/resource/resmgr/2016\\_MM/2016\\_MM\\_Handouts/Saturday\\_Plenary-Hadfield\\_Rh.pdf](http://c.ygcdn.com/sites/ncbp.org/resource/resmgr/2016_MM/2016_MM_Handouts/Saturday_Plenary-Hadfield_Rh.pdf)



## ***ABA and State Bar Futures Commissions***

AILA's initiative on the future of immigration law practice comes at a time when the ABA and state bars are embarking on similar paths of trying to figure out how they can best prepare their membership to stay relevant and competitive in the years to come. In fact, law societies around the world are looking into the future of law practice in their countries.<sup>79</sup>

In 2014, the ABA created their Commission on the Future of Legal Services with representatives from the federal judiciary, state courts, law schools, large and small law firms, and state bars. As a result of this work, the ABA has catalogued many resources,<sup>80</sup> held hearings,<sup>81</sup> and issued several reports.<sup>82</sup>

A number of state bars have created similar groups, including New York, Virginia, Ohio, Florida, Michigan, Utah, and Wisconsin. These bar committees are producing reports similar to this one, and are worth reading.<sup>83</sup>

## ***Movement Toward New Regulatory Schemes?***

As the work of the AILA Future of Immigration Law Practice Task Force was on-going, the ABA was also reviewing the regulatory landscape. In February 2016, it made a significant move toward new state-based regulation of legal services by passing ABA House Resolution 105.<sup>84</sup> The resolution is meant to spur discussion and action by state courts and their oversight of state bars to survey the current delivery of legal services—by lawyers and non-lawyers—to determine if regulations should be changed to include non-lawyer delivery. Whether this resolution will change the ethics rules or regulatory landscape for lawyers depends on how many lawyers respond to the call for change.

## ***Regulating Non-Lawyer Providers***

It should come as a surprise to no one that licensed immigration attorneys are not the only players giving immigration legal advice in the United States. Representatives accredited by the Board of Immigration Appeals (BIA) are eligible under EOIR rules to give legal advice on immigration matters and represent clients in immigration court. In Washington state, Limited Licensed Legal Technicians (LLLT) (non-lawyers) are authorized by law to give legal advice about family law issues, and potentially soon, immigration.<sup>85</sup> These programs are meant to expand access to justice by offering ostensibly lower cost services.

*Whether this resolution will change the ethics rules or regulatory landscape for lawyers depends on how many lawyers respond to the call for change*

79 See Canada: [http://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf); United Kingdom: <http://www.lawsociety.org.uk/news/stories/future-of-legal-services/>; Australia:

80 [http://www.americanbar.org/groups/centers\\_commissions/commission-on-the-future-of-legal-services/Comments.html](http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/Comments.html)

81 [http://www.americanbar.org/groups/centers\\_commissions/commission-on-the-future-of-legal-services/Testimonials.html](http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/Testimonials.html)

82 [http://www.americanbar.org/content/dam/aba/images/office\\_president/issues\\_paper.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/issues_paper.pdf)

83 The State Bar of Wisconsin's Challenges to Legal Profession Committee published a fascinating report, "[The New Normal: The Challenges Facing the Legal Profession](#)," that identifies four top challenges, including economic pressures on the practice, advanced technology and the practice of law, regulation of the legal profession, and new lawyers' training and development.

84 [http://www.americanbar.org/groups/centers\\_commissions/commission-on-the-future-of-legal-services.html](http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html)

85 <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Legal-Technician-FAQs>



Online companies including LegalZoom and Avvo are now offering immigration services to the public, albeit via a proprietary network of lawyers who provide the actual services. There are also a number of providers like SkiptheLawyer.com that are not authorized by any laws to provide immigration legal services. The looming questions for us are whether and to what extent these providers should also be regulated.

A clear consequence to be considered: Over-regulation of licensed attorneys, or regulation of attorneys where no regulation exists for non-lawyer providers, puts licensed attorneys at a competitive disadvantage. To avoid this, it seems obvious that, to the extent that ethics are regulated for licensed attorneys, there should be at least some regulation for non-lawyer practitioners.

## Conclusion/Practical Takeaways

*There can be little innovation in the marketplace without innovation in the profession*

If the practice of immigration law must evolve to meet the changes in the marketplace, so must the regulatory framework. There can be little innovation in the marketplace without innovation in the profession. Unlike many of the market forces currently at play, lawyers control the regulatory scheme, and it is within our power to change. Without regulatory change,

lawyers will have more difficulty meeting consumer needs, and non-lawyer providers will have a distinct advantage in the marketplace.

What must we as lawyers do? How can AILA help members to ethically innovate their practices to address the many needs of the immigration legal services marketplace? What could we be doing as an association to spur the innovation in the regulatory scheme and the marketplace?

- At a minimum, AILA could advocate for clarification of existing and conflicting rules promulgated in the federal regulations for practice before EOIR and DHS.
- AILA members should participate in making upcoming state ethics and regulatory decisions, especially in light of [ABA House Resolution 105](#).
- AILA could educate members to navigate the various ethics rules to help members innovate within the current confines of the rules.
- Because immigration law and practice is unique, AILA members must advocate for immigration lawyers and consumers within the ABA and in other national and state bar associations in the debate on ethics and the regulation of lawyers.
- AILA could review and advocate for alternative regulatory schemes, starting with the APRL Report on Legal Advertising.





# Existing and Emerging Technologies: Can Legal Services Be “Better?”

Ever heard the phrase, “There’s an app for that”? The answer probably will be a resounding “yes!” This is simply evidence that new technologies are continuously being created to address consumers’ needs, from the commonplace to the more complex. Yet, have you ever really thought about how the dizzying pace of technological innovation has changed your life, your habits, and your daily interactions? For instance, the iPod forever altered the way we obtain and listen to music. This technological “disruption” in buying and listening to music has transformed the music industry by changing the way consumers purchase and listen to commercially produced music.<sup>86</sup> Technology has also created new possibilities, and challenges, for the practice of immigration law. Lawyers benefit from using technology, but are at the same time being pushed by the marketplace to lower the cost and improve the speed of delivery of legal services.

For years, technological changes in the legal profession were gradual. With the advent of the Internet, however, the legal profession was forever altered. The Internet revolutionized the way attorneys work, communicate with clients, and gather and share information. The Internet, with enabling technologies such as Wi-Fi, netbooks and tablets, email, immigration forms programs, case management systems, smartphones, and search engines like Google, has initiated profound changes that have increased immigration attorneys’ ability to effectively and efficiently deliver legal services. All of these technological developments have changed how attorneys perform their work, interact with current clients, and market to prospective clients.

86 See Stephen Witt, *How Music Got Free: The End of an Industry, the Turn of the Century, and the Patient Zero of Piracy* (Viking) (2015).

This article is one of six in a series prepared for the AILA membership by the Future of Immigration Law Practice Task Force. The article series provides foundational information and analysis on the future of immigration law practice, and is meant to provoke thought and reflection about the future of your practice and career, as well as our profession and association. Readers are encouraged to pursue additional research on matters of particular interest. These are issues on which individual members and AILA as an organization must act as we develop our preferred future.



*Information technology, “while not replacing lawyers, will be a force for displacement,” as well as a mechanism for positive change in the legal field*

Technology has created the tools to make the practice of immigration law more efficient and cost-effective. Empowering practitioners and consumers alike, technology has helped save time for professionals and consumers, and has reduced overall costs for the provision of legal services. It is therefore important for lawyers to be aware of the types of technologies that are available to them and their clientele. Technological developments in the legal profession have not only increased

access to legal services and the pace at which those services are delivered, but also have reformed the way lawyers structure their practices, interact with their associates and employees, collaborate with their colleagues, and communicate with their clients. Emerging technologies directly affect who is in the legal marketplace, who has access to information, how the practice of law manifests itself in the real world, and how business relationships are developed. For all of their benefits, however, new technologies can disrupt the established way of conducting business in the legal arena. Information technology, “while not replacing lawyers, will be a force for *displacement*,”<sup>87</sup> as well as a mechanism for positive change in the legal field.

In light of the above discussion, this article will briefly explore some of the more notable and current technological advances presently affecting the legal profession, and will attempt to identify emerging technologies that will continue to revolutionize the future of immigration law practice. This paper will discuss ways in which immigration attorneys might incorporate technology into their practices and business models, addresses some challenges immigration attorneys may face in the future because of cutting-edge technological innovations, and identify technology-related choices that immigration lawyers may need to grapple with soon.

## Technology in Immigration Practice

Most, but not every, immigration firm and practice has embraced technology to some degree. There has never been a definitive requirement as to the level of technology a lawyer must have in a law office to successfully practice immigration law. Traditionally, a lawyer has used the technology he or she feels is necessary and sufficient in order to provide services to clients. Those days, however, are coming to an end. There is now a new standard in the legal profession—a standard created by the ABA, and currently accepted by over 20 states.

In 2012, the ABA 20/20 Commission added a short sentence to Comment 8 to Rule 1.1-Competence. It now states: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”

This means that lawyers in those states (and other states that will most likely adopt the standard over the next few years) must meet a minimum competence standard in using technology. This also means that lawyers must not only have competency in the technology they use, but also must have a minimum competency in using the technology of the reasonably competent lawyer. If you do not have such competency, then you have to acquire it. A lawyer using technology is no longer an island unto herself, but part of an effort to bring the profession farther into the technological era.

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87 M. Ethan Katsh, *Lawyers in the Network*, 2 J. OF COMPUTER-MEDIATED COMM’N, no. 2, Sept. 1996.



## Sustaining vs. Disruptive Technologies

There are two types of technologies: technology can be “sustaining” or “disruptive.” It is sustaining if it helps existing companies improve the delivery of their product or services; technology is disruptive if it allows new or existing consumers who previously could not avail themselves of the existing or incumbent service.

Lawyers have been using sustaining technology for years, incorporating desktop computers, Internet connectivity, mobile devices, productivity software such as Microsoft Office, legal-specific software such as LawLogix or Clio, and similar tools that help them to deliver services to their clients. These sustaining technology tools have allowed lawyers to improve their services, become more efficient, and remain competitive in a world of price-sensitive consumers. These tools will continue to evolve, and lawyers who evolve with them will continue to find benefits of using them. Lawyers who do not evolve will find it difficult to remain competitive.

Disruptive technology is rarely adopted by law firms today. As set forth in the article, *Ethics and Innovation: Do the Rules of Professional Conduct Support or Impede Innovation in the Delivery of Legal Services?*, it is more difficult for firms to do this; however, some lawyers and non-lawyers are headed down this path. These technologies include online delivery of legal services, artificial intelligence, and data analytics. These disruptive tools will provide consumers with greater access to the law, but will cause many lawyers to be concerned about their future in the law.

We look first at common sustaining technologies in use by lawyers today. These technologies are helpful and necessary to run a successful practice today. We then turn to several emerging technologies that will likely disrupt the practice of law in the next decade or more.

## Mobile Technology and Virtual Office Technology

In the past, immigration lawyers did their work in the office at their desks. With developing mobile technologies such as smartphones, iPads and tablet computers, and laptops and netbooks, lawyers can now do their work from almost anywhere there is an Internet connection.

Similarly, remote access technologies such as GoToMyPC, secure VPN connections enable attorneys to access their desktops from anywhere and voice-over Internet Protocol (VOIP) systems use Google Voice to allow users to talk to clients when they are away from the office. Innovations in these types of technologies have made it possible for many organizations to enact work-from-home programs. It may surprise you to know that the USCIS Service Centers have a robust work-from-home program, which in part led to the USCIS Nebraska Service Center winning second place in a recent “Best Company to Work For” contest in Lincoln, Nebraska.<sup>88</sup>

Mobile technologies have certainly provided a high level of convenience and flexibility for immigration attorneys to work from almost anywhere and be accessible to clients at almost any time. Such technology also benefits clients, who often want to communicate with their lawyer. Gone are the piles of pink message slips after a day out of the office, replaced by detailed email or voicemail message that more often than not move the

*While not yet “frictionless,” the attorney-client relationship has greatly benefited from the improved communication and responsiveness that mobile communication allows*

88 2015 BEST PLACES TO WORK IN LINCOLN, <http://www.woodsaitken.com/2015bptwlnkgallery/> (last visited April 25, 2016).



ball forward. Gone are the nights when a lawyer had to run back to the office to complete a forgotten task: With remote access software, lawyers can get secure access to their office computer from home or anywhere. Mobile technology has taken a big step toward reducing friction in the attorney-client relationship. While not yet “frictionless,” the attorney-client relationship has greatly benefited from the improved communication and responsiveness that mobile communication allows.

### ***Email—Past, Present and Future***

No other single technology has changed the way most immigration lawyers practice than email. Before email came along in the mid-90s, lawyers communicated with clients by telephone and letter. Letters took time to draft, type, print, sign, and mail; it took 2 days or more to arrive at the recipient’s mailbox. The process was both expensive and inefficient when compared to business correspondence today. Over the past 20 years, lawyers’ use of U.S. mail has dropped, and the use of email has skyrocketed to where we use U.S. mail only when we *must* send paper to a recipient.

Email has become synonymous with smartphones. No longer are we tied to a desktop computer to send and receive email, but we can access our email anywhere we can get a mobile network signal. As can our clients. This convenience and speed comes at a price: email overload. Many of us struggle with too many emails throughout the day—and night—and no standard timing for which the recipient to respond. Email management has become a major problem at many firms.

Part of the problem is that most lawyers use Microsoft Outlook or Google email as their email software. That software has not kept up with the needs of professionals to handle their email. But lawyers are to blame too. We are not spending time looking for additional software tools that would make our email management more effective. Tools such as Copy2Contact, SimplyFile, QuickFile, SendSecure, and ShareFile just to name a few. With Office365 we can expect Microsoft to improve Outlook, but if you are using an older version, you need to investigate other productivity add-ins.

Email is being joined by texting as a quick and easy mode of communication, but don’t expect email to go away soon. Lawyers need to keep improving their email skills in proportion to the amount we use it every day (and night)!

### ***Cloud Computing—Convenience, Cost, and Collaboration***

For many attorneys, cloud computing is such an integral part of their practices and business models that they never stop to question - how does it work? The reason for this may be that legal practitioners are more focused on the benefits of cloud computing – user friendly, efficiency, scalability, convenience, document control and low set up cost, than they are on the means.

Cloud computing is a business platform and “type of computing that relies on sharing a pool of physical and/or virtual resources, rather than deploying local or personal hardware and software. It is somewhat synonymous with the term ‘utility computing’ as users are able to tap into a supply of computing resource rather than manage the equipment needed to generate it themselves; much in the same way as a consumer tapping into the national electricity supply, instead of running their own generator.”<sup>89</sup> Attorneys have three options to choose from when seeking to work “in the cloud.”

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89 INTER-ROUTE: WHAT IS CLOUD COMPUTING?, <http://www.interoute.com/cloud-article/what-cloud-computing> (last visited April 20, 2016).



Cloud computing users can work through a private, public or hybrid cloud platform. In general, the size of the attorney's firm will determine which cloud platform is best for their business model; with smaller firms opting for public clouds and larger firms incurring an additional expenditure to purchase software to support a private or hybrid cloud platform.

*These types of collaborative sites also make travel much more convenient for the busy immigration lawyer who spends a lot of time out of the office*

Collaborative websites such as Dropbox, Box, Hightail and Microsoft Office 365 are considered public clouds. These websites are chosen by many organizations because of convenience, they better enable attorneys to communicate and collaborate with other attorneys and staff in their offices. For instance, immigration law firms with offices in numerous cities can utilize these types of collaborative sites to share information, provide instructions, jointly work on projects, and edit documents in real-time without having to talk on the phone or send multiple emails back and forth. These types of collaborative sites also

make travel much more convenient for the busy immigration lawyer who spends a lot of time out of the office.

Likewise, immigration management and forms programs such as Tracker, Cerenade's eImmigration and LawLogix are also public cloud-based platforms that have dramatically changed the way immigration lawyers practice law by making the preparation of immigration petitions and applications more efficient. These public cloud platforms have also changed the clients' experience by giving them more responsibility and ownership over the process of collecting information and documentation for their own case.

At present, we are seeing more traditional productivity software products—from bookkeeping to word processing moving to the cloud. Cloud-based systems make it easier to share documents and access information from anywhere. One of the biggest moves from traditional software to cloud-based is Microsoft Office365. Formerly installed on one computer, the cloud-based version is available to the software owner across multiple computers with document storage and other tools now included. And, it costs less.

Looking into the future, we can anticipate that, at some point, many of these traditional software products will only be available in the cloud. In the end, these technologies further enable the harmonization of legal services globally.

### ***Developments in Video Communications***

Client interaction in the legal profession has changed over the years due to the innovation of video conferencing sites, such as Skype and Zoom. These sites offer free and/or subscription-based features that allow users to communicate without being in the same room. This alternative method means fewer in-person meetings—a convenience to clients and a cost-savings to lawyers. As long as they both have access to the Internet, a lawyer in New York can meet via Skype with a client who is away for business in London.

Skype has not only minimized the need for in-person meetings, but has also broken language barriers. In 2014, Skype introduced a new translation feature, since then the system is able to translate English, Spanish, French, German, Chinese, Italian, Portuguese and most recently, Arabic. A Skype user “can translate [their] speech between any of those languages, but Microsoft says that it works best by far between English and another language. Over time, as Skype's machine learning techniques are





exposed to more and more usage, other languages will get better”<sup>90</sup> Language translation features are not only convenient for client and immigration attorney interactions, but also save firms and solo attorneys money on translators or higher salaries for bilingual staff members.

Although, video conferencing technology has improved attorney/client communications, in some instances it is not the best option for the client. Some immigration attorneys find that the convenience of video conferencing does not outweigh the many benefits of in-person communication with their clients. However, as consumers become more comfortable with video conferencing because of their use of FaceTime and similar services, firms will want to offer video conferencing to clients as an alternative to in-person meetings.

### ***Social Media for Marketing***

The advent of social media has perhaps indelibly changed the way people interact in their daily lives, both personally and professionally. Social media marketing tools like Facebook, LinkedIn, Twitter and blogging have changed the way immigration lawyers interact with clients and how they market their practices to prospective clients.

Many attorneys are using social media platforms as a tool to market their firms and services to potential clients. Facebook, for example, has over one billion users with active accounts, and most of those users live outside of the United States.<sup>91</sup> Through Facebook, attorneys can showcase themselves and their firms for free—sharing links to magazines and newspapers in which they are featured for winning a case or speaking at a conference.

Likewise, LinkedIn, the “Facebook for professionals,” is a social media tool that demonstrates that marketing is not always directed towards a client—now immigration lawyers have a way of marketing themselves to each other. Young lawyers, who have grown up in a world saturated with information technology and social media and embrace it, use LinkedIn as a forum or search engine to network, seek new job prospects, and showcase their most recent resume. LinkedIn has also made the interview process a lot easier for lawyers. If they so choose, firms can now forgo the job post portion of recruiting a new hire by searching through countless resumes online to locate a pool of qualified candidates.

Additionally, Twitter may not be as widely used by immigration attorneys as other forms of social media, but this platform is still changing the way lawyers market their firms and stay informed. This social media tool allows attorneys to stay current by enabling them to share and research “timely information about the legal industry, post links to relevant blogs, technology, law school-related news, legal developments, as well as use hashtags to find new cases, articles, and issues related to social networking.”<sup>92</sup> Twitter allows firms to create a community of followers and communicate information about their law practices to users accustomed to getting information in 140 characters or less. The word limit forces users to communicate their point quickly, allowing their followers to review a lot of content about their law practice in a short period of time.

90 ENDGADGET: SKYPE’S LIVE TRANSLATOR FEATURE NOW SUPPORTS ARABIC, <http://www.engadget.com/2016/03/08/skype-live-translator-spoken-arabic/> (last visited April 20, 2016).

91 FACEBOOK NEWSROOM, <http://newsroom.fb.com/company-info/> (last visited April 20, 2016).

92 Tim Barran, *How Lawyers Use Twitter*, LEGAL PRODUCTIVITY (March 9, 2015), <http://www.legalproductivity.com/legal-marketing/lawyers-twitter/>.



For immigration attorneys that seek to be at the forefront of innovation in the legal profession, Twitter offers features that may help lawyers in gaining a competitive edge because they are not commonly used by attorneys. For example, features such as Twitter video and Periscope (acquired by Twitter in 2015) puts a face to an attorney’s online presence – “they can produce live videos, discover other streams to watch, engage with viewers, give insights to services provided and save streams to their camera roll – independently, inexpensively, and all from a smartphone.”<sup>93</sup>

*Immigration attorneys are benefiting from discovering alternative uses for these platforms by incorporating social media driven marketing, information exchanges and online client interaction into their practices.*

Immigration attorneys are benefiting from discovering alternative uses for these platforms by incorporating social media driven marketing, information exchanges and online client interaction into their practices.

### ***Online Legal Research***

Of all the existing workplace technologies, online legal research has probably had the most impact on the legal profession in the last 20 years. LexisNexis and Westlaw have left an indelible mark on how legal professionals conduct legal research, and they have been able to charge a premium for their services. Today, however, low-cost legal research providers like Casemaker and Fastcase are competing with LexisNexis and WestLaw. Furthermore, search engines such as Google Scholar are providing legal research materials at no cost, while products like AILAlink can provide targeted legal research that search engines can’t find or others do not have.

Legal information that was once the exclusive domain of lawyers is now freely available to the general public via the Internet. While not as well organized and searchable, those in need of legal assistance are taking full advantage of no-cost legal information to identify and gain insight into their own legal immigration issues that lawyers used to provide to them. Yet information alone is often not enough to solve their problems. Consumers still need help analyzing their problems and navigating the system.

*Consumers still need help analyzing their problems and navigating the system*

As legal information becomes more accessible, the value in legal services is shifting away from educating clients about the law and toward the ability to analyze the law in the context of a particular set of facts based on experience and expertise in immigration law. Savvy immigration lawyers stay ahead of the curve by providing more general information for free online through a

variety of technologies and online forums, thus satisfying potential clients’ thirst for information in a cost-effective manner, while simultaneously convincing potential clients that the lawyer has the expertise to advise and represent them in their unique or complex cases.

### ***Practice Management Software***

Practice management software integrated with time and billing programs have been widely used by firms and solo practitioners to manage the functions of their practices. Tools common to these

93 Fiona Finn, *Three New Ways to Use Twitter for Lawyers*, CLIO BLOG (Jan. 4, 2016), <https://www.goclio.com/blog/twitter-for-lawyers/>.



products and services include creating and sending accurate bills, recording payments, calendaring and docketing, time tracking, conflicts-checking, secure client portals, document management, and document assembly. Some well-known products and services in this category include Clio, FirmManager, RocketMatter, MyCase, and TimeMatters. Generally small to mid-size firms gain the most benefit from case management software. This may be because there are usually less client matters to keep track of compared to larger firms.

Those immigration attorneys that choose to invest in a case management system express overall satisfaction with the functionality of the system and improvements in their firm’s management. In 2014, “33% of respondents reported being very satisfied—up from 25% in 2011. More than 85% of respondents reported being very or somewhat satisfied with their practice management software.”<sup>94</sup>

These practice management software products can save lawyers hundreds of hours each year in handling client matters and managing their practices. Because these products have so many integrated functions, once client data is entered, it is available to be accessed and reused again and again. One downside to case management systems is that “the proliferation of low-quality practice management startups and an increased expectation from tech savvy consumers” has made it even more difficult for attorneys to decide which software is best for them.<sup>95</sup> This is why attorneys must make a decision based on the needs of their firm size and client base. Maybe the attorney will decide all the features offered by the case management system are unnecessary for the operation of their firm, but it will still be advantageous to research the possible benefits.

*These practice management software products can save lawyers hundreds of hours each year in handling client matters and managing their practices*

### ***Document Assembly Software***

Most immigration attorneys that currently use immigration case management software are getting the benefit of integrated document assembly software. However, there is little usage of document assembly software in immigration firms beyond this. Larger general practice firms focused on business are taking full advantage of document assembly systems. In 2014, “just 35% of solo practitioners reported having document assembly software available while 96% of respondents from the largest firms reported availability.”<sup>96</sup> Documents such as attorney and client contracts, briefs, motions to reopen, and other longer documents can now be automated and completed by answering a few questions about the client and the matter.

Document assembly applications also have a great advantage over cutting and pasting—consistency for all staff members. When changes to the law or process are made, all relevant documents are updated accordingly and provided to all staff members so everyone is using the most current and relevant documents. By integrating document assembly software into an already existent practice management system, immigration attorneys can save time, help reduce the cost of drafting documents for clients and have a better operational structure in their firms.

94 Joshua Poje, *Practice Management*, ABA TECH REPORT (2014), <http://www.americanbar.org/publications/techreport/2014/practice-management.html>

95 *Id.*

96 *Id.*



## Emerging Technologies in the Law

Moore’s Law isn’t a statute or something learned in law school. Yet, it has had a tremendous impact on the legal profession. Moore’s Law is named for Intel Corporation founder Gordon Moore, who hypothesized over forty years ago that the speed of a computer chip would double every 12 to 18 months. And, for over forty years, this “law” has held true. Similar to Moore’s Law is Kryder’s Law. Mark Kryder of Seagate Storage Technologies hypothesized that the decline in data storage costs follows a pattern similar to the pace of Moore’s Law. The cost of storing data drops by half every 12 to 18 months. In 1981, the cost of a gigabyte of data storage was \$300,000, in 1997 it was about \$100, and by 2011 it was approximately \$0.10.<sup>97</sup> It is the increase in affordable computing, coupled with the decrease in storage costs, which is driving technological changes in the legal profession today. While desktop and laptop computing are not changing quite as rapidly, new computing and data storage technologies will play a crucial part in the future delivery of legal services.

### *Artificial Intelligence and Expert Systems*

*It is the increase in affordable computing, coupled with the decrease in storage costs, which is driving technological changes in the legal profession today*

The Oxford Dictionary defines artificial intelligence as “the theory and development of computer systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.”<sup>98</sup> In essence, “artificial intelligence is a sub-field of computer science. Its goal is to enable the development of computers that are able to do things normally done by people—in particular, things associated with people acting intelligently.”<sup>99</sup>

Since the 1950s, scientists have been working on developing artificial intelligence (AI) with the ability to model human analysis and response. An example of artificial intelligence that many overlook is the personal assistant, such as Siri, in iPhones. In 2011, Siri revolutionized the way people interact with their phones, offering a system that could reply, and in many cases predict, what question a person would ask.<sup>100</sup> Siri may seem like archaic technology, because it has become such an integral part of everyday life. Technological advancements are contributing to a world “in which cars drive themselves, machines recognize people and ‘understand’ their emotions, and humanoid robots travel unattended, performing everything from mundane factory tasks to emergency rescues.”<sup>101</sup>

In the spring of 2004, the first contest was held for self-driving cars. Of the 100 cars, none finished even 10 miles of the 150-mile course, despite the \$1 million prize offered. The next year, several cars finished the course. Eight years later, the state of Nevada licensed the first Google self-driving

97 Josh Smith, *Hard Drive Prices Over Time: Price per GB from 1981 to 2010*, NOTEBOOKS (March 9, 2011), <http://notebooks.com/2011/03/09/hard-drive-prices-over-time-price-per-gb-from-1981-to-2010/>.

<sup>13</sup> OXFORD DICTIONARIES, [http://www.oxforddictionaries.com/us/definition/american\\_english/artificial-intelligence](http://www.oxforddictionaries.com/us/definition/american_english/artificial-intelligence) (last visited April 20, 2016).

98 OXFORD DICTIONARIES, [http://www.oxforddictionaries.com/us/definition/american\\_english/artificial-intelligence](http://www.oxforddictionaries.com/us/definition/american_english/artificial-intelligence) (last visited April 20, 2016).

99 Kris Hammond, *What is artificial intelligence (AI), and what is the difference between general AI and narrow AI?*, COMPUTERWORLD (Apr 10, 2015, 4:05AM), <http://www.computerworld.com/article/2906336/emerging-technology/what-is-artificial-intelligence.html>.

100 *Hey Siri, Can We Talk ... To Our Apps?*, DIGITALIST MAGAZINE (Dec. 22, 2014), <http://www.digitalistmag.com/technologies/mobile-applications/2014/12/22/hey-siri-can-we-talk-to-our-apps-01955677>.

101 John Markoff, *The Rapid Advance of Artificial Intelligence*, N.Y. TIMES, Oct. 14, 2013, *available at* <http://www.nytimes.com/2013/10/15/technology/the-rapid-advance-of-artificial-intelligence.html?pagewanted=all&r=0>.



car. As of July 2015, Google’s 23 self-driving cars have driven over one million miles, and have only been involved in 14 minor traffic accidents on public roads.<sup>102</sup> If they can teach a car to drive, can they teach a computer to complete tasks performed by an attorney or their paralegals?

*If they can teach a car to drive, can they teach a computer to complete tasks performed by an attorney or their paralegals*

Artificial intelligence isn’t coming to the legal profession; it is already here. Meet Ross. Ross is a digital legal expert designed to help lawyers power through their research.<sup>103</sup> You ask it a question, and Ross searches through an entire body of laws and legal documents to speed research. Remember IBM’s Watson that appeared on “Jeopardy!” a few years back? Ross is Watson’s offspring, so to speak. IBM is licensing the technology to global megafirm, Dentons, and Lexis-Nexis. True, Ross will probably not be used for immigration questions today, but it may do just that in less time than it took to teach a car to drive itself.

The legal community is not welcoming artificial intelligence with open arms, and has not moved quickly to integrate artificial intelligence into the practice of law. While many other industries have been open to using artificial intelligence to evolve their business models and better serve their consumer base. Many attorneys may jokingly cite being replaced by robots as a reason for their concern. However, the more likely reasons may be related to competitive price schemes and the trepidation of immigration attorneys and their clients to rely on a computerized artificial intelligence system to resolve client problems. Although these concerns may cause attorneys to be apprehensive, it should not prevent the legal industry from recognizing some benefits that artificial intelligence may provide to their clients and to the overall practice of law.

At the forefront of AI technology in the legal profession is Michael Mills, the creator of Neota Logic, a new expert AI legal system. Using artificial intelligence, Neota Logic relies on a user’s earlier answers to determine the next set of questions that will be asked and answered. The questions posed to this advanced AI system only help to expand the “intelligence” of Neota Logic, providing it with a greater arsenal of legal information for clients in need of quick legal assistance.<sup>104</sup>

Coincidentally, Neota Logic has sparked the innovation flame in other technologically focused competitors, like the Data Law Center, which was co-created by Martin T. Tully of Akerman. The Data Law Center is the “first-of-its-kind legal product developed in collaboration with Thomson Reuters to support the compliance strategies of large companies. The Akerman Data Law Center will provide corporate counsel and compliance officers with a timely trove of state and federal data laws, regulations, and legal insights. This product will deliver tailored research, multi-jurisdictional surveys and regulatory gap analyses in a wide array of data and privacy risk areas empowering clients to quickly and cost-effectively understand and handle routine compliance matters.”<sup>105</sup> AI technology in the law may have originated with companies like Neota Logic, but the Data Law Center is only one example of how the legal industry is testing ways in which AI technology can transform the practice of law.

102 Google maintains they have a perfect driving record, because in all cases the vehicle itself was not at fault, as the cars were either being manually driven, or the driver of another vehicle was at fault. See *Google Self-Driving Car*, WIKIPEDIA (April 22, 2016), [https://en.wikipedia.org/wiki/Google\\_self-driving\\_car](https://en.wikipedia.org/wiki/Google_self-driving_car).

103 ROSS INTELLIGENCE, <http://www.rossintelligence.com/lawyers/> (last visited April 26, 2016).

104 NEOTA LOGIC, <http://www.neotalogic.com/who-we-are/> (last visited April 26, 2016).

105 Ron Friedmann, *Automating Legal Advice: AI and Expert Systems*, BLOOMBERG BNA (Jan. 22, 2016), <https://bol.bna.com/automating-legal-advice-ai-and-expert-systems/>.



The legal profession has not been completely open to the idea of incorporating AI systems like the Data Law Center into their business models. Yet it is consumer demand that will ultimately determine how much AI lawyers incorporate into their firms. Artificial intelligence will not completely replace lawyers, as consumers still prefer to interact with a human. However, the human element to lawyering will shrink over several decades. “[T]o sustain [profit] margins, a law firm would have to show added value elsewhere, such as in high-level advisory work, effectively using the AI as a production tool that enabled them to retain the loyalty and major work of clients.”<sup>106</sup>

The question is not if artificial intelligence will change the legal community, but rather what kind of change it will bring, and when it will have an impact on immigration law. This does not mean that lawyers will become obsolete, or that all clients will go to legal robots in a shopping mall. It means that, as technology changes to improve the delivery of legal services, lawyers should be at the forefront of the change, applying their knowledge of the law and experience in delivering legal services, rather than leaving it to non-lawyers to develop the technology themselves.

### ***Big Data & Predictive Analytics in the Legal Industry***

*The question is not if artificial intelligence will change the legal community, but rather what kind of change it will bring, and when it will have an impact on immigration law*

Big data is the collection of data from traditional and digital sources inside and outside of a firm or company that represents a source for ongoing discovery and analysis.<sup>107</sup> In lay person’s terms, “big data is so vast an amount of data that it cannot be analyzed by traditional tools.”<sup>108</sup> Thus, tools such as predictive analytics (which uses statistics), modeling, machine learning, and data mining are applied to big data to predict future events, suggest how to manipulate them, identify trends, and much more.<sup>109</sup> Many industries have benefited from the analytical insights that big data provides. For example, the healthcare industry has been revolutionized by big data; doctors now have

the ability to cross-reference patients’ medical records with case studies. Often, this has enabled physicians to not only properly diagnose their patients, but also to come up with an appropriate treatment regimen.

One may ask, how can big data change the practice of immigration law? Big data is already impacting the legal profession. Websites such as the recently created Ravel Law, started in 2012 by two lawyers with backgrounds in analytics, provide services designed to help legal professionals draw insights and connections using advanced analytical algorithms.<sup>110</sup> Law firms can use algorithms that offer predictions on certain cases based on how similar cases fared in the same jurisdiction. Such algorithms provide a basis for predicting how new cases could turn out.

106 Dan Bindman, *Artificial Intelligence Will Cause “Structural Collapse” of Law Firms by 2030*, LEGAL FUTURES (Dec. 1, 2014), <http://www.legalfutures.co.uk/latest-news/report-ai-will-transform-legal-world>.

107 Lisa Arthur, *What is Big Data*, FORBES/CMO NETWORK (Aug. 15, 2013, 8:17 AM), <http://www.forbes.com/sites/lisaarthur/2013/08/15/what-is-big-data/#76dd09c93487>.

108 Sharon D. Nelson and John W. Simek, *BIG DATA: Big Pain or Big Gain for Lawyers?*, 39 A.B.A. LAW PRACTICE MAGAZINE 4 (2013), available at [http://www.americanbar.org/publications/law\\_practice\\_magazine/2013/july-august/hot-buttons.html](http://www.americanbar.org/publications/law_practice_magazine/2013/july-august/hot-buttons.html).

109 *Id.*

110 Bernard Marr, *How Big Data Is Disrupting Law Firms And The Legal Profession*, FORBES TECH (Jan. 20, 2016, 2:31AM), <http://www.forbes.com/sites/bernardmarr/2016/01/20/how-big-data-is-disrupting-law-firms-and-the-legal-profession/#161568ad5ed6>.



Another example is the subscription-based Lexis Advance MedMal Navigator software (LexisNexis), which offers predictions on potential medical-malpractice cases by looking at how similar cases fared in the same jurisdiction, and predicting how new cases will be decided.<sup>111</sup> The software also alerts medical-malpractice attorneys if their case may involve a standard-of-care issue, and gives them analysis on available expert witnesses, including information about the types of cases those witnesses have participated in and the testimony they have offered.<sup>112</sup>

How are these predictions being generated? What data is being accessed and analyzed before answering? Often, we just say “it’s experience” or “it’s a gut feeling,” but could these predictions be improved if we could access various outcomes from large amounts of data? Could lawyers gather data to make their predictions based on facts rather than a gut feeling? Would such predictions be more valuable to a client, who would appreciate the improved precision of the answer?

It is data that closes the gap between insight and innovation. Experienced lawyers may have a gut feeling, but hard data will always help fine-tune the prediction. Humans and machines working together outperform either working in isolation.<sup>113</sup> The time attorneys spend on research can now be significantly reduced because of quantitative legal predictions.<sup>114</sup> Mark A. Lemley, a Stanford Law School Professor, states, “I think analytics is the wave of the future. ... Lawyers and companies make decisions today based on ‘anecdotal.’ If the lawyer remembers winning a case on a particular issue in front of a particular judge, they instinctively assume they know how that judge thinks about that issue. But that’s not necessarily so. [Big] data allows companies and firms to understand the real opportunities and risks they face so they can make intelligent business decisions.”<sup>115</sup> Big data has the capacity to change the way attorneys compile large amounts of client information, and the speed and accuracy in which they can analyze their clients’ legal matters.

*Experienced lawyers may have a gut feeling, but hard data will always help fine-tune the prediction*

In the field of immigration law, information about case adjudication trends is sparse, because government agencies do not release this type of information to the public and administrative agencies such as the Administrative Appeals Office (AAO) issue decisions lacking in-depth analysis. Big data has the potential to provide immigration attorneys with unprecedented information about adjudication trends. It is unlikely that government agencies will release this information in the future; however, private companies (possibly immigration case management service providers), with the consent and cooperation of lawyers and their clients and in compliance with privacy/security laws, could use big data to gather information on adjudication trends that could help immigration lawyers better predict the outcomes of their cases. For instance, this type of big data system could provide immigration lawyers with more precise information on the approval rates of EB-1 Extraordinary Ability petitions for Russian ballerinas, or help lawyers better understand how Indian L-1B adjudications are faring in Chennai, or what the latest H-1B RFE regarding the employer-employee relationship is asking for.

111 Joe Dysart, *How Lawyers are Mining the Information Mother Lode for Pricing, Practice Tips and Predictions*, A.B.A. JOURNAL (May 1, 2013, 10:20AM), [http://www.abajournal.com/magazine/article/the\\_dawn\\_of\\_big\\_data/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=ABA+Journal+Magazine+Stories](http://www.abajournal.com/magazine/article/the_dawn_of_big_data/?utm_source=feedburner&utm_medium=feed&utm_campaign=ABA+Journal+Magazine+Stories).

112 *Id.*

113 Katsh, *supra* note 2.

114 *Id.*

115 Dysart, *supra* note 26.



Furthermore, big data could provide immigration attorneys with profiles of each immigration judge: Has a particular judge ruled on a particular issue before, and if so, what was the outcome? What bond amount does this judge set in cases with similar facts and issues? How does this judge react to a single DUI? Immigration lawyers practicing asylum law could also use big data to find potential expert witnesses, sorting by country, issue (i.e. FGM, gang violence, etc.), and price. Today, immigration lawyers rely on their own limited experience and the limited experience of a handful of colleagues. Tomorrow, big data has the potential to provide substantial answers to these questions that are backed up by hard data, not just a lawyer’s hunch.

*Big data can also help immigration firms increase the profitability and efficiency of their offices*

Big data can also help immigration firms increase the profitability and efficiency of their offices. The time attorneys spend on research can now be significantly reduced because of quantitative legal predictions. These predictions can assist lawyers in that they will have more time to focus on client acquisition and retention. For example, Lawyer Metrics is a research company that focuses on issues and trends affecting the

legal industry. Lawyer Metrics can analyze the data collected from the daily operations of a firm and formulate substantive, customized solutions related to organizational strategy and performance.<sup>116</sup>

Christian R. Lueth, Director of Finance and Accounting at Dykema Gossett in Detroit, states, “Over the last five years, it has become increasingly clear that the legal industry has changed and will likely never return to the pre-recession state...The most successful firms will be the ones that understand that their clients are already using benchmarking data [big data] to evaluate law firms, and that they need to get ahead of the curve and successfully leverage external competitive data to provide their clients the efficiency and cost competitiveness that they are demanding.”<sup>117</sup>

The government is also using big data. All immigration attorneys should be aware that big data enables DHS and other government agencies to collect enormous amounts of data about individual and corporate clients. For example, IBM recently developed a big data system for the Australian Customs and Border Protection Service that relies on data collected from Passenger Name Records, and aims to facilitate and automate profiling mechanisms to identify “high risk” travelers.<sup>118</sup>

Big data is still in the beginning stages of its development in the legal industry, but the potential it has to transform legal practice should not be ignored.

### ***Mobility and Internet Connectivity***

Not every technological change is disruptive; some changes are sustaining. Looking forward, it is hard to predict future technological changes. Looking back, the iPhone isn’t even 10 years old, and yet consider the tremendous impact the smartphone has had on lawyers as well as clients. The changes arriving in Internet connectivity over the next few years will be welcomed by most lawyers. New players will enter the broadband business, and wireless phone networks will move from 4G speeds to 5G speeds. What is the significance of this change? Download speed. For example, an 8GB movie download that takes seven minutes on 4G will take six *seconds* on 5G.

116 LAWYER METRICS, <http://lawyermetrics.org/services/> (last visited April 26, 2016).

117 *Id.*

118 B. Ajana, *Augmented Borders: Big Data and the Ethics of Immigration Control*, 13 J. OF INFO. COMM’N & ETHICS IN SOCIETY 58, 59-78 (2015).





Phones will change, and the Internet of Things (IoT) will emerge.<sup>119</sup> The Internet of Things is shorthand for all of the new and emerging smart devices and objects that will connect to the Internet to collect and exchange information. From tracking shoppers in a store to tracking cars on a freeway, from energy management in a home to environmental management in an entire city, the IoT will spur innovation.

What sort of innovation in immigration law and practice will occur is hard to predict. Will clients use these devices to keep their lawyers informed? Will the government insist on wearable devices to keep them informed of a client’s whereabouts? Maybe lawyers will never lose a file again, because they can easily track it in their office. While difficult to predict, here is a simple example of what is possible with innovation:

It’s late at night, and you’re already asleep. Your client, with whom you’re meeting in the morning, just realized he needs to come in earlier to make time for another appointment later in the day. He sends your calendar an email, moving the meeting up by an hour. Your calendar gets this urgent notification, and sends a message to your alarm clock at home. The alarm clock does a quick check of the expected weather conditions, as well as local traffic, and resets your alarm clock so you wake up earlier than originally planned, in plenty of time to get to the office for your meeting.

Because it’s early, it’s nice that your coffee is already made downstairs when you’re getting ready to leave for the office. Your coffeemaker at work is also working to make sure that the revitalizing beverage is hot and waiting for you there when the meeting starts. Your calendar communicated with your office thermostat as well, to make sure the temperature is comfortable when you and your client arrive.<sup>120</sup>

With technology, almost anything is possible.

## Challenges Using Technology: DHS/EOIR E-filing and Going Electronic

Unfortunately, government agencies like USCIS, ICE, and EOIR are not as technologically advanced as immigration attorneys would like them to be. These agencies are “behind the times” as far as enabling electronic filing, equipping immigration court rooms with the necessary technology to enable an “electronic trial,” or even allowing electronic devices into USCIS offices, detention centers, or immigration court rooms.

While the Department of Homeland Security (DHS) and the Department of State (DOS) are committed to modernizing the process of applying for immigration benefits by developing new electronic filing systems and online portals for applicants to complete and store their immigration information and applications, it will take decades for these agencies to perfect these new technological advances.<sup>121</sup> Additionally, it seems that certain agencies within DHS, including USCIS and ICE, continue to bar attorneys from using electronic devices such as cell phones, computers, and iPads or tablets during USCIS interviews, immigration court proceedings, or client meetings at detention centers.

119 *Internet of Things*, WIKIPEDIA (April 24, 2016), [https://en.wikipedia.org/wiki/Internet\\_of\\_Things](https://en.wikipedia.org/wiki/Internet_of_Things).

120 Tom Mighell, *The “Internet of Things” in Law Practice*, 40 A.B.A. LAW PRACTICE MAGAZINE 3 (2014), available at [http://www.americanbar.org/publications/law\\_practice\\_magazine/2014/may-june/web-2-0.html](http://www.americanbar.org/publications/law_practice_magazine/2014/may-june/web-2-0.html).

121 Jerry Markon, *A Decade Into a Project to Digitize U.S. Immigration Forms, Just 1 is Online*, Wash. Post, Nov. 8, 2015, available at [https://www.washingtonpost.com/politics/a-decade-into-a-project-to-digitize-us-immigration-forms-just-1-is-online/2015/11/08/f63360fc-830e-11e5-a7ca-6ab6ec20f839\\_story.html](https://www.washingtonpost.com/politics/a-decade-into-a-project-to-digitize-us-immigration-forms-just-1-is-online/2015/11/08/f63360fc-830e-11e5-a7ca-6ab6ec20f839_story.html).



Agencies claim these electronic devices present a security risk; however, many immigration attorneys believe the real reason that such devices are banned is because the agencies want to curtail the ability of lawyers to provide representation to this class of people, and that these devices can record inappropriate behavior by agency officers. The inability of these agencies to modernize the process of applying for immigration benefits through technological innovation, and the unwillingness of these agencies to enable more effective representation of certain groups and individuals by allowing lawyers to access mobile devices during interviews, court hearings, and at detention centers, is a major obstacle to the immigration bar’s ability to advance the practice of immigration law and keep up with the pace of technology. Thus, it is critical that bar associations such as AILA and the ABA continue to support the efforts of government agencies to modernize their technological capabilities, while also advocating for a lawyer’s right to use electronic devices during immigration proceedings.

One simple, modern change that DHS and EOIR could make that would significantly advance immigration lawyers’ ability to incorporate cutting-edge technology into their practices would be to accept electronic signatures on forms. President Clinton signed the Electronic Signatures Act in 2000, giving electronic documents the same weight as paper.<sup>122</sup> Yet again, DHS and EOIR are behind the times in not accepting electronic signatures when most other court systems and businesses have adapted to this technological advancement (even the IRS allows for electronic signatures). Imagine how the practice of immigration law would change if DHS and EOIR accepted electronic signatures! Lawyers would no longer have to mail forms back and forth to clients for original signatures. Instead, they could create a PDF document that allows for electronic signatures, and upload the document to the client’s online portal or securely transmit the document electronically to the client for signature. The cost and time involved in obtaining original signatures would become ancient history, and immigration law could advance into the 21st century!

## Practical Takeaways

As the article on *The Future Practice of Immigration Law: Twelve Projections for 2025* thoroughly discusses, lawyers will continue to change their business systems to accommodate their clients’ needs, which are now being defined by emerging technologies. Such technologies will change the form and substance of legal practice; some are sustaining technologies, others will be disruptive. This is a fact that may affect some lawyers’ willingness to accept certain types of novel technologies. Richard Susskind, a leading expert in legal technology, was one of the first people to identify the disruptive potential of technology on legal practice. Looking ahead into the future, Susskind contends that “the electronic creation and transmission of digitally stored information will be at the heart of the future of law.” He believes that law will be transformed gradually from an advisory service to an information service as lawyers package their conventional work product in electronic form. Low-end legal advice will become a low-cost, high-volume commodity, and only some lawyers in the spectrum of practices will continue to provide advice in person.<sup>123</sup> While this may overstate the case, there is certainly the potential for the disruptive aspects of technology

*there is certainly the potential for the disruptive aspects of technology to become forces of displacement, and lawyers should keep this in mind as we move further into the technological age*

122 ECSI, [https://www.ecsi.net/help/help\\_esig.html](https://www.ecsi.net/help/help_esig.html) (last visited April 26, 2016).

123 Darryl R. Mountain, *Could New Technologies Cause Great Law Firms to Fail*, 52 Syracuse L. Rev. 1067, 1068 (2002).



to become forces of displacement, and lawyers should keep this in mind as we move further into the technological age.

What will be the next innovation that will transform the practice of law? Will it be “sustaining” technology that helps improve the delivery of legal services, or will it be “disruptive” technology that creates a legal service solution for consumers and competes with the traditional model of delivering legal services? Will your practice be ready for whichever it is?

Can we agree that it is better for attorneys to be aware of, if not involved in, the technological changes taking place, rather than reacting to them once they have taken hold in the marketplace? In a world in which technology is progressing at an accelerated rate, there are some choices that immigration attorneys must make. Being cognizant of how technological advancement changes the practice of law will enable attorneys to keep pace with technology and utilize each of these advancements for the benefit of their practices, rather than being left behind.





# Online Legal Services: Do They Help or Harm Consumers?

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With the advent of the Internet and transferring so much of our daily lives to the World Wide Web, it was only a matter of time before legal services began to be offered online. Over the last few years, the number of consumer-oriented websites claiming to offer legal services, including immigration legal services, has dramatically increased. These sites tout that their services are affordable, easier, and more convenient than traditional legal services. In fact, many state they are not providing legal services at all, yet extoll their benefits for legal consumers.

*Many of today's immigration clients are more web savvy and much more accustomed to interacting with web-based portals to obtain information*

In the immigration context, services like ClearPath, FileRight, and LegalZoom promise simplified ways to obtain immigration benefits by following online “wizards” and convenient print-at-home options, all for a fee that is usually much cheaper than a brick-and-mortar law practice. These services capitalize on changes in consumer buying habits. Many of today’s immigration clients are more web savvy and much more accustomed to interacting with web-based portals to obtain information, shop for what they need, and even form relationships.

Online legal services are not uncommon—they exist for completing tax returns, creating wills, incorporating businesses, and now for immigration. Consumers have been using TurboTax for many years as an alternative to hiring CPAs or professional tax preparers. LegalZoom advertises that entrepreneurs have downloaded over a million incorporation forms rather than, presumably, visiting a lawyer’s office. Such online service is growing as a method to deliver legal services.

This article is one of six in a series prepared for the AILA membership by the Future of Immigration Law Practice Task Force. The article series provides foundational information and analysis on the future of immigration law practice, and is meant to provoke thought and reflection about the future of your practice and career, as well as our profession and association. Readers are encouraged to pursue additional research on matters of particular interest. These are issues on which individual members and AILA as an organization must act as we develop our preferred future.



Immigration attorneys have understandably raised significant concerns over this evolution of legal service delivery, including the possibility of the unauthorized practice of law where no lawyers are involved, or ethical violations when they are. However, if those concerns are overcome, is it possible that online services can actually help attorneys run their business and provide more effective, streamlined services to their clients?

This article will examine online legal services in the immigration law context—both by lawyers and non-lawyers—including the unauthorized practice of law issues as well as whether such services could be used by attorneys to deliver legal services.

## Background/History

Online services are not new. The term “online services” describes any service that consumers access using a web browser or mobile computer app, which then delivers that service through a process that was once exclusively delivered by traditional brick-and-mortar businesses. Consumers have been using the Internet to obtain a variety of services for many years. In addition to examples such as TurboTax, consumers also use online services to book airline tickets (Expedia), do their banking, including depositing checks via cameras (Capital One), perform bookkeeping (Quicken Online), buy health insurance, and purchase movie tickets. Many of these online providers are using a combination of online wizards and form completion software, as well as live assistance via telephone or web chat, to provide consumers with the help they need. A “wizard” is a term for information and/or advice placed by the service provider at points to guide consumers in the service delivery process. Many consumer services have moved to online delivery of that service, with some working to complement traditional brick-and-mortar businesses, while others almost completely replace the traditional method of delivery—have you been to a travel agent lately? The online evolution has reached the legal services market to include consumer assistance for immigration benefits.

These services are distinguished from immigration case management software such as INS Zoom, Law Logix, and others, which are designed to help immigration law practitioners manage their client information. While this type of software offers some level of online engagement through questionnaires or case status updates, it is meant for lawyers, and does not provide the consumer with the complete legal service online.

As currently conceived, we have identified three types of online immigration service providers in the marketplace: Pro Se Forms, Pro Se Plus, and Virtual Legal Services.

- **Pro Se Forms:** Clients access form-filling software via a web browser. They self-select what immigration benefit they want to apply for, choose their form, go through basic information wizards to determine eligibility, and if they believe they can move forward, fill out the application, and then print it on their own printer to submit to the government. The fee for these services is paid at the time the form is selected or prior to printing, depending on the provider.
- **Pro Se Plus:** Similar to the Pro Se Forms model, but includes the ability to communicate with a person—sometimes a lawyer—to answer questions that arise during the process or just prior to filing for the immigration benefit. The communication methods vary from online chat to a phone call to a video call, but rarely, if ever, includes in-person consultations. This additional help often costs the consumer an extra fee. Fees for these services are paid via credit card.



- **Virtual Legal Services:** In this business model, legal services are delivered primarily through a website. The consumer does not visit an office, nor meet in-person with a lawyer. Information and supporting documents are frequently uploaded by the consumer to the website (web portal) where a law firm works on the client’s legal matter in a traditional manner. Interaction with the client can occur by email, phone, video, or other electronic means. The virtual firm saves time and money by not having a traditional brick-and-mortar office, and firm workers may all be disbursed working out of their homes rather than at desks in the same office.

## Current Examples of Online Providers of Immigration Legal Services

Lawyers and non-lawyers are using the online legal services model in several ways. Some are developing a unique online platform to deliver legal services directly from their firm to consumers. Other lawyers are choosing to use another company’s platform (website) as a pipeline to drive clients to their firm. The growth in the number of online providers of immigration legal services is continuing. We researched 10 of these services, and in some instances used their services to understand their model (Pro Se Forms, Pro Se Plus, and Virtual Legal Services), involvement of a lawyer or lawyers, and their pricing.

*Clearpath:* This online provider of immigration services maintains one of the highest profiles of any such provider, thanks to a concerted media relations campaign. Founded by a former INS director, this company is headed by two non-lawyer executives with an advisory group that includes former DHS Secretary Tom Ridge and long-time immigration lawyer and AILA member Charles Foster. Clearpath offers forms completion services (Pro Se Forms) for naturalization, DACA, green cards, and more. After creating a profile, the consumer selects a form to complete, and the service provides guidance through an online wizard they call “tooltips.” When presented with an answer incompatible with the form, a pop-up box suggests the consumer may want to consult with an attorney. Sign-up and form completion are free. Payment comes prior to printing the form. DACA forms completion is \$99 plus government filing fees.

*FileRight:* This online provider falls into the pro se plus model. It uses the tagline “Immigration paperwork just got easier.” They claim to offer an easy way to complete numerous immigration forms, including the I-90, I-130, N-400, I-821D, I-751, and a half dozen others. The company has several disclaimers that it is not a law firm and does not give legal advice. According to the website, the company is run by several Silicon Valley-experienced immigrants, although only their communications director has a law degree. A test of FileRight for an I-90 had the user go through a relatively simple wizard closely related to USCIS’s own interactive assistance wizards. It asked what the user’s current status was, what they wanted to achieve (in this instance, a replacement green card), and why they wanted to apply for this (because a card had been lost). After answering simple questions, the case was forwarded to an attorney (in this case in California) whose contact information was immediately shared with the user. The attorney performed a seven-point review, contacted the user to let her know she was available to speak by phone to answer questions, and once the application was cleared to go forward, explanations were sent to the user as to how to go about submitting the form pro-se.

*Citizenshipworks:* This is an online service that helps consumers complete citizenship applications. It is a collaboration between the Immigration Advocates Network, Immigrant Legal Resource Center, and Pro Bono.Net. Its goal is to make the immigration system accessible to everyone through user-friendly technology and plain language legal information. The online software allows individuals to determine naturalization eligibility pro se at kiosks in various community organizations. Citizenshipworks can also connect individuals to their national network of nonprofit immigration service providers (making this a pro se plus delivery model.) The software is also used by nonprofits



providing citizenship application assistance at group events to move forward with completing and printing the form for attendees to submit pro se. Citizenshipworks is accessible via a computer browser or the Citizenshipworks smartphone app.

**LegalZoom:** This is a well-known online provider of legal forms and legal services. It offers three immigration services, naturalization, green card, and fiancé visa applications, starting at \$595 plus filing fees. After entering your contact information, a LegalZoom “specialist” will contact you for free to “discuss your options.” Should you decide to proceed, a LegalZoom-affiliated lawyer will prepare and file your forms. To speak to an attorney, a consumer must subscribe to a personal legal plan for as little as \$10 per month. The plan entitles you to an unlimited number of 30-minute consultations with a lawyer, and the review of any legal document ten pages or less for free. Larger documents and more complex matters require additional fees. Business plans are available. LegalZoom has been actively defending unauthorized practice of law claims in a number of states, including high-profile litigation in North Carolina. Under a consent agreement, LegalZoom is now offering legal forms that are created and approved by North Carolina lawyers.

*The software is also used by nonprofits providing citizenship application assistance at group events to move forward with completing and printing the form for attendees to submit pro se*

**MyUSCIS:** In September 2015, USCIS launched its online customer service management site, MyUSCIS.com. USCIS created this site to address the needs of individuals seeking legal assistance with various immigration matters varying from asylum seekers to those obtaining employment authorization. As USCIS Director León Rodríguez explained, “Our prior customer service model did not adequately implement emerging technologies or reflect customers’ needs.” On MyUSCIS.com, the “Explore My Options” feature “helps alleviate anxiety about the immigration process by using information from the customer to provide some immigration options for them to consider.” For example, a U.S. citizen consumer who has a question about obtaining a petition for their fiancé would enter preliminary information on the site. After entering the status as “I am a U.S. Citizen,” the website provides the consumer with the cost for filing fees, the number of days he or she may stay in the United States before they must marry their U.S. citizen spouse, and whether they can apply for a work permit. By continuing with the hypothetical scenario of completing a petition for a fiancé, the site directs the consumer to further explain the resolution they are seeking. After choosing the option “Bring my fiancé to the US to marry them here,” MyUSCIS streamlines the immigration process by explaining the consumer’s eligibility for this legal remedy. Additionally, the site provides instructions on how to apply, with the option to complete the application online, and advises the consumer on the next steps in the application process, once they have successfully filed the Form I-129F.

**Simple Citizen:** Simple Citizen claims to be the only comprehensive digital immigration solution, because it offers optional individual consultations with an attorney, not just forms completion. Simple Citizen’s website does not say who founded the service, but it does have at least one AILA member who provides legal consultations. According to the website: “Founded in 2014, Simple Citizen is a digital immigration and visa solution designed to streamline the pathway to citizenship.” In addition, the company has received investments from at least eight venture capital funds, including KickStart, Seed Fund, Pelion Venture Partners, and Appletree Capital.

**Visanow:** Started in 1998 by an AILA member, this online company provides a digital platform to engage consumers of immigration legal services. VisaNow.com is not a law firm, but rather a separate business offering technology services to consumers. The website uses “VisaNow-affiliated attorneys” to complete and file applications and petitions. Currently, that affiliated firm is Global Immigration Associates based in Chicago, Illinois. The firm works exclusively for Visanow.com. It helps both



businesses and individuals with a wide variety of immigration services—far more than online forms completion sites. This service fits into the virtual legal services delivery model.

*OnlineVisas:* This is the online portal for the Velie Law Firm in Norman, Oklahoma. While it appears to be a forms completion site, it quickly becomes apparent that it is website that funnels site visitors to complete an online form to request a free strategy session to begin the process. This is another example of a virtual law firm (or at least a virtual component of a traditional brick-and-mortar law firm).

*Teleborder:* This startup company states that it is “the easiest way to manage international employees” in a world in which international borders are becoming irrelevant. The company claims to be a platform for visa management software, and offers numerous services including immigration services through attorneys or agents in Japan, Indonesia, Vietnam, Singapore, and the United States. The co-founder of Teleborder holds a J.D. from Columbia, and practiced with Davis, Polk, & Wardell before starting the company. The company lists one other lawyer on its corporate roster.

*Avvo:* This lawyer rating service recently began to offer limited immigration services through its new online platform. For “a family green card,” the consumer selects an attorney from a roster of lawyers who have agreed to be in the Avvo immigration network. The consumer pays the \$2,995 fee, and within one day, the lawyer contacts the client, works to complete the application, and files it. Then Avvo pays the fee to the lawyer and immediately takes back a \$400 marketing fee “in a separate transaction.” This separate transaction could be deemed “fee-splitting, yet Avvo General Counsel deems it “ethical” because it does not create a situation in which a lawyer’s professional independence is compromised.

### ***Non-Lawyer Providers***

*SkipTheLawyer.com:* Skip the Lawyer poses as an online service directing the user to first call a 1-800 number. However, on that call, the person answering the phone asks the caller only a few short questions before quoting a price (about \$300 for an N-400) and directing them to make payments to receive the form plus a cover letter. The filing fee, it is noted, is in addition to this cost. This pro se forms service specifically promotes itself as an alternative to lawyers and cites its staff’s combined years of experience working for immigration attorneys to explain their knowledge.

*ImmigrationDirect.com:* claims to be a forms completion website that offers to help consumers complete their forms quickly and accurately. It disclaims that it is a law firm, yet uses “self-serve” wizards, “tips for confusing questions,” and “quizzes” to determine eligibility. It also discloses that the forms available on its site are available for free at USCIS.gov, yet it touts 24/7 customer service. Why, one wonders, would customer service be needed if this is just a forms completion site?

## **Consumers, Technology, and the Availability of Legal Services**

The rise of online providers in the immigration law context may have certain benefits such as lowering costs and increasing consumer access, but has also drawn significant negative feedback. These online services, most commonly run by private companies and with staff being either entirely made up of non-attorneys or a mix of attorneys and lay persons, are often accused of unauthorized practice. Further, they give rise to ethical concerns when lawyers providing legal services are supervised by non-lawyers. In short, the online delivery of legal services makes many immigration lawyers uncomfortable. It doesn’t seem right. Knowing how complex each client’s case can be, how can that be delivered through a website?





*Many consumers are underserved by legal services as traditionally delivered by lawyers*

Many consumers are underserved by legal services as traditionally delivered by lawyers.<sup>124</sup> This is not always a financial issue that they cannot afford one, but an engagement issue. Many potential consumers do not understand the value of engaging an attorney, *i.e.*, they don't know if the time and money spent on hiring, visiting, and communicating with a lawyer will be worth the result they may receive. As stated in a recent memo from the ABA Standing Committee on the Delivery of Legal Services to the ABA Commission on the Future of Legal Services:<sup>125</sup>

Creating better access to those who know they have a legal issue involves processes of simplification and navigational support. In many respects, we need to develop consumer-centric systems. Uniform forms should be adopted both within and between states so that technological interfaces can be maximized. Procedural audits or process mapping should be undertaken to identify and assess those points where a legal matter can be simplified from the point-of-view of the consumer. What is the process of getting a divorce, a green card, a bankruptcy? What steps does a petitioner need to take and in what sequence must this be done? How can this process be changed to make the systems less cumbersome? These steps will make legal solutions more accessible for those who self-represent and less costly for those who seek the assistance of a lawyer on either an unbundled or full-service basis.

Further, consumers who want to engage a lawyer often do not know where or how to engage one. If they do not have a person in their personal network to assist them in finding a lawyer, they go without.<sup>126</sup> Finally, accessibility and convenience are barriers to legal services. We certainly know that immigration legal services are not distributed across all communities, often requiring consumers in small towns and rural areas to travel many miles to reach a lawyer. Even immigrants in larger cities have difficulty at times traveling to a lawyer's office due to the lack of a driver's license or public transportation.

With the development of online legal services, consumers now have the choice to consume legal services from their home computer, their mobile phone, or a nearby public computer. They don't need to travel to their lawyer as the service is delivered where it is convenient for them to consume. Their true cost of engaging a lawyer is lowered, so the possibility that a consumer will engage a lawyer goes up.

Finally, we do know that some consumers cannot truly afford traditional legal services. Given a choice of no help and getting help from a non-lawyer online, consumers may often choose this new form of service even if inferior to the services of a lawyer. Consumers of immigration legal services are unaware of what lawyers know to be true—that “some help” may be worse than no help.

*With the development of online legal services, consumers now have the choice to consume legal services from their home computer, their mobile phone, or a nearby public computer*

124 *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* (2009): <http://legalaidresearch.org/pub/1661/documenting-justice-gap-america-unmet-civil-legal-needs-low-income-americans-2009/>

125 [http://www.americanbar.org/content/dam/aba/images/office\\_president/delivery\\_of\\_legal\\_services.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/delivery_of_legal_services.pdf).

126 *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, Sandefur (2014): <http://legalaidresearch.org/source/1499/american-bar-foundation/>



## Evolving Technology

Delivering legal services online is a form of disruptive innovation. Disruptive innovation was coined by Professor Clayton Christensen, author of *The Innovator's Dilemma*, to address marketplace changes caused by technology.<sup>127</sup> In his view, technology can be “sustaining” or “disruptive.” It is sustaining if it helps incumbent companies improve the delivery of their product or services; technology is disruptive if it allows the targeting of new consumers or existing consumers who previously could not avail themselves of the existing or incumbent service.

Lawyers have been using sustaining technology for years, incorporating desktop computers, Internet connectivity, mobile devices, online credit card payments, and similar tools that help them to deliver services to their clients. In fact, the business model lawyers almost universally employ is a traditional office with a waiting area, computers, and staff, where clients come to seek solutions to their legal matters, and lawyers do so by using the tools and people in their offices. Lawyers complete these services for a fee (flat or hourly) that is high enough to pay their expenses and provide a profit on which they can live.

On-line immigration services are a disruptive technology, creating a new model of delivering legal services that competes with the traditional model of a brick-and-mortar law practice. The waiting room is gone, the file cabinets are digital, and more likely than not, the client will be doing much of the data entry. Rather than always talking to a lawyer or paralegal, some or all of the interaction is with computer software. Online delivery uses different tools and a different approach to meeting the legal needs of consumers.

Because lawyers have not moved toward delivery of online services, non-lawyers have started to fill that market space demanded by consumers. Knowing that many immigrants get ripped off by notarios, immigration lawyers know that things will likely get worse with “netarios”— the nickname for unauthorized online immigration service providers. So why haven't we moved into that space to protect consumers?

## UPIL Concerns

The question regarding online legal services and the unauthorized practice of immigration law (UPIL) hinges on what constitutes “practice of law.” State regulations vary, but generally speaking, practice of law is considered to be the application of law to specific facts in order to advise a person or corporation.

Determining whether a person or entity is engaged in the practice of law in the real or virtual world is surprisingly complicated, because it is largely based on state statutes and case law. Although it seems obvious that appearing in court as the representative of another implicates the practice of law, the practice of law involves a much broader spectrum of activities. It is these other activities that have direct implications for non-lawyers who conduct business in an office or over the Internet. The practice of law has been defined as including rendering legal advice, preparing legal instruments and contracts by which legal rights are secured, and advising of people as to the execution of those instruments.

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127 [https://en.wikipedia.org/wiki/The\\_Innovator%27s\\_Dilemma](https://en.wikipedia.org/wiki/The_Innovator%27s_Dilemma).



Federal regulations define “practice of law” in the immigration context as “the act or acts of any person appearing in any case, either in person or through the *preparation* or filing of any brief or other document, paper, *application*, or petition on behalf of another person or client before or with DHS, or any immigration judge, or the Board.”<sup>128</sup> Moreover, “[t]he term preparation, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the *giving of advice and auxiliary activities, including the incidental preparation of papers.*”<sup>129</sup>

Arguably, online services that are modeled to walk an individual through a form selected by the individual, without any guidance as to how to answer the form, are not engaging in UPIL even if no attorney is involved in the process at any stage. If the online service institutes a wizard or some other software mechanism to help consumers select the form needed in the first place, additional questions arise.

Whether form selection constitutes the practice of law is a hotly debated issue, and one that is lacking in recent guidance. In the immigration context, however, it is arguable that form selection will often constitute the practice of law.

Agency guidance from the legacy Immigration and Naturalization Service (INS) from the mid-1990s points to the belief that form selection is the practice of law.<sup>130</sup> The agency based its reasoning on the fact that the selection of a form may depend on making a legal conclusion as to whether the client is eligible for that particular immigration benefit.<sup>131</sup> More recent publications by the U.S. Citizenship and Immigration Services (USCIS) show that the agency has not changed its position on this issue in recent years.<sup>132</sup>

If an online service assists an individual in determining which form they require to achieve a desired result, and if they do so by asking targeted questions as to the client’s current situation and goals, then arguably an attorney must be involved in the process, or the entity behind the service has engaged in practice of law.

*While some cases may not require sophisticated analysis or sustained advocacy, there are far too many pitfalls or hidden dangers in immigration law that require expertise to navigate*

Further, if the online service provides guidance in the form of wizard or questionnaire, before the consumer asks a question, it would be more than just scrivener services. The wizard/questionnaire contains written legal guidance created earlier in time, but delivered to the consumer via software at the time the consumer needs it. When the consumer reads the guidance it becomes advice that impacts the consumer’s decision. This may well fit within the definition of the practice of immigration law.

The concern regarding UPIL, of course, is the danger it presents to the would-be client. Immigration law is complex. While some cases may not require sophisticated analysis or sustained

advocacy, there are far too many pitfalls or hidden dangers in immigration law that require expertise to navigate. There are many dangers posed by UPIL, all of which come with dramatic consequences: An individual may be brought to the attention of Immigration and Customs Enforcement (ICE) as

128 8 CFR §1001.1(j)

129 8 CFR §1001.1(k)

130 Grover Joseph Rees III, General Counsel, *Genco* opinion 93-25 CO 202.2, April 20, 1993.

131 Office of the Commissioner: “Practice of law by unlicensed ‘immigration brokers,’” January 18, 1995

132 See e.g. “How to Become an Authorized Immigration Service Provider,” USCIS website, Avoid Scams, Education Tools, available at <http://www.uscis.gov/avoid-scams/educational-tools>.



belonging to a class of deportable individuals, or worse, being rendered deportable as a result of UPIL. In addition, due to UPIL, an individual may be subject to detention, lose money, or unknowingly forfeit eligibility for future immigration benefits.

## Common Consumer/User Complaints

The continuing growth of online legal services providers does not mean that consumers universally like those services. Looking at consumer reviews of these services, common complaints include buying old forms no longer accepted by a court, paying for forms available elsewhere for free, poor or non-existent customer service from online providers, incorrect filing with government agencies, and costly ongoing subscription fees.<sup>133</sup>

## Response of Consumer Protection Agencies to the Unauthorized Practice of Immigration Law

What are state and federal agencies charged with protecting consumers doing about the proliferation of online providers of immigration legal services?

### *State Enforcement*

As creatures of state law, unauthorized practice statutes are enforced by state agencies. In some states, the laws are enforced by state bars through their mandate as part of the judicial system. Furthermore, many states will employ general consumer protection statutes to shutter an unauthorized provider of legal services. In the 12 states that have immigration consultant statutes, prosecutors will use enforcement provisions to prosecute the unauthorized practice of law.

However, due to a recent decision from the U.S. Supreme Court, UPL enforcement is in a state of flux.<sup>134</sup> The Federal Trade Commission (FTC) has issued guidance,<sup>135</sup> and state courts and bars are reviewing this decision to see if changes to UPL enforcement must be made.<sup>136</sup>

### *Federal Enforcement*

There is no federal agency that has broad authority to prosecute the unauthorized practice of immigration law. USCIS solely has a mandate to educate consumers about choosing an authorized provider. The Executive Office for Immigration Review's (EOIR) Office of Bar Counsel prosecutes non-lawyers who pretend to be lawyers, but not immigration consultants or other individuals who engage in the practice of immigration law.

The Federal Trade Commission (FTC) does investigate and prosecute a limited spectrum of unauthorized providers. The commission determined that using the term "notario publico" when advertising immigration services is false or misleading under their statutory mandate. They use this mandate to prosecute and close notarios who use this phrase when promoting their immigration

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133 See Jan/Feb 2016 Law Practice magazine article by SiteJabber CEO Jeremy Gin

134 N.C. State Bd. of Dental Examiners v. FTC, 135 S. Ct. 1101

135 [https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active\\_supervision\\_of\\_state\\_boards.pdf](https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf)

136 <http://abovethelaw.com/2015/03/what-lawyers-must-learn-from-dentists-about-the-unauthorized-practice-of-law/>



services. However, the commission has prosecuted less than a dozen notarios under this provision in the past five years.

The FTC does have a mandate to investigate and prosecute online fraud, including identity theft, fake sweepstakes, credit scams, shopping refunds, and many more. However, the FTC is clear to point out on its website: “The FTC cannot resolve individual complaints, but we can provide information about what next steps to take.”<sup>137</sup>

As a result, there is little enforcement of both state and federal laws protecting consumers who use online legal services provided by non-lawyers.

*As a result, there is little enforcement of both state and federal laws protecting consumers who use online legal services provided by non-lawyers*

## Benefits of Authorized Legal Service Delivery via the Internet

While there are certainly serious considerations about online delivery, there are also benefits to the consumer that should not be ignored. The biggest one, of course, is cost. An attorney-led online service could be a cost-effective way for the client to access legal benefits, and for the attorney to render a service at a lower cost than if the entire process was handled using the traditional delivery model. Further, streamlined processes result in less time and work for each client, making it possible to increase the number of clients serviced.

Attorneys offering their services via online software can likely expand their client base with individuals who would otherwise not walk through their doors. Online services are also convenient. Traditionally, lawyers are most often available during business hours, when the potential client is usually also at work or in school. Appointments with lawyers can take a long time, and more than one may be necessary, requiring additional time off when the client would otherwise be occupied. Online services, on the other hand, can be accessed when convenient for the customer. This convenience and flexibility can also be the difference for a client making a decision as to engage immigration assistance or not. It can also speed up a timetable that would otherwise be delayed by the need to find time to schedule attorney meetings. These factors add value when consumers are deciding whether to engage an attorney or do it themselves.

We all know many clients who will travel many miles and suffer inconvenience to meet face-to-face with their trusted immigration attorney. How many of them would decide to engage online is unknown. Conversely, it is also hard to quantify how many consumers who now represent themselves would find online legal services a compelling reason to engage a lawyer.

Even with these benefits, some consumers will never want online services. They want the personal interaction. Online discussions lose out on the nuances that face-to-face interactions, and issues that an experienced attorney may pick up on via the client’s demeanor or paperwork might go unnoticed,

137 To be fair, UPIL poses a particular challenge for law enforcement and prosecuting agencies. The biggest obstacle from both law enforcement and advocates’ perspectives is getting victims to come forward. Because of fear, lack of awareness regarding where to report, or simply being unaware that they have been defrauded, victims of UPIL do not typically come forward easily. Once they do, complaining witnesses often do not have much evidence, perpetrators often move or disappear, and witnesses often lose interest once delays begin to accumulate. Finally, because of the resources that must be dedicated to such investigations, it may not be feasible to pursue a case based on only one complaint. These issues are compounded in online service investigations, where questions of jurisdiction are more complex and few or no reporting mechanisms exist.



to the detriment of both. However, with the increasing quality and reliability of affordable video conferencing, these issues may be largely overcome.

### ***Changing Consumers***

Today's consumer base is rapidly changing—anything one may need is available at the click of a mouse or, increasingly more common, at the swipe of an app. Anything from clothes and books to medical supplies to banking services are available online. Consumers are more and more accustomed to being able to handle everyday tasks at odd moments and in odd places: during their commutes, at the check-out line at the grocery store, or late at night after work and family time.

Consumers are already visiting and using online immigration legal services. Many potential applicants may want to apply for immigration benefits to improve their situations, but have a fear of facing the daunting process alone while not being able to afford full fees charged by an attorney. Those individuals are effectively locked out of the immigration system and the benefits it could bring. Online services have the potential to lower the cost of providing services, with consumers sharing in that savings. The role of the consumer is discussed in depth in the companion article, *Changing Consumers*.

### ***Ethical Obligations of Attorneys***

When a lawyer takes her oath as a member of a bar, she wears her lawyer hat 24/7. Whatever she does and wherever she goes, her obligation to the Rules of Professional Conduct follows. Whether that is delivering services in an office or online, the same ethical standards guide her conduct.

If a lawyer chooses to adopt new technology to provide immigration legal services through a web-based platform, there are several ethical issues of particular importance.

*Supervision:* A lawyer must oversee the delivery of online legal services—not a paralegal, well-meaning businessperson, or website expert. According to Comment 2 to ABA Model Rule 5.5, “Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.” However, the Comment continues: “This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work.”<sup>138</sup>

*Whether delivering legal services via the traditional “brick-and-mortar” firm or online, they must develop ways to keep this client information confidential*

*Fee Sharing:* At present, all jurisdictions except Washington state and the District of Columbia prohibit lawyers from sharing fees with non-lawyers; however, several companies delivering online legal services have been creative to outsource some functions of a law firm in order to share revenue without drawing a bar complaint. Whether these arrangements are in compliance with fee sharing rules is beyond the scope of this article.

*Confidentiality/Protection of Information:* Lawyers in all U.S. jurisdictions are required to keep client data and information confidential. Whether delivering legal services via the traditional “brick-and-mortar” firm or online, they must develop ways to

138 See also, ABA Model Rule 5.3.



keep this client information confidential. Companies that provide legal services but disclaim that they are providing legal services are not bound by the Rules of Professional Conduct, but may be bound by state data breach laws.

*Advertising Across State Lines:* Immigration lawyers who desire to practice immigration law across state lines may do so in states that have adopted Rule 5.5(d)(2), although with some limitations. One common limitation is on advertising one’s services in a particular state where the lawyer is not licensed. When providing online legal service via the Internet, lawyers must be careful not to violate the advertising rules in the states where their services are offered. That presumably is all 51 U.S. jurisdictions. Non-lawyer providers are not subject to these advertising restrictions.

*Competency:* Competency means knowing the law and how to deliver legal services to meet the needs of each client. Does that change for a client who contracts with an online website to provide limited (unbundled) legal services, such as merely completing a form online with the help of an online “wizard”? Does a lawyer who makes the website, publishes the particular form, and creates accompanying pop-up informational boxes to guide the consumer to complete the form have further liability to make sure the form is the proper solution to the consumer’s legal problem? Or to ensure that the informational boxes competently guide the consumer?

These ethics issues are discussed in more detail in the companion article “Ethics and Innovation.” However, it is important to note that nothing in the Rules of Professional Conduct prohibit providing immigration legal services via an online portal. Given the number of legal websites that are providing services to consumers, it appears that some lawyers have successfully navigated a path through the ethics rules that allows them to engage clients online.

## Impact in the Future: Why Law Firms Haven’t Embraced Online Services

Although a few immigration firms are starting to provide some level of legal services online, the vast majority of lawyers have not. With so many other services now available on the Internet, why haven’t lawyers taken legal services online?

One reason may be legal ethics. The Rules of Professional Conduct do not make it easy to create a new model of delivery. Lawyers are encumbered with many requirements to handle money in certain ways and to guard documents and information, among others. Further, these complex rules vary from state to state, making them difficult to navigate. This leaves many lawyers looking over their shoulder to see if disciplinary counsel is staring down at them. In short, who wants to be the first to take that risk?<sup>139</sup>

Also, as discussed earlier, the disruptive innovation model provides a clue. Even aside from restraints imposed by regulation, law firms are captives of their resources, processes, and values. The current law firm model resists migration from a brick-and-mortar configuration to an online model. Successful companies, even those with plenty of capital, typically do not divert that capital, but rather reinvent themselves in completely new form. However, new upstart competitors often step into the online

*With so many other services now available on the Internet, why haven’t lawyers taken legal services online*

139 For a more detailed discussion, see *Ethics and Innovation: Do the Rules of Professional Conduct Support or Impede Innovation in the Delivery of Legal Services?*



space when traditional brands fail to do so. This so-called “disruption” in the marketplace is not new. Amazon did it to Borders and Barnes & Noble, and independent booksellers went out of business. Expedia and others moved into online travel arrangements, and traditional travel agents were left behind.

Another reason may be that immigration lawyers don’t believe legal services can be competently delivered online. Yet many firms deliver their services without ever meeting their clients in person. How different is that from having an online portal to interact with a client?

Finally, it may be that clients are satisfied with the present services delivery model. Unless clients reject their present role as a consumer in which they call the lawyer for an appointment, meet with the lawyer at their office, pay in the prescribed manner, etc., then a lawyer has very little to change in their practice. However, if lawyers want to extend their practices to meet the needs of the 60% of Americans who at present can’t afford or can’t access legal services, then changes in delivery should be made.

While there are clear challenges involved, not the least of which includes getting over the fear of a new model of service delivery, there can also be ways in which this can be beneficial to the legal profession.

## Impact in the Future: How Can Online Services Be Leveraged into Successful Law Practices?

### *Help Solos/Small Firms Be More Efficient*

The vast majority of immigration practices are small firms or solo practitioners. Some are smaller boutique practices, while others are higher-volume and more leveraged with paralegals and legal assistants.<sup>140</sup> Incorporating an online service into this latter business model could help these practices increase case-load with proportionally less work performed by the attorney. For example, if an attorney could rely on automated screenings and application preparation, where their time would instead be focused on review of intakes and final applications and complex case work, they would essentially play the role of supervisor to the online service role of junior staff.

Further, on-line services allow clients to do some of the input and upload work themselves. This is part of the “Costco-ization” of America, where consumers are willing to do some of the heavy lifting to save some money. Traditional delivery of legal services does not lend itself to this trend, but with on-line services, clients can use their own computer to work jointly on a matter but that is ultimately controlled by the lawyer.

### *Wider, More Diverse Client Base*

Many immigrants do not have access to lawyers, whether due to distance or convenience. For example, New York is one of the many states that does not offer driver’s licenses to undocumented immigrants, making the simple act of visiting a lawyer’s office daunting. Others may not be able to afford the cost of a lawyer’s services. Offering services through an online model would allow an attorney to access these clients and provide a valuable service to underserved communities at the same time. Because

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140 See “Changing Consumers” for a discussion of the spectrum of law firm niches.





the Internet can be accessed anytime and anywhere, an attorney's client base could conceivably become nationwide. At a minimum, the potential client pool would be expanded to those who cannot, for whatever reason, easily access a lawyer's office.

On-line services can also reach those who cannot access a lawyer's services due to cost. On-line services can reduce the cost of delivering legal services so those services can be offered to the public for less. In fact, online services are thought to expand a law firm's business because the service attracts clients who could not otherwise hire a lawyer or afford a lawyer. Further, some of those online clients then decide to move to the full services offered by the firm. In short, online services are a win-win for consumers and law firms.

### ***Help with Schedule Management***

Utilizing online service would also help an attorney control their schedule better and work on a schedule that best fits their personal needs. If a client is able to access information and fill out forms on their own time, not only can an attorney spend less time on simpler tasks such as inputting information into forms—thus freeing them up for in-depth review and critical analysis—they can also review the same forms at a time that works for the attorney. Weekend and evening hours become less necessary, as do strict weekday work schedules, if the attorney prefers to keep certain hours free.

### ***Platform vs. Pipeline***

Lawyers that want to deliver legal services via the Internet are first met with several issues. One issue is whether to offer services via their own website (platform) or to tie into a third-party pipeline like LegalHero to bring additional clients to their practice.

A platform is simply a technology layer between two interacting or transacting parties. Examples include eBay, a platform in which buyers and sellers of goods can interact and conduct transactions; Airbnb, a platform to connect property owners with those in need of short term accommodations; and Uber, a platform to connect drivers and passengers.

Lawyers may decide to partner with technologists to create their own platform, such as VisaNow, or lease a customizable platform from a company like DirectLaw.com and similar companies that help establish virtual legal practices. Platform features include integration with your law firm website, a client portal, calendaring, web-based document storage, online advice delivery system, and secure client communications, among other functions.

Still other lawyers may decide to join a network of lawyers such as the ones created by LegalZoom, RocketLawyer, and Avvo. These third-party platforms can augment (or replace) a lawyer's own marketing efforts. Instead of spending time marketing, a lawyer can sign up for these networks that can generate new clients, although at a price set by the network. At present, lawyers have ethical concerns about these referral relationships, so expect some robust discussions and probable action by state bar disciplinary committees or legal ethics committees before it is settled.

### ***Costs of Developing Online Services***

Building software platforms to deliver legal services costs money. Leasing platforms costs money. The more robust and functional the service, the more it costs to build or lease. This is a primary



## Is it time to allow non-lawyer partners as investors to help lawyers finance these technology improvements?

reason why our profession is reviewing the prohibition on non-lawyer partners in law firms.<sup>141</sup> Is it time to allow non-lawyer partners as investors to help lawyers finance these technology improvements? Whatever the outcome of the current debate, make no mistake about it—hundreds of private companies—whether led by lawyers or not—are working on new platforms for every legal service found in a law firm. The only question is whether today’s law firms are going to adapt and start building

software themselves, or whether the rules will change and open up opportunities for software companies to steal away even more market share. Will lawyers take the financial risks themselves, or join together to create superior platforms based on their knowledge and experience practicing law?

One company that works with lawyers to deliver online legal platforms is DirectLaw. This company provides a customizable web platform that allows law firms to develop legal service solutions for their clients using the tools provided by DirectLaw. Those include ecommerce functions, client collaboration tools, and document automation tools to create and automate forms.

### ***Ethics of Moving Online***

As discussed earlier in this article, there are ethical issues to analyze and resolve for any lawyer moving online. As stated in the companion article, *Ethics and Innovation: Do the Rules of Professional Conduct Support or Impede Innovation in the Delivery of Legal Services?*, it is very tricky to navigate our state and federal ethics rules to expand a traditional practice online. But that should not be a sufficient reason not to try. Our ethics rules are rules of reason, not rules of perfection; lawyers should not be disciplined for trying to expand the use of legal services to those that need them. Nevertheless, the ethical component of moving online will be as important in the process of moving online as the technological tools. Look for resources on e-lawyering and virtual law practices to help with these issues.

### **Conclusion**

It is hard to predict the future, but it seems clear that consumers are moving to online services for many aspects of their lives. For better or worse, that is happening for legal services in general and immigration legal services specifically. How many consumers will move to online legal services, and how fast they will move, is unknown.

However, we do know this: If consumers want online immigration services and lawyers are not there to service them, the only ones who will are the notarios and scammers.

Early adopters will not have an easy time of it. Other consumers and lawyers will make ethical complaints, and some consumers and lawyers may make UPIL complaints against them. Deciding which technologies to build or buy to create and deliver on-line immigration legal services will be more costly to these early firms.

141 ABA Commission on the Future of Legal Services Issue Paper (April 8, 2016): [http://www.americanbar.org/content/dam/aba/images/office\\_president/alternative\\_business\\_issues\\_paper.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/alternative_business_issues_paper.pdf)



Some lawyers may decide they don't need to go online, and many consumers will decide the same. Yet like so many other areas of commerce, the expansion of traditional delivery methods of legal services will extend to the online world. It is happening already. Existing immigration firms may decide to expand their services online, but more likely to do so are the newer legal entrepreneurs who don't have a firm (or even a job) in order to establish an online presence to attract consumers to hire them for the first time or pull them away from traditional service providers.

Maybe the biggest question of all is "What will you do?"





# The Present and Future State of Non-Lawyer Practitioners

*These forces are empowering consumers, changing the regulatory scheme for non-lawyers, and leaving many lawyers wondering where their next competitor will come from*

Today's immigration legal marketplace is changing. There are numerous forces at work that are changing and reshaping the marketplace as we know it. Among those forces is the continuing evolution of technology, a belief within the profession that more consumers should have access to legal representation, and a rise in the marketplace of non-lawyer competitors—some authorized by federal law, some authorized by state law, and still others not authorized at all. These forces are empowering consumers, changing the regulatory scheme for non-lawyers, and leaving many lawyers wondering where their next competitor will come

from. This article examines why non-lawyer providers are entering the market, who these players are, how they are regulated, and what impact they might have on the immigration legal services space in the future.

## Access to Justice

According to a 2006 study, the United States has more lawyers per capita than any of the 29 countries studied except for Greece.<sup>142</sup> Notwithstanding the large number of attorneys in the United States, legal scholars, judges, and bar associations have identified an enormous “justice gap” for low-income individuals in the country. “In the United States, 80 to 90 percent of low-income people with civil legal

142 *America's lawyers Guilty as charged, Cheaper legal education and more liberal rules would benefit America's lawyers—and their clients*, **THE ECONOMIST**, February 2, 2013, available at <http://www.economist.com/news/leaders/21571141-cheaper-legal-education-and-more-liberal-rules-would-benefit-americas-lawyersand-their>

This article is one of six in a series prepared for the AILA membership by the Future of Immigration Law Practice Task Force. The article series provides foundational information and analysis on the future of immigration law practice, and is meant to provoke thought and reflection about the future of your practice and career, as well as our profession and association. Readers are encouraged to pursue additional research on matters of particular interest. These are issues on which individual members and AILA as an organization must act as we develop our preferred future.



problems never receive help from a lawyer.”<sup>143</sup> The situation is equally dire in the immigration legal field, particularly for low-income immigrants.<sup>144</sup>

Defining what we mean by “access to justice” is critically important. To those who advocate for the expansion of non-lawyers, accessibility means more than availability of counsel. It also means a sense of safety and security in exercising one’s right to engage with a legal system. In addition, it relates to the availability and affordability of accurate and competent legal information, advice, and representation without the limitation of English language proficiency.<sup>145</sup> The concept of accessibility stems from a justice system that is characterized by fair and equal protection and enforcement, with a means of civil oversight. This concept is central to the debate surrounding the expansion of non-lawyer practitioners, and experts on both sides of the issue have compelling arguments.<sup>146</sup>

To supporters, the expansion of legal services by non-lawyer practitioners in specified areas has the potential to significantly increase access and affordability of legal services to both new consumers and underserved populations that may be unable to afford the fees of traditional attorneys or access them due to geographic and other limitations. Supporters argue that the opportunity to close this justice gap cannot be ignored as the crisis continues to grow across the country.

A 2013 report issued by the Committee on Professional Responsibility of the New York City Bar Association noted:

Almost half a century ago, Justice William O. Douglas warned against labeling services as ‘legal’ and reserving them for lawyers in situations where non-lawyers may be able to function just as capably:

“The so-called ‘legal’ problem of the poor is often an unidentified strand in a complex of social, economic, psychological, and psychiatric problems. Identification of the ‘legal’ problem at times is for the expert. But even a ‘lay’ person can often perform that function and mark the path that leads to the school board, the school principal, the welfare agency, the Veterans Administration, the police review board, or the urban renewal agency.”

On the other hand, those who are wary of adding non-lawyer practitioners to the mix assert that non-lawyers will charge at least as much as lawyers, lack the competence to handle legal matters, necessitate the creation of regulatory regimes that are doomed to fail, and more.<sup>147</sup> As experts in the

143 Robert Ambrogi, *Who Says You Need a Law Degree to Practice Law?* **WASH. POST**, March 13, 2015, available at [https://www.washingtonpost.com/opinions/closing-the-justice-gap/2015/03/13/a5f576c8-c754-11e4-aa1a-86135599fb0f\\_story.html](https://www.washingtonpost.com/opinions/closing-the-justice-gap/2015/03/13/a5f576c8-c754-11e4-aa1a-86135599fb0f_story.html)

144 Robert A. Katzmann, *The Robert L. Levine Distinguished Lecture, Deepening the Legal Profession’s Pro Bono Commitment to the Immigrant Poor*, 78 **FORDHAM L. REV.** 453 (2009). It is important to note that although most of the research that addresses this issue focuses on low-income populations, access to affordable legal services is not just a problem for low-income immigrants; it dramatically impacts the middle class, too.

145 Nat’l Ctr. St. Cts., *A National Call to Action, Access to Justice for Limited English Proficient Litigants: Creating Solutions to Language Barrier in State Court*, July 2013, [http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/~/\\_media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Language%20Access/Call-to-Action.ashx](http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/~/_media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Language%20Access/Call-to-Action.ashx)

146 Broadly, the concept of “access to justice” comes from international law and is a metric by which the “rule of law” is measured. Although difficult to define, the rule of law is a general legal principle that states that laws should govern a nation as opposed to arbitrary decisions by government officials. The American Bar Association’s (ABA) Rule of Law Initiative explains: “International human rights principles recognize access to justice both as a basic human right and as a means to protect other universally recognized human rights...” see American Bar Association Rule of Law Initiative, Access to Justice and Human rights, Americanbar.org, [http://www.americanbar.org/advocacy/rule\\_of\\_law/thematic\\_areas/access\\_justice\\_human\\_rights.html](http://www.americanbar.org/advocacy/rule_of_law/thematic_areas/access_justice_human_rights.html). In the United States, the ABA, the Department of Justice and other legal organizations have offices or divisions devoted to promoting access to justice within the civil legal system.

147 Regulated non-lawyer practitioners like Washington’s Limited License Legal Technicians require new, but untested disciplinary schemes similar to state bar rules for lawyers.



immigration field are aware, mistakes in immigration legal practice have high-stakes consequences. Those who oppose the expansion of non-lawyer practitioners argue that more legal errors are likely to be made—to the detriment of vulnerable individuals—if more non-lawyer practitioners enter the market.

The challenge of the justice gap for low-income Americans and immigrants, and the resulting debate surrounding non-lawyer expansion, is both long-standing and structural. It cannot be attributed solely to the recent recession, nor can it be expected to disappear as the economy continues to recover. Studies have shown that a consistently wide justice gap has existed for at least the past quarter century. So, what is driving the change now? Where is the pressure in the marketplace coming from? The answer lies in technology.

Technology has been evolving and changing lives and society for decades. Each year it seems that faster, better, and cheaper technology leads to improvements in our lives and the world in which we live. Every facet of our lives seems to improve through the use of technology, yet that powerful and ubiquitous tool has thus far failed to make a dent in a huge segment of society that needs affordable legal services. Why hasn't the technological evolution that has taken place in law firms over the past 30 years resulted in more affordable legal services for more people? After years of waiting, this longing has turned to impatience: If lawyers cannot provide affordable services, allow those who can to enter the marketplace.

One of the leaders in this effort is William Hubbard, immediate past president of the American Bar Association (ABA). Mr. Hubbard appointed the ABA Commission on the Future of Legal Services, and continues to help the Commission pursue its goals. His quote from 2013 still adorns the ABA website: “We must develop a new model to meet the needs of the underserved.”

*We must develop  
a new model to meet the  
needs of the underserved*

So, according to access to justice advocates—many who are themselves lawyers—effective action is long overdue. But what does that action look like, particularly in the immigration legal services space? Can and should increasing the number of non-attorney practitioners effectively and adequately address this shortage?

Perhaps Justice Douglas's “lay” immigration advocates *could* reduce the justice gap as social workers, guardians ad litem, courtroom aides, and “navigators” have done in other civil legal settings. However, that is easier said than done. There are numerous laws and rules that regulate the practice of immigration law and protect consumers from harm caused by incompetent or fraudulent legal service and advice. In order to allow non-lawyers to deliver affordable legal services, these laws and rules must be modified.

*The federal government, state supreme courts, and bar associations are constantly grappling with the challenge of trying to balance consumer protection with the demand for increased access to legal services*

## Who are the Non-Lawyer Practitioners Currently in the Market, and How Are They Regulated?

There are three groups of non-lawyers in the immigration market today: those authorized by federal law, those authorized by state law, and those not authorized to provide immigration services. In the immigration field, non-lawyers are regulated by 8 CFR §1292.1 in a system overseen and enforced by the Executive Office for Immigration Review (EOIR). The number of



states authorizing non-lawyers to provide immigration services has grown over the years, and may expand further. But the number of unauthorized providers also continues to grow, including those who are exploiting the wild world of the Internet. The federal government, state supreme courts, and bar associations are constantly grappling with the challenge of trying to balance consumer protection with the demand for increased access to legal services.

### ***Board of Immigration Appeals Recognition and Accreditation—Federally Regulated***

Non-attorneys have long played a role in the practice of immigration law. These non-lawyers include some individuals who are authorized to represent immigrants, and others who are not. Focusing first on those who are sanctioned, the U.S. Code of Federal Regulations authorized the practice of immigration law by non-lawyers in 1958.<sup>148</sup> The Immigration and Nationality Act (INA) provides that persons in removal proceedings, or in appeal proceedings before the Board of Immigration Appeals (BIA), have the “privilege” of being represented by counsel, provided that such representation is at no expense to the government. Other than “accredited representatives,” who comprise the largest group of federally authorized non-lawyers, none of the non-lawyer categories may charge any fees for representing immigrants.

Accredited representatives must be associated with certain nonprofit, charitable organizations that have obtained recognition by the BIA through an extensive application process. Those organizations must demonstrate that they charge only nominal or low fees for services, and that they have at their disposal the adequate knowledge, information, and experience to provide immigration services.

The current rules regulating the accreditation of representatives are virtually unchanged from the standards set out by the Department of Justice (DOJ) in 1975.<sup>149</sup> However, in response to concerns about the ability of non-lawyers to navigate increasingly complex immigration laws, DOJ amended the accreditation rules in 1984, creating a two-tiered system of partial and full accreditation.<sup>150</sup> Partially accredited representatives may only represent individuals before the Department of Homeland Security (DHS), while fully accredited representatives may represent respondents in Immigration Court and before the BIA, as well as DHS.<sup>151</sup>

On October 1, 2015, EOIR promulgated a proposed rule titled “*Recognition of Organizations and Accreditation of Non-Attorney Representatives*.”<sup>152</sup> The rule would mark the first significant changes to the recognition and accreditation rules since 1984. EOIR’s stated purpose for the proposed rule is to “promote the effective and efficient administration of justice before DHS and EOIR by increasing the availability of competent non-lawyer representation for underserved immigrant populations.”<sup>153</sup> The rule includes a number of commonsense changes that address important shortcomings in the current

148 Tim McIlmail, *Board of Immigration Appeals Accreditation and Entering Immigration Appearances: A Checklist Guide to 8 CFR §292* (Third Edition), American Bar Association Commission on Immigration, [http://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/bia\\_accreditation.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/bia_accreditation.authcheckdam.pdf)

149 Careen Shannon, *To License or Not to License? A Look at Differing Approaches to Policing the Activities of NonLawyer Immigration Service Providers*, 33 *CARDOZO L. REV.* 437, 450 (2011)

150 *Id.*

151 8 CFR §1292.2(d); *see also* Matter of EAC, INC, 24 I&N Dec. 563, 564 (BIA 2008).

152 Recognition of Organizations and Accreditation of Non-Attorney Representatives, 80 Fed. Reg. 59514 (Oct. 1, 2015) (amending 8 CFR pts. 1001, 1003, 1103, 1212, 1240 & 1292)

153 *Id.* at 59514.



recognition and accreditation program.<sup>154</sup> However, the proposed changes also place additional burdens on recognized organizations, and will not markedly increase the number of accredited representatives in the foreseeable future.<sup>155</sup>

Although not yet in effect, EOIR’s proposed changes to the BIA Recognition and Accreditation Program are significant. The current requirements for agency recognition are that an organization be a nonprofit, religious, charitable, social service, or similar organization; that the organization charge only “nominal fees” and assess no membership dues for its services; and that it possesses adequate knowledge, information, and experience to serve its immigration clients. Though some may argue that the proposed changes are a liberalization of the existing recognition and accreditation regulations, in many ways, the new rules have more regulation and oversight than ever before. Notably, though the nominal fees requirement has been deleted, the spirit of its purpose remains. The proposed rule replaces the nominal fee requirement with a more flexible analysis that looks at agencies’ other sources of revenue and balances those against the income an agency receives from client fees. Other proposed changes seek to increase accountability, deter fraud, and raise the quality of service provision across the program by ensuring that high standards of training and education are met.

Accredited representatives will continue to play a critical role in addressing the legal service needs of indigent immigrants in the coming years. However, unless recognized organizations obtain significant funding, they can only provide services to a small fraction of consumers in the legal services marketplace.

### ***State and Local Statutory Schemes—“Immigration Consultants” and “Immigration Service Providers”***

In recent years, many cities and states have attempted to regulate non-lawyer providers of immigration legal services by passing state legislation and city ordinances that define “immigration consultants” or “immigration service providers.”<sup>156</sup> These regulatory schemes have, at best, produced mixed results for consumers. The present immigration system suffers from a lack of qualified immigration practitioners in many geographic regions, leaving noncitizens with little choice but to seek the

*The present immigration system suffers from a lack of qualified immigration practitioners in many geographic regions, leaving noncitizens with little choice but to seek the help of predatory immigration service providers, or to have no access to legal assistance at all*

154 The proposed rule would transfer the Recognition & Accreditation Program from the BIA to EOIR’s Office of Legal Access Programs (OLAP), an entity better suited to administer the program. OLAP oversees legal orientation programs, and facilitates access to pro bono representation and self-help educational materials for individuals in immigration proceedings. The proposed rule would also require recognized organizations to demonstrate that their services are directed primarily to low-income and indigent clients, and that each recognized organization has at least one accredited representative on its staff. The proposed rule would allow important flexibility by permitting an organization to extend its recognition and the accreditation of its representatives to any office or location where it offers immigration legal services. The rule would promote accountability and deter against fraud and exploitation of the recognition and accreditation process through notice requirements. Finally, the rule would authorize OLAP to require organizations to post public notices to inform the public about the approval period of an organization’s recognition and accreditation of its representatives. Notices would also explain how to submit complaints about accredited representatives or organizations.

155 The proposed rule would replace the requirement that recognized organizations charge “nominal fees” with a new requirement that the organization demonstrate that a “substantial amount of the organization’s immigration legal services budget is derived from sources other than funds provided by or on behalf of the immigration clients themselves (such as legal fees, donations, or membership dues.)” See proposed regulation §1292.11(a)(3). The proposed rule would also require renewal of organizational recognition. See also, Recognition of Organizations and Accreditation of Non-Attorney Representatives, *supra* note 11 at 59522.

156 CAL. BUS. AND PROF. CODE §22440-22449, N.Y. GEN. BUS. L. §Art. 28-C (2015)





help of predatory immigration service providers, or to have no access to legal assistance at all. While the intent of these state and local laws is generally to protect consumers and to expand the pool of reputable individuals available to provide services, they often fail to meet those goals, and sometimes produce the opposite result.

Many immigration advocates argue that state-specific immigration consultants do more harm than good by legitimizing providers who are expressly prohibited under federal law from providing immigration legal services. Federal regulations explicitly define both what constitutes the practice of immigration law and which types of providers are authorized to practice before DHS and DOJ on immigration matters.<sup>157</sup>

Agency guidance from the legacy Immigration and National Service (INS) from the mid-1990s states that even form selection may constitute the practice of law.<sup>158</sup> The agency based its reasoning on the fact that selecting which immigration form a client should use may depend on making a legal conclusion as to whether the client is eligible for that particular immigration benefit. More recent publications by the U.S. Citizenship and Immigration Services (USCIS) show that the agency has not changed its position on this issue in recent years.<sup>159</sup>

Because of the federal limitations, state schemes that regulate non-lawyer practitioners limit immigration consultants to serving in the role of “scrivener.” In theory, one might think this limitation would work, but as in other areas of law, the devil is in the details. Many consultants defy their limits as scriveners and use their state licensing status to tell consumers they can provide greater services than federal and state laws allow. Imposing a very low maximum fee for immigration consultants might be one way to educate consumers about the type of service they should expect to receive, as well as the professional credentials of the provider. The city of Chicago, for example, has addressed this by enacting an ordinance that caps the maximum fee for an immigration service at \$75.<sup>160</sup>

### ***State Bar Regulation of Non-Lawyer Practitioners***

State bars have long had an important role in protecting consumers from unlawful practitioners. At present, 31 state bars (or supreme court committees) have enforcement authority over non-lawyer practitioners. Most often, state bars concern themselves with enforcement against non-lawyers who hold

*The role of state bars in regulating non-lawyer practitioners is evolving as both lawyers and consumers question the purpose of unauthorized practice laws*

157 8 CFR §1.1(k) states “[t]he term preparation, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers.”

158 Grover Joseph Rees III, General Counsel, Genco opinion 93-25 CO 202.2, April 20, 1993, *available at* <http://www.aila.org/infonet/ins-role-of-visa-consultants-in-immigration>

159 A USCIS pamphlet titled *How to Help Someone Applying for an Immigration Benefit* instructs that “[i]f you are NOT an Accredited Representative or Licensed Attorney you can only” perform the following functions: “Read the form to the individual; [t]ranslate, either verbally or in writing, information from the individual’s native language to English or English to the individual’s language; and [w]rite down information that the individual provides to complete the application.” *See How to Help Someone Applying for an Immigration Benefit*, U.S. Citizenship and Immigration Services, Avoid Scams, Education Tools, *available at* <https://www.uscis.gov/avoid-scams/educational-tools>. Yet another USCIS brochure warns that only an authorized immigration service provider may “[s]elect what form an applicant should submit, [p]rovide legal advice about documents to submit, [e]xplain immigration options, and [c]ommunicate with USCIS about an applicant’s case.” *See How to Become An Authorized Immigration Service Provider*, U.S. Citizenship and Immigration Services, Avoid Scams, Education Tools, *available at* <https://www.uscis.gov/avoid-scams/educational-tools>.

160 *Immigration Assistance Ordinance*, **MUN. CODE CHI.** Chpt. 4-6-240, *see also* City of Chicago Business Affairs and Consumer Protection, *Immigrant Assistance Providers Rules and Regulations* (March 6, 2013), <http://www.cityofchicago.org/content/dam/city/depts/bacp/Rules%20and%20Regulations/immigrationassistanceprovidersrulesregs20130306.pdf>



themselves out as lawyers, but bars have also played a role in stopping non-lawyer providers who unknowingly cross the line into practicing law without a license.<sup>161</sup>

The role of state bars in regulating non-lawyer practitioners is evolving as both lawyers and consumers question the purpose of unauthorized practice laws.<sup>162</sup> Recently, the Chief Justice of the Washington Supreme Court issued an order that stops the state bar from enforcing laws designed to protect consumers from unauthorized practice, leaving the bar to refer those matters to other state agencies.<sup>163</sup>

The changing nature of the bar's role is highlighted in the outcome of a recent U.S. Supreme Court case, *North Carolina State Board of Dental Examiners v. the FTC*. In North Carolina, the State Board of Dental Examiners is a state-created agency tasked with licensing dentists and dental hygienists. The Board consists of eight members, six of whom are dentists and are elected by their peers. The body can bring actions in state court against individuals suspected of practicing dentistry without a license. In 2003, the Board became aware of many non-dentists offering teeth-whitening services, and began a campaign to shut down these providers by sending cease and desist letters. The campaign worked, and many providers left the market. Subsequently, the Federal Trade Commission brought an administrative action against the Board alleging that it engaged in unfair methods of competition in violation of the FTC Act. Ultimately, the Supreme Court affirmed the Fourth Circuit's denial of review, and the FTC's final order enjoined the Board from sending further cease and desist letters, or otherwise discouraging participation in the market.<sup>164</sup> Although the lawsuit primarily focused on an anti-trust analysis and whether the Board was a state actor with immunity, the Supreme Court's ruling suggests that self-regulation of a profession like the law may be forced to evolve.

As the will to prosecute these cases continues to wane, the financial resources needed to stop unauthorized practitioners are more limited. At a recent meeting of the ABA Commission on the Future of Legal Services, a state bar president lamented that the last UPL case the bar brought cost them \$400,000 in legal fees over several years. Another past president shared that state bar resources available to fight UPL are becoming much more limited. With a lack of will and resources, enforcement efforts may need to be redirected before they can be effective.

One notable outlier is the state of Florida, the jurisdiction best known for attempting UPL enforcement by the state bar. In Florida, the bar spends approximately \$1.8 million annually on UPL enforcement, yet the state remains atop the list of jurisdictions where unauthorized practitioners thrive.<sup>165</sup> What more can the state bar possibly do in such a scenario? And furthermore, what truly is the bar's role?

### ***Limited License Legal Technicians—State Regulated***

In 2012, the Washington State Supreme Court (WSSC) responded to that state's access to justice crisis with a controversial measure to allow a limited license to non-lawyers to practice law. The WSSC created the LLLT program on June 15, 2012, with the promulgation of Admission to Practice

161 Am. Bar Ass'n Standing Comm. on Client Protection, *2015 Survey of Unlicensed Practice of Law Committees*, (Sept 2015), [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2015\\_upl\\_report\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2015_upl_report_final.authcheckdam.pdf)

162 Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 **FORDHAM L. REV.** 5 (1999)

163 *In the Matter of Reconstituting the Practice of Law Board*, Sup. Ct. Wash. Order No. 25700-B-559 (July 8, 2015), available at [http://www.wsba.org/~media/Files/Legal%20Community/Committees\\_Boards\\_Panels/Practice%20of%20Law%20Board/Miscellaneous/Sup%20Ct%20Order%20re%20Reconstituting%207815.ashx](http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Practice%20of%20Law%20Board/Miscellaneous/Sup%20Ct%20Order%20re%20Reconstituting%207815.ashx)

164 *North Carolina State Board of Dental Examiners v. FTC*, 129 **HARV. L. REV.** 371 (2015)

165 Am. Bar Ass'n Standing Comm. on Client Protection, *supra* note 20



Rule 28. In an opinion that accompanied the rule, the court explained that it acted in response to “a ballooning population of unrepresented litigants.”<sup>166</sup> According to the WSSC, the authorization for LLLTs to engage in certain limited law-related activities “holds promise to help reduce the level of unmet need” for low-income people who have “uncomplicated family-related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome.”<sup>167</sup> The WSSC referred to these non-lawyers as “legal technicians” who are permitted to practice only in certain areas beginning with family law matters.<sup>168</sup> Other states, including California and New York, are actively seeking ways to expand non-lawyer training and licensing in high-need areas such as family law, immigration, landlord-tenant, foreclosure, and consumer credit.<sup>169</sup>

Pushed by WSSC, the Washington State Bar Association (WSBA) has played a key role in the newly created Limited License Legal Technician Board, which has focused on developing rules and definitions that will regulate limited license technicians.<sup>170</sup>

Proponents for LLLTs maintain that this is the best way to address the justice gap in the United States:

They cite multiple state and federal studies showing that 80 to 90 percent of low- and moderate-income Americans with legal problems are unable to obtain or afford legal representation. The economics of traditional law practice make it impossible for lawyers to offer their services at prices these people can afford.<sup>171</sup>

Rather than earning a law degree that usually requires a sizeable loan to pay for tuition, LLLT candidates take a year of classes at a community college, and then must pass a licensing exam.<sup>172</sup> Like lawyers, LLLTs will be subject to disciplinary procedures and ethical rules, and must be covered by malpractice insurance.<sup>173</sup> Working with a handful of state law schools, the LLLT Board organized a list of requirements for candidates to learn civil procedure, legal research, contracts, and advanced family law. The first class of 15 candidates matriculated in the winter of 2014.<sup>174</sup> The program costs about \$10,000, and after being an apprentice under a lawyer for 3,000 hours, a LLLT can open his or her own office.<sup>175</sup> At present, the LLLT Board is looking to expand the program to immigration services.

166 Robert Ambrogi, *Washington state moves around UPL, using legal technicians to help close the justice gap*, **ABA JOURNAL** (Jan. 1, 2015, 05:50 am CST), [http://www.abajournal.com/magazine/article/washington\\_state\\_moves\\_around\\_upl\\_using\\_legal\\_technicians\\_to\\_help\\_close\\_the](http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the)

167 *Id.*

168 Debra Cassens Weiss, *In Washington State, 'Legal Technicians' Will Be Allowed to Help Civil Litigants*, **ABA JOURNAL** (June 19, 2012, 12:36 pm CDT), [http://www.abajournal.com/news/article/in\\_washington\\_state\\_legal\\_technicians\\_will\\_be\\_allowed\\_to\\_help\\_civil\\_litigan/](http://www.abajournal.com/news/article/in_washington_state_legal_technicians_will_be_allowed_to_help_civil_litigan/)

169 Dan Kittay, *An Inside Look at Limited Practice for Nonlawyers in Washington and Other States*, 38 *Bar Leader* 1 (Sept./Oct. 2013), available at [http://www.americanbar.org/publications/bar\\_leader/2013-14/september-october/inside\\_look\\_limited\\_practice\\_nonlawyers\\_washington\\_other\\_states.html](http://www.americanbar.org/publications/bar_leader/2013-14/september-october/inside_look_limited_practice_nonlawyers_washington_other_states.html), see also N.Y. City Bar, Committee on Prof'l. Resp., *Narrowing the "Justice Gap: Roles for Nonlawyer Practitioners* (June 2013), <http://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf>

170 For a more comprehensive look at Washington State's LLLT Practice, see Holland, Brooks, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice* (January 4, 2013), 82 **MISS. L. J.** 75 (2013); Gonz. U. Sch. L. Res. Paper No. 2013-1, available at <http://ssrn.com/abstract=2196607>

171 Ambrogi, *supra* note 25

172 Ambrogi, *supra* note 2

173 *Id.*

174 Ambrogi, *supra* note 25

175 *Id.*



Increasingly, the ABA is pushing for states to consider alternatives to lawyers to assist in limited legal services in diverse areas of the law. In its January 2014 final report, the ABA Task Force on the Future of Legal Education called on states to license “persons other than holders of a J.D. to deliver limited legal services.”<sup>176</sup> Other states like California, New York, Connecticut, Oregon, Vermont, and Massachusetts have working groups either studying or recommending that non-lawyers should be permitted to offer basic legal services to the public right now.<sup>177</sup>

*Increasingly, the ABA is pushing for states to consider alternatives to lawyers to assist in limited legal services in diverse areas of the law*

In California, the Limited License Working Group was created on March 6, 2013, as a subcommittee of the Bar’s Committee on Regulation, Admissions and Discipline Oversight (RAD). The working group’s mandate was to research and report back to the RAD Committee regarding the feasibility of developing and implementing standards for creating a limited license to practice law. In June 2013, the working group recommended further study of the limited license concept, and in July 2013, the RAD Committee and Board of Trustees passed resolutions approving the Limited License Working Group’s recommendations, and proposed an expanded study of access to justice challenges in California, including a review of the limited legal license concept.<sup>178</sup> It appears that California is waiting to measure the impact of LLLTs in Washington. It is still unknown when sufficient data can be collected and analyzed, as the program is in its infant stage.

In contrast to Washington’s LLLT program, in February 2014, New York Court of Appeals Chief Judge Jonathan Lippman launched a pilot program in which non-lawyers, called navigators, could provide free assistance to unrepresented litigants in housing and consumer debt cases in certain New York City boroughs. These navigators may also accompany unrepresented litigants into the courtroom for moral support, but they may not act as advocates in court or speak unless asked a question by a judge. This program is one of two navigator programs in New York. The second pilot program in Albany uses nonlawyers to advise elderly and homebound residents about their eligibility for benefits and other services. “New York’s navigators are generally college and law students. They must commit to volunteer for a minimum of 30 hours within three months of their training. A two-and-a-half hour seminar and accompanying manual train them in the basics of housing and consumer-debt cases, as well as interviewing and communication skills. They receive no formal licensing.”<sup>179</sup> Unlike Washington’s LLLT program, there is less incentive to abuse the consumer if free, as opposed to paid, services are expected to be provided.

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The state-authorized LLLT scheme is important to examine because it illustrates just how far some state high courts will go in order to address the underlying lack of legal resources available to a state’s consumers. Whether that scheme will eventually extend to immigration matters has yet to play out. Under the preemption and supremacy clauses of the U.S. Constitution, states cannot impose their own schemes of non-lawyer practitioners in the immigration arena. The federal government created the BIA Recognition and Accreditation Program to address just these

176 Ambrogi, *supra* note 2

177 *Id.*

178 Kittay, *supra* note 28

179 Ambrogi, *supra* note 25



access issues in the immigration context. Whether additional states will still attempt to develop their own programs, such as the LLLT program, is unknown, as is whether the federal government will change existing regulations to add LLLTs to the list of authorized providers. AILA continues to monitor developments in this area through its chapters and interactions with EOIR.

### ***Working Together?***

Although some might view the idea as too far a departure from the traditional practice of law, one important possibility to highlight is whether any circumstances exist under which attorneys and non-lawyer practitioners might benefit from working together. In states where non-lawyer practitioner programs are beginning to develop, some previously reluctant attorneys are beginning to explore whether cross-referral of cases—“simple” cases to non-lawyer practitioners and “complex” cases to attorneys—might benefit both practitioners and clients. This debate and the underlying relationship between the unauthorized practice of law and access to civil justice was examined in depth at the Second ABA UPL School held in April 2015 at Loyola University School of Law. Unsurprisingly, no easy answers were uncovered at

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the UPL School but attendees (including AILA members)

agreed that though “the answer is not to provide unfettered access to nonlawyers who are interested in entering the legal service marketplace,” there are innovative and inventive solutions to be crafted and opportunities to expand the provision of legal services by lawyers and non-lawyers alike.<sup>180</sup> “Just as there is no single reason those in need of legal assistance will not or cannot receive those services, there is no single approach that will solve the problem.”<sup>181</sup>

### ***Netarios—Federally and State Regulated (or Unregulated?)***

A fourth category of non-lawyer practitioner has emerged in recent years in response to technological advances coupled with consumer demand: the online legal services provider, or so-called by many colleagues, “netario.” These service providers are examined in great detail in another article in this series, *Online Legal Services, Do They Help or Harm Consumers?* For the purposes of this article, however, it is important to highlight that online providers such as LegalZoom, Clearpath, FileRight, SkipTheLawyer, ImmigrationDirect and others are developing innovative legal delivery systems that will undeniably expand at least the perception of legal service provision across the country.<sup>182</sup>

180 Selina Thomas, *Rethinking Unauthorized Practice of Law in Light of the Access to Justice Crisis*, 23 **THE PROFESSIONAL LAWYER** 3 (2016)

181 *Id.*

182 An important distinction to note is that LegalZoom, Clearpath and FileRight are headed by attorneys, whereas SkipTheLawyer and ImmigrationDirect are not. Investigation into these companies suggests that they are similar to more traditional notario shops; they are simply located online.



Although it is well-acknowledged within the immigration legal community that immigration law is a highly complex and constantly changing area of law, a misperception exists among those outside of the practice that immigration work consists of nothing more than filling out forms and simple paperwork. AILA members know that nothing could be further from the truth. From the myriad legal and factual sources a practitioner must understand to the ancillary legal issues that arise (intersection with criminal law, foreign law, adoption issues, tax law, employment law, national security law, workplace compliance issues, etc.), it is hard to imagine a scenario in which a computer interface, even one that attorneys helped build, could ask every important question in one interaction.

Online providers are subject to the same regulations and enforcement mechanisms as a brick-and-mortar provider, whether that provider is an attorney or a non-lawyer, but as the online legal services article explains, state and federal enforcement agencies have made minimal efforts to regulate these online actors. Unauthorized practice of law enforcement is in a state of flux across the board, leaving this sector of service providers largely without oversight.

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Providing online immigration legal service might sound like a great model through which to reach clients who would otherwise not have any legal assistance with their immigration questions, but it matters a great deal who is providing that service. Like traditional notario shops, online providers who are not affiliated with an attorney are unregulated and unaccountable. The harm that these online service providers can cause is exacerbated by the consumer's inability to report a complaint to a state or local consumer protection agency. Much like the challenge of "piercing the corporate veil," these secretive businesses maneuver around consumer protection laws by hiding even basic information about their business structure and governance.

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### ***Possible Changes in State Regulation***

Recently, the ABA adopted a resolution that may change the thinking of state legal regulatory bodies. In February 2016, the ABA passed Resolution 105, ABA Model Regulatory Objectives for the Provision of Legal Services. Resolution 105 "urges that each state's highest court, and those of each territory and tribe, be guided by the ABA Model Regulatory Objectives for the Provision of Legal Services when they assess the court's existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers."<sup>183</sup>

183 Am. Bar Ass'n, *Resolution 105: ABA Model Regulatory Objectives for the Provision of Legal Services* (Feb. 2016), <http://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/105.pdf>



The regulatory objectives outlined in Resolution 105 are high-minded and aspirational; they include protection of the public; meaningful access to legal information; efficient, competent, and ethical delivery of affordable and accessible legal services; independence of professional judgment; freedom from discrimination of those seeking and receiving legal services; and more. These values and objectives are easy for most lawyers to support. One can imagine how innovation in the delivery of legal services that maintains these principles might also receive the support of the bar, opening the door for creativity, collaboration, and the expansion of services. The resolution gives credibility and an implicit blessing to state high courts to make changes to their non-lawyer regulations that expand the field of providers. The adoption of ABA Resolution 105 may prove to be a significant driver of change.

## Protecting Consumers or Protecting Lawyers?

In the end, what does the expansion of non-lawyer practitioners mean to immigration lawyers and their clients? Is it really as detrimental to consumers as many lawyers argue, or are lawyers simply trying to maintain the traditional marketplace? In this era of consumerism and change, how can lawyers protect consumers while responding to claims that they are just trying to look out for themselves?

In a report to the membership in 2015, AILA staff highlighted our association's efforts to combat the unauthorized practice of law and promote consumer protection within the immigrant community. AILA members strongly believe that not only does our organization have a responsibility to the immigrant community to educate consumers about the havoc and harm that can be caused by relying on unauthorized service providers, but we also have a duty to our profession to continuously demonstrate why reliance on competent practitioners is so important.

The question the immigration bar must ask itself is whether it is possible for non-lawyer practitioners to ever be "competent practitioners who use their knowledge and expertise to do right by their clients."<sup>184</sup> Members of the ABA's Commission on the Future of Legal Services have argued that, as members of the bar, it is not our role to pursue UPL enforcement; that when we do so, we look self-serving and overprotective. As evidenced by the state of Florida, the argument that increased enforcement is a deterrent to bad actors may be a fallacy. Instead, AILA's most effective and appropriate role may be to focus on far-reaching consumer education that equips and empowers immigrants seeking legal information and assistance with the tools they need to properly understand what constitutes credible legal advice. Such a message cannot saturate the immigrant community without a significant financial investment.

An enforcement-only (or primarily) approach demonstrates to consumers that, as critics state, the immigration bar is primarily concerned with protecting its own market share. One way to combat this negative image is to pursue enforcement against criminal actors, including attorney misconduct, while remaining open to the exploration of creative new service delivery models. Although there are numerous valid concerns about the expansion of the LLLT program into immigration law practice,

*In this era of consumerism and change, how can lawyers protect consumers while responding to claims that they are just trying to look out for themselves?*

184 Am. Immigration Lawyers Ass'n, *AILA's Commitment to Consumer Protection and Anti-UPL Efforts: 2014 Report to Members* (April 24, 2015), <http://www.aila.org/about/leadership/reports/annual/report-consumer-protection-and-anti-upl-efforts>



the licensing and regulation of individuals who provide legal information, services, and advice are paramount to ensuring that consumers can rely on the information they receive, and that when they have complaints, their voices will be heard. Unregulated consumer services can often mean lower quality work product, diminished professionalism, and the significant potential for fraud.

One example that demonstrates the impact of uneven regulation is in the tax industry. There are multiple levels of service providers in the tax industry with varying degrees of education and training. At the highest educational level are certified public accounts (CPAs); others authorized to provide tax services are enrolled agents and tax preparers. Enrolled agents (EAs) are the only federally licensed tax preparers, and only they, attorneys, and CPAs have unlimited rights to represent taxpayers before the Internal Revenue Service (IRS). EAs earn their license by passing a comprehensive exam or by gaining experience working at the IRS for a minimum of five years in a position which regularly interprets and applies the tax code. They must also pass a rigorous background check by the IRS. The final category of tax professionals is the tax preparer. These are individuals who often work seasonally at large unregulated tax preparation businesses. A lack of meaningful educational and training standards for these preparers coupled with no regulation is a recipe for frequent mistakes that can have significant consequences to consumers. As a result, tax businesses and franchises can often be seen in the news accused of fraud.

The need for regulation in the legal profession also argues against the pursuit of an enforcement-only approach to non-lawyer practitioners. Instead of excluding these actors as “other,” should we be advocating for their inclusion to ensure proper accountability so that clients have a means of redress if they are harmed? Is it in our interest, both professionally and financially, to collaborate and cooperate instead of remaining obstructionist and defensive? These questions are tremendously challenging to navigate, and under the current rules of professional conduct, such collaboration is not permitted. It may be time, however, to consider riding the waves of change, and to think critically about what existing structures and systems could be improved in order to facilitate an opening of the legal market that would benefit consumers, lawyers, and entrepreneurs alike.

## What Lies Ahead

*as the preeminent organization of immigration attorneys nationwide, AILA and its members have an important voice and role to play in shaping how these changes play out*

It is becoming clearer every day with the development of new and expanding technologies and business models that the world is changing; it can be seen in the way we shop for groceries, make travel arrangements, visit the doctor, obtain transportation, and communicate with friends and family. These changes are not necessarily bad or good, but they represent progress in the way services are provided, and they develop largely in response to consumer demand and open space in the market in which a need is not being served. The same is and will continue to be true in the provision of legal services, and as the preeminent organization of immigration attorneys nationwide, AILA and its

members have an important voice and role to play in shaping how these changes play out.

Other articles in this series will delve more deeply into issues related to consumer psychology, such as the desires for transparency and efficiency and finding the right price point, but what is certain is that the rise of the non-lawyer provider of legal services is coming. State laws and regulations on the unauthorized practice of law are becoming more specific and less harsh. The focus, perhaps rightly, is turning to the consumer and what he or she needs, not on the law or the lawyer. The desire and will





for enforcement against unauthorized practice laws is waning. This is in part due to resources, but also because state bars are beginning to accept this new paradigm shift.

What is AILA's role in defining the future delivery of immigration legal services? If state bars continue not to pursue unauthorized practitioners, how shall we respond? In the enforcement realm, if states are unwilling or unable financially to enforce their own consumer protection laws and regulations, should that responsibility fall to AILA? As an association, AILA could collaborate with its chapters to undertake civil litigation against unscrupulous actors in every state with an applicable consumer protection statute. Such a project sounds quite daunting in both financial and human resources, but it could be the most effective deterrent to bad actors who seek to harm immigrant consumers.

*What is AILA's role in defining the future delivery of immigration legal services?*

Would AILA ever support the development of a federal version of the LLLT scheme that produced highly qualified and regulated non-lawyers who could not only compete in the for-profit realm, but also partner with lawyers in the provision of such services? If states continue to push forward in this area, how should AILA respond? Would there be an alternative, such as an AILA-developed program to certify paralegals? After all, who knows the requirements of competent immigration services better than AILA members?

*it may be time to push past our conceptual limits, and to imagine new and revolutionary solutions that would not only expand access to legal services, but also perhaps expand our ability to serve more clients*

As the bar for immigration lawyers, it may be time to push past our conceptual limits, and to imagine new and revolutionary solutions that would not only expand access to legal services, but also perhaps expand our ability to serve more clients.

While these ideas may seem outlandish or hyperbolic, our practice and profession are evolving. The rise of non-lawyer providers may be inevitable, but determining how they operate and interact with licensed attorneys is not. Regulations and licensing for non-lawyer providers will ensure accountability and consumer protection; an open and unregulated field will guarantee that immigrants will be harmed, just as we see now

with unscrupulous notarios. How will we choose to participate in the expansion of the legal field? What issues and values must guide our choices? Although these topics are uncomfortable and even infuriating, the immigration bar must not shy away from this confrontation. The futures of both our immigrant clients and our legal field demand our professional engagement, careful attention, considered judgment, and substantive expertise to shape the future state of non-lawyer immigration practitioners.

Consider the Law Society of Upper Canada (Ontario), which regulates, licenses and disciplines Ontario's more than 49,000 lawyers and over 7,900 licensed paralegals pursuant to the Law Society Act and the Law Society's rules, regulations and guidelines. Founded in 1797 to regulate lawyers, the law society accepted the legislative mandate in 2007 to accept as members and to regulate independent paralegals.<sup>185</sup> To protect the public, the law society has created a regulatory scheme and

185 Access to Justice Act (Bill 14, Chapter 21, Statutes of Ontario, 2006), available at [http://www.ontla.on.ca/bills/bills-files/38\\_Parliament/Session2/b014ra.pdf](http://www.ontla.on.ca/bills/bills-files/38_Parliament/Session2/b014ra.pdf)



rules to govern paralegal conduct.<sup>186</sup> So whatever regulatory changes may occur here in the U.S., we won't be the first lawyers to try non-lawyer regulation.

We need not rush to accept any new scheme to deliver immigration legal services by non-lawyers, but with the forces at work in the legal profession today, we ignore this perspective at our own risk.

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186 The Law Society of Upper Canada, *Paralegal Professional Conduct Guidelines* (October 2008), <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147502337>





# The Future Practice of Immigration Law: Twelve Projections for 2025

*By taking account of the changes we have witnessed and understanding the current market forces at play, we can better anticipate how the next ten years of the legal marketplace will take shape*

As documented in the companion articles of this report, there are multiple forces shaping the practice of law that will change the way AILA members practice. Technological advances, regulatory changes, consumer demands, and growing pressure for more affordable access to legal services are at the forefront—challenging the traditional method of legal service delivery and redefining the practice of immigration law.

As we head toward the year 2025, we need to step back and examine how far we have come in the past ten years. Though it may not be starkly clear, dramatic changes have occurred. Better desktop software has helped lawyers become increasingly productive and efficient; social media has redefined the way we interact with one another; websites are now a necessary component for every successful business; cellular phones have been replaced with smart devices; and accessibility to information is at the fingertips of almost every consumer. However, while many aspects of consumer consumption of goods and services have advanced, law practice, contrarily, has basically remained unchanged—drawing a sharp contrast between progressive consumer demands and traditional delivery methods.

By taking account of the changes we have witnessed and understanding the current market forces at play, we can better anticipate how the next ten years of the legal marketplace will take shape. How will the practice be different? How will the emerging marketplace benefit the profession? How will it change the way consumers' access information? What changes will the immigration bar help create to benefit the profession and the clients we serve? What will the practice of immigration law look like from a lawyer's perspective in 2025?

This article is one of six in a series prepared for the AILA membership by the Future of Immigration Law Practice Task Force. The article series provides foundational information and analysis on the future of immigration law practice, and is meant to provoke thought and reflection about the future of your practice and career, as well as our profession and association. Readers are encouraged to pursue additional research on matters of particular interest. These are issues on which individual members and AILA as an organization must act as we develop our preferred future.



## Spectrum of Practices

Compared to the traditional bricks-and-mortar law office and service delivery model that predominant today, by 2025 we anticipate legal services will evolve into multi-track delivery models to accommodate both consumer expectations and economic viability. In *Tomorrow's Lawyers*, Richard Susskind addresses the evolution of legal services through five stages, which he defines as bespoke, standardized, systematized, packaged, and commoditized.<sup>187</sup> Many immigration lawyers regard their work as mainly bespoke and are protective of the services they offer. However, as Susskind explains, much less legal work requires bespoke treatment than many lawyers would have their clients believe. More than this, he contends “that deploying bespoke techniques in many instances is to adopt cottage-industry methods when mass production and mass customization techniques are now available to support the delivery of a less costly and yet better service.”<sup>188</sup> We are already seeing some of this stratification today, but it will become more apparent over the next decade.

*we anticipate legal services will evolve into multi-track delivery models to accommodate both consumer expectations and economic viability*

In line with Susskind’s assessment, the traditional model of delivering legal services will not disappear, but will nonetheless be challenged, and immigration practitioners will find themselves moving toward a spectrum of bespoke and commoditized legal work. What will this spectrum of services look like for immigration lawyers? Here we identify the varying concepts that will continue to develop over the next decade. Some of these practices will be primarily lawyer exclusive while others will be non-lawyer or technology exclusive, but the most successful, will be a combination of all three.

### *Bespoke Practices*

In immigration, as the evolution of legal services takes hold, we will see a number of traditional immigration law practices reexamine and redefine the services they offer. In *Evolutionary Road*, Jordan Furlong postulates that lawyers will return to their roots and will ask themselves and others “Why do people turn to us? What do we bring to the table? With which traits and skills are we associated, and for which of these are we most valued? What do we offer that matters in an interconnected, unstable, and hopelessly complicated world?”<sup>189</sup>

Answering these questions will lead many skilled and experienced practitioners to move toward a bespoke law practice that will cater to a very specific clientele, such as a tailored boutique firm that highlights a certain area of expertise.

*The Litigation Boutique:* Even with advances in technology and the potential expansion of paraprofessionals into the business of filing U.S. immigration petitions, a litigation-centric U.S. immigration practice still has room to thrive. The most successful of such boutique practices focus on low-volume/high-complexity cases where a revenue stream based on the billable hour still prevails. While still having to deal with state licensure issues, such a boutique firm will market precise skills on a national and international basis.

187 Richard Susskind, *TOMORROW'S LAWYERS* (Oxford University Press, 2013).

188 *Id.* at 24.

189 Jordan Furlong, *THE EVOLUTIONARY ROAD: A STRATEGIC GUIDE TO YOU LAW FIRM'S FUTURE 26* (Attorney at Work, Digital ed. 2013).



*The Expert Boutique:* By pushing down work that can be standardized or systematized, Furlong points out that elite law firms will thrive by handling high quality, highly remunerative, mission-critical work, and clients, including individuals, businesses, and institutions, will look to lawyers as strategists, wise counselors, and trusted advisors. “The authority, clarity, and precision of lawyers now become necessary and valuable assets in the market.”<sup>190</sup> For this boutique practice, highly specialized advice will be its product.

*The Fixer Boutique:* This niche area will focus on areas where the systems and processes in lower cost standardized and commoditized models have failed or harmed the consumer. In this specialized boutique, immigration lawyers will assess and manage risk and help consumers avoid further legal trouble or negative consequences.

Currently, we see immigration practices implement bespoke services almost instinctively, in an ad hoc way. They are the litigator, the expert, or the fixer in many circumstances. By 2025, however, these practices will turn increasingly to one area to provide that specialized service alone.

### ***Standardized Practices***

When it comes to standardization, Susskind notes, “One of the reasons clients’ select one lawyer over another, or one firm over another, is precisely that they believe that the lawyer or firm has undertaken similar work previously.”<sup>191</sup> Thus, the client expects a degree of standardization. New and improved technologies, as discussed in the companion article *Existing and Emerging Technologies*, offer robust standardized processes that can be implemented to help reduce the internal cost and external process of many legal products and services. Some may consider standardized processes a bad thing, but Furlong disagrees: “Lawyers who had been bemoaning this trend are happily introduced to the economic principle that lower prices expand markets.”<sup>192</sup>

*Implementing standardized processes into their practices, lawyers will find they are much more proficient and efficient, reducing consumers’ costs*

Implementing standardized processes into their practices, lawyers will find they are much more proficient and efficient, reducing consumers’ costs. Lawyers in this practice stage will find that by streamlining the process and cutting consumer fees, they can manage a greater volume of clients and build a more profitable practice. With reduced pricing, more consumers—individuals, and businesses alike—can afford legal services who could not before. There will be consistent pressure, from both consumers and attorneys, to improve on standardized processes to improve economies of scale to maintain profit margins.

### ***Systematized Practices***

According to Susskind, the standardized practice becomes “systematized” with the development of IT systems used to conduct legal work. Because the standardized practice focuses on economies of scale, the next logical step is the insertion of automation into a process to decrease the cost of labor and to improve the accuracy of processing.

<sup>190</sup> *Id.* at 22.

<sup>191</sup> Richard Susskind, *supra* note 1.

<sup>192</sup> Jordan Furlong, *supra* note 3 at 21.



This model will be best suited to immigration practices with the resources to invest in continual improvement of systematized processing, such as very large immigration practices in traditional “BigLaw” firms and immigration mega-boutique firms. There is a place for the immigration lawyer in such practices, but the lawyer will be leveraged by an increasing number of non-lawyer professional staff focused on ensuring that the processes are running timely and accurately. In that vein, the immigration lawyer becomes more akin to a large-scale supervisor or executive of the processing system.

Systematization, however, will not be the exclusive territory of traditional firms and immigration mega-boutiques. Third-party software companies also see opportunities in developing automated turn-key systems to market to smaller immigration law practices.<sup>193</sup> It will then be only a small step further for such systems to be used by corporate entities that provide immigration services, with the standard disclaimers they do not engage in the practice of law.

### ***Packaged Practices***

Susskind envisions that fully evolved systematized practices will become packaged practices when “[s]ystems that are used within the law firm are made directly accessible to clients, usually across the internet.” The world of TurboTax has now come to the practice of immigration law through these DIY immigration software products.

The practice will not become packaged overnight. Rather, IT systems focusing on, for example, automated document assembly, will be phased in over time. As with the standardized practice, large immigration practices in traditional law firms and the immigration mega-boutiques will have much to gain from a packaged practice, and likely will invest in the IT improvements to make such a practice possible. In this stage, the immigration lawyer who was a supervisor or executive in the systemized practice must acquire, and build upon, basic IT skills to manage the packaged practice.

The companies marketing DIY immigration software products will have a need, albeit a limited one, for the immigration lawyer who is an expert or a fixer. The expert will be needed to analyze the continual changes in immigration law and work with software engineers to ensure that such changes are incorporated correctly into the software. The fixer will be alert to areas where the software is deficient, and will work with software engineers to design cost-effective solutions to these deficiencies, so the consumer is not harmed materially and the software company is not held liable.

### ***Commoditized Practices***

In Susskind’s model, commoditization is the final stage in the evolution of a practice in which “a legal service or offering is very readily available in the market, often from a variety of sources, and certainly at competitive prices.”<sup>194</sup> Commoditized does not mean low-quality. It generally means lower legal complexity, but more process efficiency. It means higher volume systems often at lower prices, but with overall greater profitability. Think Walmart and Target. While immigration legal service is the primary ware of the small firm immigration attorney, such services may be ancillary to large corporate entrants into the immigration services market. It is conceivable that a corporate business model could give access to DIY immigration software away for free, as an enticement to promote and

193 See the companion article, *Online Legal Services: Do They Help or Harm Consumers?*.

194 Richard Susskind, *supra* note 1 at 94.



sell other services and products provided by the business model. This is essentially the “freemium” model we see in other consumer services today.

In this stage, some immigration lawyers could be content to run small-shop practices for petition preparation. Their competitors will be many, such as corporate immigration service providers, non-lawyer practitioners, and DIY software solutions. These shops will focus on technological efficiencies with less emphasis on complex legal proficiency. This model has lower individual case profit margins, but can have higher profits due to volume.

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For many, the Spectrum of Practices is a new, and perhaps even a scary analysis of the existing delivery model of legal services. However, as evidenced in the preceding articles of this report, many of the stages outlined above are currently in place, and are becoming more pronounced as technology changes and new entrants are establishing themselves along the spectrum lines. Based on the research and analysis established in the complete report, below we offer 12 projections for the future practice of immigration law:

## Rethinking Fees, Fee Structure and Pricing Models

### ***Projection 1: The purpose and role of the initial consultation will change***

With powerful free information in the hands of consumers, the role and manner of the initial client consultation will change.

Thanks to continuing improvements in search engine technology, clients will now have detailed answers to the basic questions they once asked lawyers at initial consultation meetings. Complex legal questions will require a lawyer’s analysis, but for routine matters in which a client has obtained very good information from an online search, will she want to wait to physically walk into your office for an appointment? Or instead, will she prefer to connect almost immediately with a lawyer to confirm or revise the answers from her online search? Such an interaction could be just a click away with adding a button on the Google search results that instructs a potential client to “Connect to a lawyer now.” As such, in-office consultations with lawyers will give way to more online interaction.

With the improvements of free and low-cost video conferencing, and the ability to access it from most desktop and portable computers, that virtual attorney-client consultation may be face-to-face rather than just by phone. Not every client will obtain her legal information in this manner, nor want to, but technology is making it easier for lawyers to meet with clients in settings that are more convenient for them.

Technology is also changing client communication in other ways. Increased computing power and improved speech recognition are making real-time machine language translation a reality. Thanks to services such as Skype Translator, lawyers can understand their non-English speaking clients and vice versa during client meetings—in-person and by video—and in phone conversations. This technology will expand the ability of English-only speaking lawyers in the United States to communicate and provide legal services to immigrants speaking hundreds of languages.



### ***Projection 2: Attorneys and firms moving towards bespoke practices should consider hourly fee structures***

Though counterintuitive, practices moving towards the bespoke model should consider the age-old concept of hourly fee structure, but with a slightly more progressive stance. Those firms and attorneys that do work that is routine, non-complex, and predictable risk being overqualified for the work they are doing, and therefore risk having their pricing undercut by attorneys and non-attorneys who can do the same work at a lower price. According to Jordan Furlong, “[r]outine and straightforward work is subject to fierce competition by warring national and global franchises.”<sup>195</sup> One way to be profitable in this environment is to have specialized knowledge and to use it to create a valuable client experience and product.

*Those firms and attorneys that do work that is routine, non-complex, and predictable risk being overqualified for the work they are doing*

Furlong further explains that, “[a] small high-value portion of legal work is reserved exclusively for lawyers.”<sup>196</sup> Other work will shift from lawyers to non-lawyer providers. Attorneys must adapt and understand the importance of focusing their legal experience and expertise on matters that cannot be handled by a client on his own, or by a non-lawyer provider.

By billing hourly, there is more transparency for an attorney’s clientele. Clients can see and understand the work being done and what it is costing them. Attorneys can clearly calculate that they are being compensated for their actual time, and not losing money by trying to compete with others in the marketplace that may have less experience and expertise. In addition, attorneys can cater to each client’s individual needs without concern that some clients require more time than others. Further, attorneys will not lose money on cases with complex and unpredictable legal issues and will not feel hurried in hastily resolving such matters.

Within the immigration legal community, attorneys and firms predominantly charge flat fees for the immigration casework they perform. Although this fee structure has many advantages to the more traditional billable hour fee structure when performing routine and predictable work, immigration attorneys should carefully consider whether continuing to charge flat fees on all casework, regardless of complexity, is in line with the evolving practice of immigration law.

### ***Projection 3: Do-it-yourself software (DIY) will be a strong competitor to the traditional practice***

Do-it-yourself (DIY) software for immigration services will be a competitive threat to the traditional immigration practice that focuses on petition preparation.

At present, most immigration petitions and applications are filed by immigrants representing themselves, not by lawyers. In some matters, such as H-1Bs and E-B5s, more petitions are filed by attorneys, but for most other benefits, many immigrants do it themselves. Some can’t afford a lawyer, but many others choose *not* to hire a lawyer for other reasons. They perceive no value for their money. However, if the cost and difficulty of delivering legal services were lowered, these immigrants might

195 Jordan Furlong, *supra* note 3 at 20

196 Jordan Furlong, *supra* note 3 at 12





choose to hire a lawyer, similar to the Pro Se Plus delivery model of online software coupled with the option for review by a lawyer.

According to Susskind, emerging technology will make it easier and cheaper for consumers to find legal help through lower cost business models. Some of those services are emerging now through companies that are leveraging online software and outsourcing their marketing to branded websites such as Avvo. Still others are emerging using expert systems that help reduce the repetitive costs of delivering traditional legal services and can increase the volume of matters handled by law firms.

## Accepting the Infinite Power of Technology

***Projection 4: As the availability of inexpensive computing power and information connectivity grows, so will pressure from consumers for lawyers to provide more affordable and accessible legal services.***

In the past twenty years, consumers have seen many technological changes in the way they purchase many products and services. Books, groceries, holiday gifts, and even cars are now purchased online. People complete their tax returns and buy airplane tickets online now, but the way they purchase legal services has hardly changed. Furthermore, while the cost of many products and services purchased online has dropped, the cost of legal services has not. Consumers are getting impatient waiting for technology and lawyers to make legal services more accessible and less costly. No, consumers are not telling lawyers to go online, but they are showing us they want us to by embracing online services like RocketLawyer, Bridge.us, Trademarkia, AfterSteps, and others across all legal practice areas.

***Projection 5: Existing and emerging technologies will allow new efficiencies in law practices, allowing lawyers to offer legal services to a greater share of the market seeking immigration legal services.***

*new technologies are emerging that will allow immigration attorneys to lower their cost of doing business*

As noted in the article, *Existing and Emerging Technologies in the Practice of Immigration Law—Can Legal Services Be Better?*, new technologies are emerging that will allow immigration attorneys to lower their cost of doing business, while meeting the needs of consumers with routine matters that might otherwise be handled as DIY or by non-lawyers.

Technological efficiencies will be brought to the market by emerging legal expert systems, such as DiligenceEngine, RossIntelligence, and NeotaLogic. These powerful tools can reduce the time it takes humans to process legal matters, thereby lowering the cost of delivering legal services.

***Projection 6: Electronic filing will finally emerge as a factor in immigration workflow processing.***

The federal government has spent over \$1 billion in the past decade seeking to transform the immigration benefit processing from paper to digital. That effort has been revised several times,

*government e-filing will have an impact on reducing the avalanche of paper with which lawyers must now process*



but is now moving forward. As this evolves, lawyers must continue to engage the government so the solutions they create are compatible with systems used by lawyers. There is a huge risk that government innovation, when it happens, will impede innovation lawyers and others have made in the delivery of immigration legal services. Whatever happens, government e-filing will have an impact on reducing the avalanche of paper with which lawyers must now process.

## Understanding the Changing Consumer

### ***Projection 7: Internet search functions will continue to evolve to provide more accurate consumer solutions to complex inquiries.***

Knowledge management—capturing and reusing information again and again—has been a standard function for law firms and businesses for several decades. In the past ten years, online search—the process of organizing, finding, and reusing information across millions of websites—has become a much improved if not indispensable tool for consumers, lawyers, and just about everyone. The current “Next Big Thing” in online search is Big Data. Companies like Google, Wolfram Alpha, Bing and others are building research tools to capture useful information from huge amounts of data to help online searchers find information and make more informed decisions, using data that was once too vast to harvest and organize and too expensive to store.

Much of that information will be provided by lawyers and others publishing articles, reports, blogs, or even answers to consumer questions on websites like JDSupra, Quora and AllLaw. Additional information will be contributed by consumers who share information they previously learned from consulting lawyers, or as a result of going through the immigration process themselves (*i.e.* expat forums, etc.). We have been approaching this step-by-step, says Richard Suskind in his ReinventLaw video.<sup>197</sup>

Take a moment to think about your own search inquiries. A few years ago, searching by one or two key words was the norm. Now, we type in whole sentences and receive back even more exacting results. Have you searched on medical sites such as WebMD for advice about your health symptoms? These results have dramatically improved in the past few years and will continue to improve in the coming decade.

Couple this with recent strides in voice command software (Siri by Apple and Alexa by Amazon are examples), and it takes little imagination to believe that soon more Internet searches will be completed using speech. Within the next decade, legal consumers will request a solution to a legal problem not to a lawyer, but to a website whose database and functionality was programmed by a team of lawyers, engineers, and information specialists. Similarly, rather than employ a law clerk or an associate perform initial legal research, an attorney will be able to utilize a computer that will provide a sophisticated report in seconds. These reports will not be like today’s lists of search results on far-flung websites, but reasonably thorough analyses of the legal problem presented.<sup>198</sup>

197 <http://www.reinventlawchannel.com/richard-suskind-future-of-artificial-intelligence-and-law>

198 See interview with Ray Kurzweil, Chief Engineering Officer at Google: <http://blogs.wsj.com/cio/2014/02/04/googles-ray-kurzweil-envisions-new-era-of-search/>. Also see [RossIntelligence.com](http://RossIntelligence.com).



***Projection 8: Although referrals will continue to be a major source of business for lawyers, online client reviews and testimonials via social media networks will play a larger role in driving clients to law firms and legal services.***

Law has always been a personal referral business. When people need legal assistance, they ask their friends, family, neighbors, and colleagues for names of experienced and trusted lawyers. According to Nielsen, 83% of all consumers trust recommendations from people they know. Person-to-person referrals are the most trusted form of advertising. Coming in at the second spot: consumer opinions posted online; 66% of consumers trust these opinions.<sup>199</sup>

Ideally, lawyers should utilize online client testimonials, but at present, some states prohibit lawyers from using them, and other states limit what those testimonials may include. Given the importance of online client testimonials, lawyers should strive to use these positive reviews on their own websites, and also to advocate that the bar lift the prohibitions on this very valuable marketing technique.

## Working in the Same Field of Non-Lawyer Practitioners

***Projection 9: Increased competition from newly created and regulated non-lawyer providers of legal services across numerous states may change the regulatory scheme for lawyers too.***

The practice of U.S. immigration law, of course, is a federal practice. Individual states will debate and create new forms of legal service providers, including those who can prepare immigration petitions. This cacophony of providers joining lawyers and BIA-accredited representatives may move the government to regulate all classes of legal services providers. This possibility is made more probable because Internet technology facilitates legal services across borders; just as immigration lawyers want to provide their services across state lines, so will non-lawyer providers. This reality could catalyze the need for federal regulation, perhaps through an “Immigration Office of Professional Responsibility” similar to the office within the Internal Revenue Service that regulates tax preparers. Such an office might require the annual registration of all such professionals, attorneys and non-attorneys alike, through the payment of a renewal fee. Those annual renewal fees would provide the fiscal foundation for financing regulation of immigration service providers.

## Knowing When and How to Make Staffing Changes

***Projection 10: Fewer law firms will be joined by contiguous office space, and more will include remote workers tied together by Internet connection.***

It was just a few short years ago that lawyers everywhere complained about the lack of Internet connectivity. Dropped cell calls, slow mobile data networks and spotty Wi-Fi were common complaints from busy lawyers. In 2016, those complaints are dwindling in most parts of the country. Cloud-based software accessed via the Internet has made it easier for lawyers to communicate with clients and to be productive anywhere, whether in their office, around town, or across the world. So

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<sup>199</sup> <http://www.nielsen.com/us/en/insights/reports/2015/global-trust-in-advertising-2015.html>



instead of lawyers and law firm staff being connected by local computer networks (LANs) and tied to land-based telephone lines, they can now practice and work from almost anywhere.

For many law firms, this new reality makes contiguous office space more or less optional. Law firms can continue to work together in traditional offices, work exclusively from “home” offices, or use a hybrid of the two, but labor and employment rules may limit some of this freedom. Further, many firms may still need a base for certain office operations and to meet clients, but technology is making it possible for law firms to significantly reduce their real estate expenses.

***Projection 11: Law firms will move toward more flexible staffing models with fewer employees. Many employees will be replaced by contractors.***

In *Evolutionary Road*, Jordan Furlong predicts a future in which law firms have fewer employees and more software, fewer lawyers and more technicians, and smaller offices with more online services.<sup>200</sup>

In this vein, we are already moving toward a more flexible workforce. For many years, small firms have frequently chosen to bring in lawyers as contractors rather than employees. Others have virtual assistants who work on firm administrative matters from remote locations, often as-needed rather than for a 40-hour week. Some firms are experimenting with outsourcing work to remote paralegals; outsourcing or re-sourcing will continue to grow. As firms expand their technological capabilities and find solutions to ethical impediments, significant legal work may be delegated to the most efficient providers, whether that provider is a person in the next office, across the country, or around the world.

If technology can reduce the non-attorney staff needed within a firm, then firms can focus on putting their hiring dollars towards highly specialized legal staff, leaving the busy work to technology solutions. Attorneys, in turn, can concentrate on the meaningful work that being an attorney specializing in immigration law requires. “Automation is not eliminating jobs, but reallocating time to allow lawyers to engage in the analytical, creative, and strategic part of legal practice.”<sup>201</sup>

## Regulation of Lawyers and Non-Lawyers in Immigration Practice

***Projection 12: The role of AILA will be crucial to the success of immigration attorneys***

*As we travel down the road of this changing legal environment, the role of AILA and other bar associations will be crucial to the success of immigration attorneys*

As we travel down the road of this changing legal environment, the role of AILA and other bar associations will be crucial to the success of immigration attorneys.

It will be through unified bars and state supreme courts that lawyer regulation is modified to allow lawyers to innovate and deliver services in new ways to more people. Unless lawyer

<sup>200</sup> Jordan Furlong, *supra* note 3 at 15.

<sup>201</sup> *Id.*



regulation is simplified, and made less restrictive, access to justice expected by consumers and being demanded by some court systems will not increase.

It is up to these same organizations to decide to regulate non-lawyers to level the playing field and protect consumers. However, it is up to the immigration bar to add its voice to the regulatory debates that are taking place in 51 jurisdictions across the United States. We need to advocate for lawyers and the clients we represent, but we also need to understand and advocate for those who cannot access legal services at present. Some of these changes are happening in Canada more quickly, so we should learn from our members and our colleagues what is occurring there.

A focus on law practice management and the efficient and effective delivery of legal services is crucial to the training of lawyers on technology, finances, management and marketing to meet the needs of a changing environment. Unfortunately, to date, law schools have not done enough to teach attorneys the business side of running a law practice. This is unfortunate, and necessitates that AILA and other bar associations directing much-needed resources and energy into this important area. A successful immigration attorney must be a successful business person with entrepreneurial skills, as well as immigration expertise.

*A focus on law practice management and the efficient and effective delivery of legal services is crucial to the training of lawyers on technology, finances, management and marketing to meet the needs of a changing environment*

In addition to an increase in law practice management training, focusing on specialized legal training is also paramount to the success of attorneys in the future. As stated above, AILA and other bar associations should continue to think creatively about helping their members to become the most valuable immigration resources to their clients.





# Opportunities Moving Forward

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The goals of the task force are to raise member awareness about the impact of market forces on the future of immigration practice, and to start the conversation to help members, individually and collectively through AILA, prepare for and lead the immigration bar into the future.

There is much more to be done. There are issues to debate, priorities to set, and actions to take. What those tasks and priorities will be is now in the hands of AILA leadership. However, the task force will be available to continue to educate and engage members, and to lend our expertise to the discussions and actions that follow. In that vein, the task force respectfully suggests that the tasks and priorities for AILA should include the following:

- Continue to look into the future so that members are prepared before they get there;
- Raise awareness about innovative ways of operating an immigration practice that are more effective, efficient and profitable;
- Recommit ourselves to maintaining professionalism and ethical integrity during a time of change;
- Become a national leader in the debate to change lawyer regulation to allow for more innovation in the delivery of immigration legal services;
- Work together to address the unmet legal needs of immigrant consumers;
- Increase CLE offerings that prepare members to create their preferred future;
- Determine how best to educate and protect consumers of immigration legal services as state bars change regulations and devote fewer resources to stopping unauthorized practice;

This article is one of six in a series prepared for the AILA membership by the Future of Immigration Law Practice Task Force. The article series provides foundational information and analysis on the future of immigration law practice, and is meant to provoke thought and reflection about the future of your practice and career, as well as our profession and association. Readers are encouraged to pursue additional research on matters of particular interest. These are issues on which individual members and AILA as an organization must act as we develop our preferred future.



- Provide a forum to address concerns and exchange ideas regarding the evolution of the practice of immigration;
- Commit funding to create technology resources that directly help members ethically innovate their practices to more effectively address the needs of the immigration legal services marketplace; and
- Engage EOIR to make changes to the Federal Rules of Practitioner Conduct that will allow immigration legal services to evolve.

Technological innovation and changing consumer behavior are indelibly affecting the practice of immigration law today. In order to ensure that AILA remains the preeminent leader in immigration practice, the association must provide its members with the tools and resources for continued success in a changing landscape. As we enter this brave new world, we must remain open to discovering what those tools and resources look like and how we can create and access them together. The time for creativity and engagement is now!





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