

Chapter Seven

Brick and Mortar or Virtual

With the growth of the internet has come the presence of virtual law offices. Lawyers today now have a choice between selecting a permanent commercial location and developing a virtual office. In this chapter, we will explore both options.

VIRTUAL LAW PRACTICE

(The information in this section was adapted from Stephanie L. Kimbro's book Virtual Law Practice: How to Deliver Legal Services Online, Second Edition, American Bar Association (2015) and used with permission from Stephanie L. Kimbro.)

"Virtual law practice" can have different meanings depending on with whom you are speaking. The two most common definitions seem to be:

- 1) "[A] professional law practice that exists online through a secure portal and is accessible to both the client and the lawyer anywhere the parties may access the Internet." Stephanie L. Kimbro, *Virtual Law Practice: How to Deliver Legal Services Online, First Edition*, and
- 2) Rentable meeting space, a receptionist, and other services that are shared by several lawyers.

While the latter arrangement can be a great way to save on overhead, it does not require lawyers to incorporate technology into the management or delivery of their legal services. Ideally, lawyers will do both: develop low-overhead practices *and* incorporate technology into the management and delivery of their legal services to clients. In this chapter, we will use Stephanie Kimbro's definition when referring to "virtual law practice."

Virtual law practices can provide tremendous value to potential clients through convenience, transparency, price certainty, affordable fees, and collaboration. For example, clients can have around-the-clock access to information about their cases through a secure portal and that may suit their own busy schedules. Clients unable to travel to a lawyer's office during regular business hours may appreciate the ability to video conference or communicate primarily through portal access, email, and text.

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The benefits of online delivery include:

- Lower overhead;
- The ability to create an eco-friendly, paperless office;
- Greater work/life balance and flexibility;
- The ability to expand your client base across jurisdictions;
- Flexibility to transition between different phases in life and career to meet professional and personal needs;
- The opportunity to tap into a broader market of consumers seeking legal services;
- The ability to serve as an amenity for existing clients of a traditional law practice;
- Added security of hosted backups and other cost-effective benefits of using software as a service (SaaS);
- Less malpractice risk through the use of technology to automate checks; and
- Streamlined administrative features of a law practice that permit lawyers to focus on the actual “practice” of law.

The risks include:

- Ensuring security of the technology, including third-party control and storage of law office data; (see Chapter 8: Technology)
- Properly retaining and returning law office data;
- Maintaining confidentiality;
- Competently providing unbundled legal services (if applicable); and
- Avoiding the unauthorized practice of law in other jurisdictions.

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You do not need a physical office space to have a successful and financially viable law practice. All you really need is a place to meet with clients. CBA members have access to Stratum, a co-working and meeting space for lawyers at the CBA and DBA offices. You might also consider meeting with clients at locations in the community that are convenient for them, as long as you adhere to the applicable Colorado Rules of Professional Conduct, specifically with respect to confidentiality. Meeting at coffee shops, public libraries, community centers, and other public places can be an option if other people cannot make out the details of your conversations with your client.

If you do choose to go this route, strongly consider using a business address other than your home address. Alternatives could include renting a mailbox at a UPS store or a virtual law office. If you go with the former option, you can simply tell clients you work virtually and are happy to meet with them at public locations that are convenient for them. If you would prefer to meet with clients in a professional setting other than the CBA/DBA, most, if not all, virtual offices also rent out meeting space. And if working at home is simply not an option for you, virtual offices and offices with co-working spaces, such as LawBank (<http://law-bank.com>), could be good low-cost alternatives. See the Appendix to this chapter for tips on selecting office space. Again, however, please note that you do not need to rent a physical office space to test client value assumptions or to have a successful and financially viable law practice.

Virtual Law Office Start-up Checklist

- ___ Write a business plan whether you are starting a new practice or incorporating into an existing law firm.
- ___ Select a name and register a domain name. (You can incorporate into your existing website without purchasing a new URL.)
- ___ Contract with a website developer and start creating web content, payment processing.
- ___ Complete business formation and registering with Secretary of State.
- ___ Draft any needed agreements: partnership, fee structure, online legal engagement, disclaimers, etc.
- ___ Draft law firm's policies and procedures for delivering legal services online, including technology use and social media use, email policy, and response/turnaround for handling online clients.
- ___ Develop needed online forms, such as limited scope agreements, etc.

OFFICE SPACE

When selecting office space for your practice, you need to consider all options. Whatever setting you select, you should strive for flexibility, so that as your law practice evolves, the office space can evolve. Avoid long-term leases or agreements. Most importantly, what does the office cost in good times and in lean times? You should not get in over your head.

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7****What Are the Basic Considerations and Questions?**

It is best to explore office options such as working from home, virtual office space, office sharing, and individual office rental. When selecting office space, you need to consider your needs, the needs of your clients, the needs of the public, and the needs of your staff. You should think simply and ask practical questions, such as:

- How will your client pay fees and costs in person?
- How will your client drop off signed documents or evidence?
- How will client confidences be kept confidential?
- How will other parties hand-deliver pleadings and documents?
- What meeting space is needed?
- Where does privacy of the attorney and his or her family factor in?
- What kind of lease or office-sharing agreements are needed?
- How often will a meeting room be needed?
- Who answers telephones?
- How will copying and faxing needs be met?
- What are the ethical considerations for sharing offices?

What Are the Office Space Options?

Office space needs can vary depending of type of practice. For example, if your practice includes face-to-face contact with clients, attorneys, and others, an office presence with conference room and meeting space will be necessary. Even if you work from home, alternative arrangements can be made for space rentals on a short-term basis or on an as-needed basis.

- *Keys to Working from Home:* Working from a home office can be the least expensive option. With a home office, you need to balance serving the client with personal and family privacy. It is critical to provide clients a secure, professional place to drop off payments, documents, and evidence. Virtual office vendors provide drop-box services, phone answering, and as-needed meeting room space for the home office attorney. Online communication options such as Google Voice can be the answer to communication issues.

Note: You will need to get tax advice before writing off or deducting home office space.

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1. If you are office sharing, be sure to have a written office share agreement.
2. If you are office sharing, establish policies to ensure confidentiality. Colo. RPC 1.6.
3. Avoid the appearance of a partnership if office sharing.
4. Before you write off your home offices on your taxes, be sure to consult with your accountant about IRS regulations, as you can only write off space used exclusively for conducting business (*i.e.*, if you also watch television in the office space it will not qualify).
5. Make sure your office budget includes collateral expenses (*i.e.*, costs for parking, utilities, and costs of common space).
6. Don't forget about insurance!
7. Register a URL and develop a website as your virtual office home base. Colo. RPC 7.1 and 7.2, ABA Formal Ethics Opinion 10-457 — Lawyer Websites.
8. When communicating with clients via email, make sure you comply with all confidentiality requirements. ABA Ethics Opinion 11-459 — Duty to Protect the Confidentiality of E-Mail Communications with One's Client.
9. When meeting with clients in community space convenient for them, make sure you adhere to confidentiality requirements. Colo. RPC 1.6
10. With virtual law offices, ensure COLTAF compliance.

- *Keys to Office-Sharing Arrangements:* Office sharing with other attorneys requires detailed planning. An office-sharing agreement is necessary to address not only business concerns, but also ethical issues. Business concerns involve paying for sharing of equipment, reception services, common space, and sometimes staff.

Note: Office sharing requires special scrutiny of ethical issues involving confidentiality, conflicts of interest, and misleading clients on lawyer relationships.

- *Keys to Renting Individual Office Space:* It's all in the lease and terms of the tenancy. Negotiate terms to avoid getting locked into a long-term and expensive lease, especially when your law practice experiences peaks and valleys. During negotiation of a lease, you should be aware of hidden costs, such as parking, utilities, premises liability insurance, etc. You should lease only the space that is needed and that your practice will support. Seek references from other tenants and former tenants.
- *Consider Combinations of the Options:* Attorneys often rent individual space, then, as the practice expands, use virtual office space or satellite office space. This option is an alternative to leasing more space than you need for growth potential. For expanding staff needs, consider distance working arrangements for clerks and paralegals, who can complete tasks remotely.

ETHICAL CONSIDERATIONS

You need to be continually concerned about ethical duties to the client, the court and the profession. Your office space choice also involves the public's perception, especially in office-sharing arrangements.

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Some key Colorado Rules of Professional Conduct include:

- *Firm Names and Signage:* Colo. RPC 7.1 and 7.5 control how lawyers in an office-sharing situation should designate their individual practices to avoid misrepresenting the relationship among the lawyers in the suite.
- *Confidentiality of Information:* Colo. RPC 1.6 requires every lawyer to keep clients' information confidential, even in office-sharing or virtual office situations. Special care needs to be observed with phone messages, mail, storage of files, and technology.
- *Conflicts of Interest:* As with lawyers in the same law firm, Colo. RPC 1.7, 1.8, and 1.10 apply to imputation of conflicts of interest between office suite lawyers who are on the opposite sides of a dispute. The potential is there for the appearance of impropriety and for actual disclosure of confidential information.
- *Sharing of Fees and Cases:* Office-sharing financial arrangements can create fee-sharing issues raised by Colo. RPC 1.5(d) when space-sharing costs involve a percentage of fees generated. In addition, written fee agreements should list all lawyers working on the case, especially in a contingency fee case under Chapter 23.3, Rules 1-7.

- *Shared Lawyers, Paralegal and Clerical Staff*: When lawyers not in the same firm are sharing office space and also share lawyers, law clerks, paralegals, investigators, and clerical staff, issues of confidentiality, conflict of interest, and misleading appearance of partnership/affiliation of lawyers are likely to arise. See CBA Formal Ethics Opinion 89. In addition, there are supervisory ethical issues under Colo. RPC 5.1, 5.3, and 5.4 with the sharing of staff.

APPENDIX

eLawyering

- eLawyering Blog, published by Richard S. Granat

Selecting Office Space

- “Tips for Choosing Virtual Office Space,” Carolyn Elefant, Blog Post on MyShingle.com (Feb. 18, 2014)
- “Why Do Small Law Firms and Solo Attorneys Choose Shared Office Space?,” Stephen Perih, Blog Post on LawFirmSuites.com (Feb. 11, 2014)
- “Home Is Where the Office Is: Ethical Implications of the Virtual Office,” Seth L. Laver, Blog Post on ABA Section of Litigation Webpage (March 27, 2014)
- “10 Questions to Ask Yourself Before Choosing an Office Space,” Lisa Girard, Blog Post on Entrepreneur.com (March 19, 2013)
- “Five Things to Look for in Shared Office Space,” Ron Bockstahler, Blog Post on AttorneyAtWork.com (Oct. 7, 2015)

Virtual Offices

- *Virtual Law Practice: How to Deliver Legal Services Online, Second Edition*, Stephanie Kimbro, American Bar Association (2015)
- eLawyering Blog, published by Richard S. Granat
- “Virtual Law Practice,” Joshua Poje, *ABA TechReport* (2014)
- “The Counselor: How Rachel Rodgers Built Her Virtual Legal Practice,” Danielle Jenene Powell, Blog Post on FastCompany.com (April 15, 2013)
- “Virtual Firms on the Decline - Why?,” Carolyn Elefant, Blog Post on MyShingle.com (August 16, 2013)
- “The Completely Virtual Lawyer: Can It Be Done?,” Andrew Cabasso, Blog Post on JurisPage.com (date unknown)
- “How Real Are Virtual Law Firms?,” Chat Burton, American Bar Association

Authorities

Colorado Rules of Civil Procedure

- C.R.C.P. 23.3, Rules Governing Contingent Fees
- C.R.C.P. 265, Professional Service Companies

Colorado Rules of Professional Conduct

- Colo. RPC 1.4, Communication
- Colo. RPC 1.5, Fees
- Colo. RPC 1.6, Confidentiality of Information
- Colo. RPC 1.7, Conflict of Interest: Current Clients
- Colo. RPC 1.8, Conflict of Interest: Current Clients: Specific Rules
- Colo. RPC 1.9, Duties to Former Clients
- Colo. RPC 1.10, Imputation of Conflicts of Interest: General Rule
- Colo. RPC 7.1, Communications Concerning a Lawyer's Services
- Colo. RPC 7.2, Advertising
- Colo. RPC 7.4, Communication of Fields of Practice
- Colo. RPC 7.5, Firm Names and Letterheads

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 8, Office Sharing – “Associates”
- CBA Ethics Committee Formal Opinion 9, Office Sharing – “Associates”
- CBA Ethics Committee Formal Opinion 13, Office Sharing – Municipal Judge
- CBA Ethics Committee Formal Opinion 50, Definition of Associates as Applied to Lawyers
- CBA Ethics Committee Formal Opinion 89, Office Sharing – Conflicts, Confidentiality, Letterheads and Names
- CBA Ethics Committee Formal Opinion 90, Preservation of Client Confidences in View of Modern Communication Technology

American Bar Association Ethics Opinions

- Formal Ethics Opinion 84-351, Letterhead Designation of “Affiliated” or “Associated” Law Firms
- Formal Ethics Opinion 94-338, Relationships Among Law Firms
- Formal Ethics Opinion 96-401, Limited Liability Partnerships

