

Mary E. Vandenack: The Evolution of Innovation, Technology and Estate Planning: Moving Toward a Concierge Practice

“The American Bar Association is encouraging states to innovate as to how legal services are delivered. Various states are exploring alternate business structures, alternative providers, and other innovations in legal services. The pandemic had a significant impact on the delivery of legal services and marketing of such services. There are various law firm models evolving in response to industry changes. One model to consider is that of the highest level of service – the concierge model.”

Mary E. Vandenack provides members with commentary on how the pandemic has resulted in law firms adopting existing technologies and getting serious about innovation in the delivery of legal services and offers ideas for trust and estate lawyers to be part of the movement forward.

Mary E. Vandenack is founding and managing member of **Vandenack Weaver LLC** in Omaha, Nebraska. Mary is a highly regarded practitioner in the areas of tax, high net worth estate planning, benefits, asset protection planning, executive compensation, equity fund development, business and business succession planning, tax dispute resolution, and tax-exempt entities. Mary’s practice serves businesses and business owners, executives, real estate developers and investors, health care providers, companies in the financial industry, and tax-exempt organizations. Mary is a member of the ABA Real Property Trust and Estate Section where she serves as a member of Council and Planning. Mary is also active in the ABA Law Practice Division where she currently serves as Vice Chair of Law Practice Magazine and Secretary for the Division. Mary was named to ABA LTRC 2018 Distinguished Women of Legal Tech, has been inducted into the College of Law Practice Management, received the James Keane Award for e-lawyering in 2015, and serves on ABA Standing Committee on Information and Technology Systems. Mary is a frequent writer and speaker on tax, benefits, asset protection planning, and estate planning topics as well as on practice management topics including improving the delivery of legal services, technology in the practice of law and process automation.

Here is her commentary:

EXECUTIVE SUMMARY:

The American Bar Association is encouraging states to innovate as to how legal services are delivered. Various states are exploring alternate business structures, alternative providers, and other innovations in legal services. The pandemic had a significant impact on the delivery of legal services and marketing of such services. There are various law firm models evolving in response to industry changes. One model to consider is that of the highest level of service – the concierge model.

FACTS:

In 2019, the American Bar Association passed Resolution 115 encouraging the states to consider regulatory innovation with the potential to improve accessibility, affordability and quality of legal services.ⁱ In late 2020, the Arizona Supreme Court approved rules that will allow non-lawyers to have economic interests in law firms and eliminated rules prohibiting fee sharing. The Arizona Supreme Court also provides for licensure of non-lawyers called legal paraprofessionals to provide limited legal services.ⁱⁱ The Utah Supreme Court has authorized a two-year pilot program wherein lawyers and non-traditional legal providers and services can engage in testing new ways of delivering and marketing legal services, including non-lawyer ownership of law firms. The State of Washington had originally authorized limited license legal technicians but withdrew the program in late 2020 due to limited interest and high cost. The State of Illinois is also developing initiatives in the area of regulatory innovation.ⁱⁱⁱ An excellent compilation of links to various reports related to innovation and the future of the profession can be found at

https://www.americanbar.org/groups/bar_services/resources/resourcepage/s/future.

The push for legal innovation and advances in legal technology (two different issues) has been going on for a long time. The COVID-19 pandemic in 2020 has expedited the adoption of technology in the legal industry. Firms that had not quite moved forward in the realm of technology were sent remote and technology that had been available took hold with a vengeance. Lawyers who were still printing paper found out how much easier it was to navigate remotely without it. Even lawyers who were used to working remotely discovered new challenges when their entire office was remote. More law firms are offering virtual and online services. Experiments with new law firm models are occurring.

Estate planning lawyers are being impacted in terms of changing consumer demands as to how services are delivered. Google has responded to the pandemic by implementing significant changes impacting marketing. There

are many different models that an estate planning law firm can adopt to address the changing environment in the practice of law. This article proposes one model to consider, that of a concierge law firm.

In the medical world, a concierge practice is one in which a physician limits the number of patients of his practice so that appointments are readily available. In the medical realm, the concierge practice generally involves the payment of an annual fee. Many estate planning law firms have adopted “maintenance plan” approaches that have worked with varying degrees of success. The approach suggested in this article is simply one of offering a level of service well above the average and creating a menu of services that takes the estate planner beyond being a document drafter. There are a variety of approaches to monetizing a higher level of service.

COMMENT:

Step One: Automate Your Practice

This newsletter assumes your practice is paperless. If that isn't the case despite the pandemic, make that happen. Being paperless requires an effective approach to document management and a commitment to finding ways to eliminate paper. If you do need some help with moving further into eliminating paper, there is an excellent approach summarized by Larry Port in an article written for the ABA.^{iv}

Automate documents. Refuse to let anyone to pull up an old client document to create a new one. Doing so is not only inefficient but creates fodder for credibility issues, metadata issues, malpractice issues and security issues. Most practice management systems have some document automation tools. Alternatively, there is stand alone document automation software. HotDocs is a sophisticated software program for automating documents. There are simpler automation tools such as TheFormTool. Document subscription services such as Interactive Legal and Wealth Counsel have gained significant ground with trust and estate lawyers in recent years.

Automate processes. Automating processes is practice-changing. Doing so will reduce costs, improve accuracy, expedite turnaround and dramatically improve effective billing rates. If you are new to automating processes, consider those processes that you do on a regular basis and that are predictable and repeatable. An example of something that is predictable and repeatable is the intake of information for a new estate planning client. Estate plan information intake can and should be automated. Automation can be as simple as creating workflows in a practice management system. If you haven't created an automated workflow in the past, hire a consultant to help with the first process automation. Creating the process map to automate a process is similar to designing estate tax strategies for clients

with estate tax issues. It is logic and analysis. Lawyers are good at this. Some process mapping software options include Lucidchart, Visio, Creately, and Miro.

Automate deadline entry and notification. One of the common malpractice claims remains missed deadlines. Design a system that automates the entry and reminders of deadlines. Do this not just to avoid malpractice but to enhance service. In addition to absolute deadlines, you can automate reminders that are simply value-added client service reminders.

Step Two: Implement a Knowledge Management Strategy

Knowledge management is about creating tools that make knowledge readily available to those who need to use it. Have you ever researched an issue to find out that a partner researched the exact same issue three weeks earlier? Have you ever spent a lot of time searching through files to try and find the unique disposition language you drafted for a particular trust? Have you ever hired a new paralegal or associate and struggled to train them in a routine function that they do often? Knowledge management preserves information in a way that makes that information available to others. You can buy software to assist in managing knowledge but you can also create your own system without software. Creating your own system can be as simple as create a matter within your document management system where checklists, samples, and information is saved and organized in a manner that makes it easy to find. Use someone with the mind of a librarian to help organize the system.

Step Three: Adopt a customer relationship management system

Customer relationship management is technology that manages relationships with clients and potential clients. A customer relationship system stores information about contacts in a manner that allows ready retrieval and use of the information. Such a system helps manage customer relationships as well as potential customers. Create automated and personalize birthday messages to clients. Create automated reminders to clients to consider powers of attorney for health care as their children turn 18. Create automated reminders to clients for key dates such as minimum required distribution rules. Often, you can use software that you already own for basic customer relationship management. Custom design screens in your practice management system to include basic client information that will support relationship building and excellent service. You can obtain higher powered customer relationship management by purchasing software designed specifically for the purposes of client intake and client relationship management. Some current products used in the

legal industry include Captorra, Clio Grow, Freshsales, Lexicata, Lawmatics. In selecting customer relationship management software, consider desired features and the ability to integrate the system with software that you already own.

Step Four: Create User Friendly Client Portals

Client portals allow the law firm to interact securely with clients online. At a minimum, create portals that allow clients to readily access estate planning documents. Particularly, clients should be able to have access to health care directives via a smartphone app. Creating a portal of this nature can often be done with software a firm already owns, such as sharefile. Portals allowing more complicated interactions and more advanced features can be designed. The right portal is one that both lawyers and clients will use. In designing portals, consider practice goals and how portals will add value for clients. Talk with clients about portals and their terms of use. Keep tabs on how much portals are being used by clients. If they aren't being used, re-evaluate.

Step Five: Add Automated Digital Assets Support

During the pandemic, dealing with asset issues in trust and estate administrations became a bigger headache than the challenges that followed the 2009-2010 recession. One approach might be to simply let paralegals wrack up hours handling what should be simple issues for clients. The better long term solution is to add a technology solution for recording digital property, online accounts and final directives. Educate clients on the issues that arise for family members when they log on to accounts using client passwords after the client is dead.

Step Six: Offer Online Remote Notary Services as well as E-Signature Software

Software for e-signatures has been popular for quite some time. Common options include DocuSign, RightSignature, HelloSign, SignNow and Adobe. The pandemic brought home the need for the signatures that still require notarization and witnessing. At least 28 states now have some form of remote online notarization. Have your law firm become an authorized provider. This has been really helpful to our firm during the pandemic by adding the ability to assist clients in assisted living facilities and hospitals sign documents. Even as we move out of the pandemic, the ability to provide online notary services to clients will be useful, particularly for clients with mobility issues.

Step Seven: Consider the Trend of Law Firm Relationship with Care Managers

There has been a trend in recent years for law firms to expand senior services beyond traditional legal services and to offer care coordination with respect to considering and finding senior housing options and coordinating care for clients. There are a variety of different models evolving in this area. One organization that assists law firms considering this as an option is Life Care Planning Law Firms Association www.lcplfa.org.

Step Eight: Inform and Educate Your Clients

Provide relevant, accurate, and free information to clients and prospective clients that establishes your expertise in the areas of practice that you serve well. Different consumers use different resources to find you but ultimately, they find your website. Website articles continue to be a key in getting hired.

Step Nine: Hire A Concierge and Elevate Service

Many law firms are hiring various positions with titles such as Client Experience Coordinator. We just call the position “Client Concierge”. A concierge assists clients with whatever they might need. The concierge can assist clients with who to connect with in the office. The concierge can support attorneys in keeping clients updated on client projects. The concierge can assist clients with using portals and signature software. The concierge can assist with client complaints and surveys and help the firm make a mission out of being informed by its clients about how the clients want to be served.

Step Ten: Limit the Number of Clients You Accept to the Number at Which You can Provide this Level of Service.

Lawyers have spent their careers worrying about where their work will come from. Many tend to hoard work and be unrealistic about their ability to remain responsive. To provide concierge level service, a law firm has to be committed to delivering on its service model. Define the ideal client that is best served by the model. Market to those clients. Accept only those clients. Limit the number that you accept. Being able to provide great work and great service is far more rewarding than the stress of piles of work that clients are waiting on you for.

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HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Mary Vandenack

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CITATIONS:

ⁱ https://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/

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<https://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf>

ⁱⁱⁱ <https://chicagobarfoundation.org/pdf/advocacy/task-force-report.pdf>

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<https://www.americanbar.org/news/abanews/publications/youraba/2019/march-2019/how-to-go-paperless-in-2019--a-month-by-month-plan/>