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**What follows below is excerpt from Deborah Epstein Henry’s book, *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*, published by the American Bar Association on October 18, 2010. The excerpt is taken from Chapter 2, entitled “The Rise of New Models of Legal Practice.” To review the book’s Table of Contents, read advance praise, read press features, order the book, and learn more, visit [www.lawandreorder.com](http://www.lawandreorder.com).**

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Alternatives to the traditional legal model have been unfolding for some time now. . . . The question remains whether these alternatives to the traditional model will continue to develop at exponential rates and whether there will be multiple future models to legal practice.

### **Axiom and Other New Law Firm Models**

In 2000, Mark Harris founded Axiom. The impetus was simple: both parties to the exchange of legal services—the clients and the lawyers—were unhappy. Clients felt they were overpaying for services that were not always the quality they expected. Attorneys felt overworked and were dissatisfied with their treatment. So Harris decided to “take the traditional [law firm] and put it in a wind tunnel . . . and strip away all the pieces that create drag and waste.”<sup>1</sup> Rather than operate under the large law firm leveraged pyramid of three to four high-priced associates to every one partner, Axiom removed most of the costs associated with large firms including young lawyer training, office space rentals, and leverage-based finances.<sup>2</sup>

Axiom clients are in-house legal departments, not law firms. The Axiom model relies on contracting directly with corporate clients on a retainer basis, usually for a fixed fee.<sup>3</sup> Occasionally, when circumstances dictate, an hourly rate is used, but in such situations, the more the client buys, the more the hourly rate is reduced. Typical assignments involve an Axiom lawyer being staffed on a client matter for 11 months. Axiom lawyers are W2 employees with benefits and 401(k) plans, but when they are not staffed on a matter (when they are “on the beach”), they are not paid.<sup>4</sup> However, benefits continue when salary shuts off. Axiom does not hire first-year lawyers; typically it hires lawyers with four to five years experience following law school.

By removing traditional cost structures, Axiom freed itself to charge clients half the fees or less.<sup>5</sup> It removed overhead costs by having its lawyers work at the client site or at a subsidized home office. Axiom also proved that high-level talent was willing to accept a position with some income security risk in exchange for more control and flexibility in the work they do.

Axiom recognized that internal legal departments were getting bigger and were holding on to the more interesting work while sending specialized matters to large firms.<sup>6</sup> Its goal has been to provide extra help for the work that legal departments keep. Additionally, Axiom advises in-house departments on how to reduce their legal budget. It was ahead of the curve in recognizing that legal work is being disaggregated. That is, such work is being broken out into smaller pieces with different parties handling different pieces of the work. Disaggregated work often requires more case management, and Axiom handles case management for its clients.<sup>7</sup> Seeing its role as servicing the in-house client and making its needs a priority, Axiom advises in-house legal departments on reducing their legal expenses by unbundling, outsourcing onshore and offshore, and creating processes to more efficiently handle routine work. Rather than being threatened about shrinking legal service needs, Axiom provides advice to in-house departments as part of its client service.

In addition to Axiom, a multitude of new-model firms and variations have cropped up— . . . Many of them mirror the Axiom model of supplementing work directly for in-house legal departments. Some also serve as part-time general counsel for companies that cannot justify hiring someone full-time.<sup>8</sup>

Mae O’Malley started Paragon Legal Group, P.C. in Silicon Valley in 2006 to provide working-mother attorneys well-paid, interesting work with flexible schedules.<sup>9</sup> Specializing in technology licensing and corporate transactions, Paragon lawyers work with law firms and in-house legal teams on a project basis when, for example, an in-house

attorney is on maternity or medical leave or a company needs overflow support.<sup>10</sup> Paragon lawyers do not work overtime, and they can take as much time off as they like between assignments.<sup>11</sup> . . .

The success of the Axiom-type model is intuitive. It has not only been effective in reducing client costs but also in responding to client needs. In 2009, while about two-thirds of general counsel said they were going to bring more work in-house, nearly one-third also said they were planning to cut lawyers and other law department staff.<sup>15</sup> This combination of more work and less in-house staff is the perfect opportunity for Axiom-type outside counsel to handle spillover work of in-house legal departments.

Additionally, the Axiom-type model has been responsive to the needs of many individual lawyers who seek more flexibility and predictability in how, where, and when they work. The model is a good fit for Gen Y, a generation that is generally more willing to take risks and less willing to work within the confines of traditional law firms.<sup>16</sup> The model also has been particularly appealing to working mothers.

Lawyers working for these new-model firms are happier, because of the flexibility they garner and because of the opportunity to work onsite, at the client.<sup>17</sup> Attorneys also see the appeal of project-based work—not only because it gives them flexible hours but because of the exposure to a larger variety of clients.<sup>18</sup> There are risks for the attorneys too. The work is not always consistent and the attorneys' career path may look more disjointed. However, in the recent economic downturn, these risks seem less specific to new-model law firms. Indeed, the traditional law firm path has become much less certain and therefore the new-model law firms will likely continue to gain popularity. These new options, however, do not exist for most junior lawyers. The nontraditional firms are still looking to traditional firms and other established employers to train their lawyers. Once those lawyers are trained, the new-model firms offer what they believe is something better.

### **Virtual Law Firms**

Virtual law firms have been gaining momentum over the past 10 to 15 years. At its core, a “virtual firm is a flattening of the traditional model through tools of technology and a philosophy of sharing, rather than joining by hierarchy and physical space.”<sup>19</sup> For many of the virtual firms, the formula is simple: hire partner-level lawyers with established clients, cut their large law firm rates in half, and let the lawyers keep almost all of what they bill.<sup>20</sup> Some virtual firms hire experienced but not partner-level lawyers. Also, some virtual firms expect all of the lawyers to develop business while others relegate business development to

a select few.

There are numerous virtual firms that have evolved. . . .

At one virtual firm, Virtual Law Partners (VLP), founded in 2008, partners with 10 to 15 years of experience work remotely and communicate through video chat and e-mail.<sup>21</sup> They bill \$275 to \$400 per hour and use a centralized infrastructure for billing, information technology, marketing, and recruiting.<sup>22</sup> Clients pay about one-third the cost of large firms. VLP attorneys do not have billing requirements but they are not paid if they don't work.<sup>23</sup> A significant incentive for VLP attorneys is that they earn 65 percent of what they bill and collect. Additionally, attorneys who manage their projects get 85 percent of their collected billables and an additional 20 percent of each working attorney's collected billings on a project.<sup>24</sup> The remaining 15 percent goes to firm overhead. Lawyers split the cost of malpractice insurance.<sup>25</sup> This revenue allocation is in stark contrast to the traditional law firm model where 33 percent of collections go to overhead, 33 percent go to partner profits, and 33 percent go to the working attorneys.<sup>26</sup> . . .

Berger Legal, another virtual firm, handles traditional outside counsel work as well as overflow work from in-house legal departments. It also acts as outside general counsel for smaller businesses and "seconds" (lends) its lawyers to clients on a full-time or reduced hour basis. These seconded lawyers work on specific projects or cover staffing gaps such as those resulting from maternity or medical leaves.<sup>28</sup>

Rimon Law Group distinguishes itself as a virtual law firm with a "satisfaction-based billing" program where a client can elect to pay up to 20 percent more or less of the firm's normal rates, depending on the client's level of satisfaction.<sup>29</sup> The firm uses project management software where all communications, tasks, files, documents, and deadlines are stored in a location to increase collaboration and efficiency. Rimon has also partnered with Virtual Paralegal Services, Inc. (VPS), enabling Rimon to delegate certain tasks to deliver more effective legal services.<sup>30</sup>

At Chase Sensale Law Group, lawyers are connected by voice-over-IP phones, and the firm has an online database of more than 20,000 files.<sup>31</sup> This database is a cost-saving measure, as it avoids the overhead of warehouse storage while offering flexibility in how work gets done.<sup>32</sup>

Along with some of the larger virtual law firm models, there are numerous smaller virtual practices that focus on individuals and entrepreneurs. At these smaller shops, e-lawyering provides legal services online including non-contested divorces, wills, limited liability company formations, bankruptcy filings and real estate leases and

closings.<sup>33</sup> . . .

The benefits of virtual lawyering are numerous. For clients, they are able to have services provided by top-notch lawyers at significantly reduced prices—sometimes a third to a half of the rates. They benefit from the more flexible infrastructure of virtual law firms that often allows them to structure alternative fee arrangements more freely.<sup>35</sup> For individual lawyers, there is the opportunity to work more autonomously and potentially earn more while gaining significantly more freedom and flexibility. Lawyers working from home also avoid wasted time commuting or chatting at the water cooler. Lawyers enjoy having no billable-hour requirements since there is no need to cover associate or staff salaries or expensive office space. Many of the lawyers are also proud to be part of a green business with a small carbon footprint. The virtual firm lifestyle appeals to many working parents and those who seek more control and flexibility in their lives to pursue interests outside the law. Since everyone at virtual firms is working from home, there is no stigma attached to doing it.<sup>36</sup>

There are also challenges facing virtual firms. A significant one is building a brand. Many of the virtual firms are deliberate in hiring senior attorneys with impressive credentials and prestigious schools as a way to help enhance their credibility and image. Another challenge of a virtual firm is to facilitate camaraderie and make people feel connected, as if they are part of a common experience and community. Virtual firms try to achieve this by fostering attorney collaboration—so it's not just a group of attorneys who share e-mail addresses and a law firm name. Virtual firms also use technology including teleconferencing and Skype video and have regular get-togethers in person with and without family members. . . .

A key question for virtual law firms is whether they will be able to compete to handle large matters or whether a greater infrastructure is necessary for the type of work typically performed by larger firms. Some clients are skeptical of a virtual firm's ability to compete for large, sophisticated matters. . . .

### **Firms Abandoning the Billable Hour**

Some law firms are basing their marketing campaigns on abandoning the billable hour. These campaigns are a way for firms to distinguish themselves and lure away clients who crave predictability in their legal budgets as well as high-quality work. These forward-thinking firms tend to innovate on not just the billable-hour issue—they often bring other new ideas to the table. One example is Summit Law Group, founded in 1997. At Summit, all lawyers and staff members have an equity stake in the business

and all have the same size offices.<sup>38</sup> All lawyers at the firm are partners and reduced-hour partners are allowed as well.<sup>39</sup> Lawyers and staff are paid based on individual and firm performance (rather than seniority). Financial information, including quarterly budgets and cash flow statistics, is distributed firmwide.<sup>40</sup> The firm's compensation team asks each lawyer to submit a pay proposal for himself or herself and for each lawyer at the firm based on the circulated financial information.<sup>41</sup> Clients are encouraged to adjust a proposed fee upward or downward through the firm's value-adjustment billing, depending on their level of satisfaction.<sup>42</sup>

Another example is Valorem Law Group, formed in January 2008 by refugees from traditional firms. The vast majority of Valorem's fees are based on alternative fee arrangements. They use project and case management tools to maximize efficiency. Like Summit, they have a "Value Adjustment Line" in their bills, allowing the client to adjust the agreed-upon fee to reflect the client's satisfaction in the service. They also offer holdbacks where a certain agreed-upon portion of the fee is held until the end of the matter or another predetermined benchmark is reached, when the holdback is paid or refunded.<sup>43</sup> . . .

Another example of a firm distinguishing itself on an alternative fee platform is Shepherd Law Group, P.C. It offers what it calls "upfront pricing"—like a general contractor doing home renovations—so clients know the cost of the work before it is done.<sup>45</sup> If the scope of a job changes, the firm will send the client a change order, setting out the new scope and the associated price change.

Smithline Jha LLP, a firm focused exclusively on technology transactions, markets a specific type of alternative fee. It offers monthly fixed-fee subscription pricing that covers all of the services provided to a client during the month. This fee includes negotiating all of a client's technology transaction deals, creating and updating forms, providing deal and legal counseling, implementing a deal flow process, and attending company meetings and training sessions.<sup>46</sup> The fee is mutually agreed upon in advance and the client's commitment is month-to-month. The first month of service is exploratory. The firm provides its services and learns about the client's business. At the end of the month, there is another meeting to mutually agree upon a monthly rate going forward, which will continue until either party requests an adjustment.<sup>47</sup>

There are numerous other firms that are based on the alternative fee, rather than the billable hour, model. . . .

## **Hybrid Firms**

### ***Blended Professional Services Firms***

Some firms are marketing themselves to appeal to the client seeking both legal and business advice. One example is Resources Global Professionals, providing consulting in fields including accounting, law, finance, information technology, human resources, and other specialties.<sup>53</sup> . . .

At Exemplar Companies, Inc., the firm is also bridging different professional realms—selling legal service and business advice. Exemplar calls this approach “convergence” and describes it as “the unique combination of professional services across the disciplines of Law and Business to achieve superior results, add more value, craft more comprehensive solutions, and solve complex problems more effectively.”<sup>58</sup> Exemplar has also abandoned the billable hour and adopted a satisfaction guarantee. If clients feel dissatisfied with the service, Exemplar will negotiate its price with the client.<sup>59</sup>

### ***Publishing Law Firm***

Practical Law Company (PLC) helps attorneys navigate transactional law by providing Web-based tools to lay out the deal-making process and improve efficiency.<sup>60</sup> It does this by offering subscription-based online resources including document templates, model clauses, practice notes, deal checklists, how-to guides, new law updates, and a searchable database of deals and securities findings.<sup>61</sup> Subscribers are both inhouse and law firm lawyers who access the online training resources on a fixed-fee basis, depending on the number of users. . . . Most of the lawyers PLC employs write content for the Web pages.<sup>63</sup> The biggest benefit of the service is facilitating efficiency among practicing lawyers, which Millerchip argues will increase profitability, especially with alternative fees becoming more popular.<sup>64</sup>

## **Small Firm Alternatives to Practice**

### ***Alternative Hour Firms***

With client needs front and center, some law firms are seeing opportunities in marketing to clients for work at certain times of the day. For example, E. James Perullo founded Bay State Legal Services as an afterhours law firm that meets with its clients between 6 and 10 p.m. Monday through Friday, and otherwise by appointment.<sup>65</sup> The firm’s target clients are small business owners and working-class clients, and these clients cannot easily leave work to meet with a lawyer in the middle of the day. . . . Bay State is able to lease the office space only during the evening hours, which gives them affordable space in a prime location. Lawyers affiliated with the firm keep 60 percent of the fees from cases assigned to

them after expenses and 90 percent from cases they originate when they serve as primary counsel.<sup>67</sup> Another firm, Scott Sagria, is open Saturdays to appeal to clients. The firm offers payment plans instead of up-front retainers.<sup>68</sup> Currently, small law firms are the largest and fastest-growing sector of the legal community.<sup>69</sup> We can expect to continue to see creative structures developed to appeal to small firm clients.

### ***Flex-Time Firms***

The Law Offices of Joanne R. Sternlieb developed out of founder Sternlieb's desire to practice trusts and estates law while gaining more control over her life. In 2002, Sternlieb started her own firm. She now has four lawyers and two assistants who work from their homes, on their own schedules. Each is an independent contractor who works a flexible schedule with no set hours, no billable-hour requirements, no guaranteed hours, and no guaranteed pay.<sup>70</sup> When Sternlieb gets a new matter, she contacts the lawyers on her roster to see who is fitting and available to handle the work. If all four of her lawyers decline the opportunity or are not suitable, then she handles the work herself. Sternlieb pays her associates and charges her clients on a preset project basis except for an hourly rate she charges for estate administration.<sup>71</sup>

### ***Women-Owned Firms***

Litigation and transaction boutique Schoeman, Updike & Kaufman LLP is an example of a woman-owned law firm certified by the Women's Business Enterprise National Council (WBENC) and the National Association of Minority and Women-Owned Law Firms (NAMWOLF). Other women-owned firms may fall into the categories outlined above as well as more conventional structures. Schoeman, Updike is among the largest of the women-owned firms, with about 30 lawyers. It distinguishes itself by emphasizing alternative fee arrangements and welcoming flex-time lawyers, including those interested in project-based work.<sup>72</sup> The flex-time attorneys have no billable-hour requirements and their pay is adjusted based on hours worked, among other factors. The firm recognizes the value of flex-time attorneys and how they can enhance the practice and complement the work of lawyers with a traditional schedule.

### **Legal Process Outsourcing (LPO)**

Legal Process Outsourcing (LPO) is the process of sending work offshore to a lower-cost jurisdiction. It is becoming increasingly acceptable to law firms and in-house legal departments for legal work to be disaggregated and unbundled, which is what is enabling the LPO process. The types of work that are being parsed out include document review; litigation preparation; deposition summaries; legal research and writing; patent prosecution; contract management;

compliance services; and drafting of memoranda, trial and appellate-level pleadings, and briefs. LPO providers are most often hired by law firms that conduct legal outsourcing on behalf of clients or pharmaceutical, technology, and manufacturing company law departments that hire LPOs directly.<sup>73</sup>

It is debatable whether a discussion of LPOs belongs in a chapter about new models of legal practice. Most legal outsourcers contend that they are not practicing law. Many say there is nothing inherent in the outsourcing tasks that require an attorney to do them.<sup>74</sup> Additionally, legal outsourcers typically handle just part of a legal representation, so some would argue that they are not technically a new model of legal practice. That being said, I still believe LPOs belong in this chapter because they have created their own category in law practice.

Global revenues generated by legal outsourcing are already significant, at about \$250 million in 2009, and they are projected to grow to \$4 billion by 2015.<sup>75</sup> The legal outsourcing sector employed about 10,000 lawyers in 2009, and is expected to expand to 79,000 by 2015.<sup>76</sup> A majority of the work comes from the United States, the United Kingdom, and Canada. In early 2009, India enacted the Limited Liability Partnership Act, which permits foreign law firms to establish an office in India. Although foreign lawyers will still not be able to practice in India, many view the Act as an opening of the Indian legal market with further growth opportunities.<sup>77</sup>

...

The savings in using lawyers in India are considerable. . . .

LPOs offer a variety of billing arrangements. Billable hours are still popular with project-based work including legal research, due diligence, and e-discovery.<sup>83</sup> Another model offered in LPOs is the full-time equivalent (FTE), where clients effectively have an LPO employee serve as an additional in-house member for a period of time.<sup>84</sup> Unit pricing is used at times where a client is billed per document or per case, rather than by time.<sup>85</sup> Flat fees and flat fees with a cap are also popular.<sup>86</sup> The two key factors influencing pricing for the LPO providers are efficiency and the willingness of clients to commit to longer and larger projects, allowing for greater efficiencies.<sup>87</sup> The longer and larger projects bring the greater discounts to clients.

The biggest benefit to employers of using LPOs is economic. LPO providers are cutting their clients' legal bills in half—or smaller.<sup>88</sup> The other significant employer benefit is efficiency. Work can be done on a 24-hour basis, with the outsourced laborers working while lawyers in the United States are asleep.<sup>89</sup> Another benefit is that law firms and law departments can have teams of lawyers available to do work without

needing to keep associates on the payroll.<sup>90</sup> Additionally, employees in offshore companies in India and the Philippines are often more educated and dedicated than temporary employees in the United States.<sup>91</sup>

A bonus to individual lawyers in the U.S. who work for outsourcing providers is lifestyle. . . .

The most commonly voiced concerns against LPOs are work quality and data security/confidentiality.<sup>93</sup> To improve work quality, extensive training has been put into place at the LPO providers. Additionally, U.S. lawyers are sent to most of the LPO providers to manage the process as it has customarily been performed in the United States.<sup>94</sup> As for the issue of data security and confidentiality, these offshore providers have extensive security measures to ensure no breach of the highly sensitive matters handled.<sup>95</sup> . . . There are also concerns raised about the difficulty of avoiding conflicts of interest when vendors serve clients with inconsistent interests, or the lack of recourse if an Indian lawyer violates an ethical rule.<sup>97</sup> These concerns, and others, will continue to arise with increased outsourcing. However, given the economic savings and efficiencies gleaned from outsourcing, LPOs will undoubtedly become more practiced at overcoming these challenges.

### **The Junior Lawyer Fallout**

One significant concern stemming from these new models to legal practice is the fallout for the junior lawyer. Where will junior lawyers in the United States get trained? In the virtual and other new law firm models, only mid- to senior-level lawyers are being hired. There is an expectation that junior lawyers will be trained elsewhere. At present, it is unclear where those venues will be. Due to LPOs, a lot of the entry-level work given to junior associates will be outsourced to India and elsewhere. Also, clients are pushing back and questioning why they should bear the expense of training new lawyers. These questions raise uncertainty for graduating law students and the legal profession pipeline. . . .

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