

E-Lawyering: Some Trends and Lessons From The USA

ABSTRACT

This article explores and investigates some emerging trends in e-lawyering in the United States (US). It concludes that from the consumerist perspective, in a near future in Nigeria, legal services consumers just like in the US may abandon traditional legal services of some 'inflexible' Nigerian lawyers for cheaper, more efficient and quicker services offered online through 'self-help' legal written materials, softwares, templates and forms. Consequently, many 'traditionally unchanged' lawyers may be redundant and that this is now the wake up time for lawyers interested in the future of legal practice.

What is e-lawyering?

E-lawyering stands for electronic lawyering. It generally means doing legal work - in fact any legal work, using the internet and associated technologies. It enables lawyers, judges and paralegals to use advancement in ICT to enhance their work. With it lawyers can easily communicate and collaborate with clients and other lawyers, produce legal documents, settle disputes, interact with courts, conduct legal research and manage their legal knowledge effectively. In other words, e-lawyering encompasses all the ways lawyers can efficiently do their work and apply their skills using the internet and associated technologies, devices and gadgets.

E-lawyering in some jurisdictions now aids lawyers to hold virtual meeting with colleagues or clients; review documents, sign them, file and serve them. It makes possible access to one's laptop anywhere and to conduct

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litigation outside the court room where permissible.¹ Virtual law offices dispenses with the traditional hardcopies of books, law reports and clients' files.² Hundreds of trial management softwares, virtual trial reports, lawyers/litigants video games, informational and demonstrative animations and e-briefs are being developed daily to help lawyers carryout their jobs with minimum stress and make willing lawyers more productive and skilful.³ Judges too can now manage their cases and control proceedings effectively. Court officials can, with the use of internet and associated devices and services interact with lawyers, litigants and judges quickly and round-the-clock. Innovative lawyers can now find new clients and discover new ways of rendering services.⁴ Effectively, all of this is bound to change the way law is practiced and managed, not only by lawyers, but also by other paralegals and clients. Andrew L. Askew captures it this way:

Years ago, attorneys were most commonly found in traditional brick-and-mortar law offices, which were crowded with dozens of shelves filled with legal reporters and digests, and countless file cabinets containing droves of confidential information. During these times, attorneys were confined within the walls of their law offices and routinely interacted with clients, colleagues, and the judiciary in person, by phone, or by letter. Today, through the use of devices like the iPhone and Blackberry, web-based e-mail such as Gmail and Yahoo! Mail, and products such as SharePoint, Google Docs, or Dropbox, attorneys have been able to step outside the walls of the traditional brick-and-mortar law offices and revolutionize not only the way clients are able to access legal services, but how those services are performed and delivered.⁵

¹ See Virtual Court First Hearing, available on <http://www.lawsociety.org.uk/advice/practice-notes/virtual-courts/> accessed on 23rd July, 2014 and Virtual Courts: an Easy link Between Police and Magistrate, available on http://www.kent.police.uk/advice/witness/victims_courts/virtual_courts.html accessed on 23rd July, 2014

² How to: run a 'Virtual Firm', (The Law Society Gazette, 29th Nov., 2013 available on <http://www.lawgazette.co.uk/practice/practice-management/how-to-run-a-virtual-firm/5039026.fullarticle> accessed on 21st September, 2014

³ A good example is Cogent Legal, Oakland based litigation graphics and case consulting company at <http://cogentlegal.com/what-we-do/>, accessed on 2nd September, 2014

⁴ See Chad E. B; Launching a Virtual Law Firm, available on http://www.americanbar.org/publications/gp_solo/2014/january-february/launching_virtual_law_firm.html accessed on 13th September, 2013

⁵ Andrew L. Askew "iEthics: How Cloud Computing has Impacted the Rules of Professional Conduct" (2012) 88 North Dakota Law Review 452, at 454-455,

E-lawyering is broader than just using the internet to advertise legal practice and sending emails to colleagues and clients. A lawyer with a traditional law office may still operate a virtual law practice as "an extension of his or her office-based physical practice or a virtual law practice."⁶

Nevertheless, just "because you work at home and use email and meet a client outside does not make one a virtual lawyer."⁷ That may qualify as a mobile lawyer. With e-lawyering the cost of filing and over dependence on paper in courts could reduce dramatically.

Through e-lawyering, lawyers are exploring the new internet scenery to deliver full-pledged legal services- from client interview and representation to putting appearances and making presentations in court. They are daily finding new ways of using emails, discussion forums, chartrooms, Facebook, OneDrive, Twitter, iCloud etc to serve their clients and add value to their services at significantly lower costs than the traditional 'hard ways' of legal practice.

Historically speaking, until around 1990s when computers were commonly being seen and used in many law firms, no one ever heard of the word 'e-lawyering'. One of the founding fathers of e-lawyering in the US, Richard S Granat said:

[T]he phenomenon of e-lawyering has swept through the legal world with amazing speed. Until recently, lawyers practiced law the same way that generations of lawyers before them had practiced. The tools of the trade, such as they were, tended to be passed down from experienced lawyers to newer lawyers without much change. The computer revolution, which began in the 1980s, however, has changed the way lawyers work in dramatic and fundamental ways. Today, lawyers in every field of practice, every geographic locale, and every type of organization use technology to improve their efficiency, productivity and profitability in countless ways.⁸

⁶ Darryl Mountain, "The Transformation of E-lawyering" available on <http://www.slaw.ca/2010/06/18/the-transformation-of-elawyering/> accessed on 13th August, 2014

⁷ GM Filisko, Lawyers' definitions of virtual practice vary, but not when it comes to finding success available on http://www.abajournal.com/magazine/article/lawyers_definitions_of_virtual_practice_vary_but_not_when_it_comes/

⁸ "Elawyering: Providing More Efficient Legal Services With Today's Technology" NYSBA Journal, 2008 available on <http://www.directlaw.com/nysbaarticle.pdf> accessed on 15th May, 2014

E-lawyering as a concept appeared around 2003 with the invention of ipads, tablets, sophisticated smartphones and other gadgets. According to Donna Seyle:

The concept and viability of e-lawyering or a virtual law practice has been around now for about 10 years, more or less. For developers, of course, it has existed much longer than for users. But I think 2003 is a good year to target the time when lawyers began noticing movement to the cloud and the rise of cloud products, aided by the development of the iPad and tablets, smartphones getting smarter, and a general progression toward a device-driven world, wirelessly connected...⁹

Richard Susskind, one technology evangelists, some years back predicted the "end of lawyers"¹⁰. He predicted "an emerging era" when the profession may be driven into oblivion by the internet and what he called 'automation efficiencies'. He predicts that when that period comes, the legal practice would be redefined by two forces – by a competitive market leaning towards the commodification of legal services and by the prevalent development and inventions of new and 'disruptive legal technologies'. By his count, the party may soon be over for traditional lawyers.¹¹ It is likely that if e-lawyering continues and blossoms, lawyers who refuse to change from traditional practice may enter redundancy and irrelevance. Were Susskind's predictions exaggerated? Of course no one can deny the fact that the internet and associated technologies is bringing about dramatic changes to the practice of law and we will continue to have more of these 'mind-boggling' changes. The internet has brought so many changes to legal practice. For instance, it makes it easier for a client to interact with his lawyer, for the lawyer to file documents in court and to make presentations, for lawyers to meet with their colleagues, review, sign and file documents etc. But it does not and cannot replace human lawyer's natural aptitude to review draft of documents and amend them.¹²

⁹ "eLawyering in an Age of Accelerating Technology" GPSolo eReport, Vol. 2, No. 6, available on www.americanbar.org/publications/gpsolo_ereport/2013/january_2013/elawyering_age_accelerating_technology.html, accessed on 15th June, 2013

¹⁰ R Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services*, (Oxford University Press, 2008)

¹¹ *Id.*, 270

¹² See also J Furlong, Book Review: *The End of Lawyers?* Law 21, February, 2010 available on <http://www.law21.ca/2009/02/book-review-the-end-of-lawyers/> accessed on 13th August, 2014

Some Lessons and Trends from the United States

In the US, e-lawyering was formally recognised as a service delivery line in 2000 when William Paul, the then president of the American Bar Association (ABA) established the ABA e-lawyering Task Force. It was established so that lawyers in the US could use the internet to deliver services to clients of moderate means who could not afford legal services due exorbitant fees of legal services. In 2003, the Task Force published Best Practice Guidelines for Legal Information Web Site Providers which was approved by action of the House of Delegates of the American Bar Association. It was observed then that there were increasing number of websites providing legal information and many non-governmental organisations, government departments, private and public companies publish websites. Since users of these websites possessed varying degrees of knowledge and understanding of information in these websites, it was thought imperative that these sites contain sufficient and accurate information. These guidelines were to be "best practices" for lawyers and any person or agency providing legal information and other services online to the public.¹³

In 2009, the American Bar Association created the ABA Commission on Ethics 20/20 which is known famously as 20/20 Commission to determine if the Model Rules of Professional Conduct are keeping pace with the emerging IT global challenge. The 20/20 Commission conducted about three years of study and submitted many resolutions and reports to the ABA House of Delegates and proposed amendment to the Model Rules of Professional Conduct continually in view of the rapid technological advances and challenges. Many state bar associations following the lead are also revising their rules to align them changing technology.

The 2013 ABA Legal Technology Report encouraged lawyers to take steps to join the emerging technological bent of practice, and budget for it. In furtherance of this the ABA e-lawyering Task Force issued suggested minimum requirements for virtual lawyers with guidelines for the use of cloud computing encouraging lawyers to incorporate emerging best practices and standards in their virtual practice.

¹³ Downloadable here: http://www.americanbar.org/groups/law_practice/committees/elawyering-best-practices.html

Interestingly, the emergence and use of e-lawyering had been predictions by the Futures Committee in 2001, as the growth area for the profession.¹⁴ These are; that:

1. Legal services will increasingly be provided electronically.¹⁵
2. There will be increasing commodification of some forms of legal services.
3. Non-lawyers will "increasingly provide legal and quasi-legal services electronically to the public efficiently and for cheap fees.
4. Lawyers will be increasingly engaged in substantial inter-jurisdictional representation.
5. Through the internet lawyers will increasingly facing terse competition from other professionals, especially accountants and other consultants
6. Lawyers will be subject to rating systems, both internally from the legal community and externally from the public and more especially consumers.
7. Courts will steadily move to electronic filing, which will require trial and litigation lawyers to learn and understand technology.
8. Lawyers will "begin working at home or in non-traditional office space".¹⁶
9. Electronic ADR and mediation systems will be used with increasing frequency.
10. Litigation will become more of a specialty practice, with the prospect of a British-style division between barristers and solicitors introduced in the United States.
11. More virtual law firms will be created.¹⁷

These advances are not without attendant challenges. For example, as legal services become increasingly commodified, clients could find it difficult to understand the added value of lawyers.¹⁸ Since some websites

¹⁴ The report was available at: www.abanet.org/lawfutures/report2001/home.html (interim Report)

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ The report was summarized in CBA Legal Futures Initiative: Contributing Perspective: The Future of the Legal Profession: Report on the State of Research (Canadian Bar Association, 2013) p 16 available on http://www.cba.org/cba/cle/PDF/JUST13_Paper_Susskind.pdf accessed on 8th September, 2-

¹⁸ Dillion Horne, Cloud Computing, Virtual Law Firms and the Legal Profession, (Cornell Law School Graduate Student Papers 2014) available on http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1045&context=lps_papers accessed on 7th September, 2014

can provide cheap and effective legal services, which could make it possible and easier for clients to draft their own self-help contractual documents and agreements and to carry out other legal services like incorporation, clients could discount the value of lawyers.

LegalZoom is a good example. The company serves almost two million customers in its 10 years of operations. In 2011 alone, it claimed to fill 490,000 orders for online legal services. The company conspicuously states on its website that over the past 12 years, over 2 million businesses and families have used its services for "wills, trademarks, incorporating companies and more".¹⁹ In 2012, LegalZoom formed partnership with one of the United Kingdom's legal services provider QualitySolicitors, in a deal to jointly offer online legal services in the United Kingdom including company formations and divorce documents preparation. And in 2014 Permira, one of the Europe's biggest private capital firm acquired \$200 million outstanding equity of LegalZoom.²⁰

Many new players are joining LegalZoom. Nolo and CompleteCase have joined. They too offer varieties of 'do-It-yourself' (DIY) legal information and other forms of legal electronic toolkits. These companies are consistently grabbing attention of thousands of online customers hunting for cost effective legal services. Millions of dollars are being invested everyday in online legal services companies owned mostly by non-lawyers, that even large law firms have to collaborate with to deliver some of their services.

Of course the online non-lawyer legal services companies compete tersely with traditional law firms, but the danger of an overtake should not be overlooked. For the client, some dangers may also lurk. Cheap online advise may prove expensive without proper guide. This is because the work products of these companies generally do not enjoy periodic lawyers review. They are presented for a 'one-size-fits-all' solution which may not fit the peculiar situation of the client,²¹ it is also feasible for the DIY

¹⁹ Found at <http://www.legalzoom.com>

²⁰ The New Normal: The Challenges Facing the Legal Profession (Wisconsin State Bar, 2011) p 11

²¹ Susan Waywood, "Listed law Firms – The Way of the Future" available on <http://www.findlaw.com.au/articles/2216/listed-law-firms-8211-the-way-of-the-future.aspx> accessed on 15th September, 2014

forms to contain inaccuracies and can suffer from non compliance with state laws or regulations.

Public listing of law firms?

Generally, rules of professional ethics or responsibility prohibit a public character law firms. Proponents of anti-listing ground their stance on a hundred and one reasons. For instance, it is argued that the fiduciary nature of legal practice makes it unsuitable for it to be purely profit driven.²² A listed firm is expected to maximise shareholder interest rather than advance the professional interest of its clients. Flowing from this, it is considered inappropriate for law firms to get listed as trading entities. What is more, decision-making process in a law firm ought to differ in character and nature from that of a trading company.

All of that can conceivable change in an era of e-lawyering. Law firms are now being listed. And rated by customers as law firm's equity are being sold like those of other companies. In Australia in 2007, Slater & Gordon, a personal injury law firm, got listed on Australian Stock Exchange as the first law firm in the world to be listed in the stock market. It offered more than 95 million shares and another 12 million non-voting shares.²³ Devoid of ethical concerns, public listing of law firm can be exciting. Consider its good sides. Slater & Gordon which at the time of listing had about 20 offices and 400 staff, grew to about 50 offices and service centres at different locations, with close to 1000 staff members thereafter. And this growth is apart from the additional funds got through public listing. To its credit, it acquired some other smaller law firms. For instance, in 2010 Slaters took over the Queensland's Trilby Misso for \$57 million, "of which \$40 million was raised through an additional capital raising offer".²⁴ Slater & Gordon later acquired UK personal injury specialist law firm, Russell Jones & Walker (RJW) for £53.8m.

²² Steve Mark, A short paper and notes on the issue of listing of law firms in New South Wales (NSW Legal Services Commissioner) available on http://www.olsc.nsw.gov.au/agdbasev7wr/olsc/documents/pdf/notes_for_joint_nobe_aprl_aba_panel.pdf accessed on 13th August 2014

²³ Lawyers Weekly, "Incorporation: Why are law firms reluctant to move away from the partnership model? Available on <http://www.lawyersweekly.com.au/news/incorporation-why-are-law-firms-reluctant-to-move-> accessed on 2nd September, 2014

²⁴ Rule 4-7.13 of the Florida Bar Rules of Professional Conduct

Several law firms are following the heels of Slater & Gordon. Integrated Legal Holdings Limited (ILH) got listed following Slaters in 2007. ILH was an amalgamation of four law firms - Argyle Lawyers, Civic Legal, Law Central and Talbot Olivier Lawyers. Since listing is a possible flow from e-lawyering, traditional assessment of a firm's professional reputation can become challenging. The intense competition among publicly listed firms could subjugate reputation and goodwill rating to financial concerns contained in firms' prospectus.

Advertising legal practice?

E-lawyering may also throw up issues relating to advertisement. It is plausible in an e-lawyering era to see advertisement like this; "our firm is one of the largest integrated law firms in Nigeria providing a comprehensive range of specialised legal services to a highly diversified clientele including top-tier multinational, supranational and non-governmental clients."

Interestingly, in the US lawyers are permitted to advertise their services as regulated by bar associations of states. In the State of Florida for example, lawyers are permitted to advertise provided they do not engage in "deceptive or inherently misleading advertising."²⁵ Under Rule 4-7.13(b) of the Florida State Bar Rules of Professional Conduct 2013 a deceptive or inherently misleading advertisement include any statement statements or information that:

can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results; or references to past results or comparisons of lawyers or statements, words characterizing lawyer's or law firm's skills unless such information is objectively verifiable. An advertisement is also misleading if it contains references to areas of practice which the lawyer or law firm does not practice or intend to practice as at the time of the advertisement.²⁶

The ABA rules permit all lawyers in the US to advertise their services.²⁷

²⁵ The rules are available on <http://www.floridabar.org/divexe/rrtfb.nsf/FV?Openview&Start=1&Expand=4.8#4.8> accessed on 13th September, 2014

²⁶ See ABA Aspirational Goals for Layer Advertising, available on http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_ethics_in_lawyer_advertising/abaaspirationalgoals.html accessed on 14th August, 2014

²⁷ See *Bates v. State Bar of Arizona*, 433 U.S. 447 (1978)

Advertisement is protected as commercial speech under the First Amendment of the US Constitution, so must be truthful and not misleading.²⁸ I suggest that it is now time for the General Council of the Bar in Nigeria to liberalise its position on advertisement by taking clues from the US to reflect current realities.

Unauthorised practice of law?

E-lawyering opens the profession to outsiders. Use of internet, softwares and applications to offer legal service opens the door for non-lawyers to practice law in authorised ways. Non-lawyers can use technology and gadgets to create and manage their web-based law practice to their 'customers' within their locality or jurisdiction and outside.²⁹ Some argue that there is justification in opening the practice to non-lawyers. In the view of George G. Leef, from the consumerist point of view lawyers' argument that licensure protects legal services consumers from unqualified and unscrupulous practitioners should be discounted. In his view licensure protects lawyers from competition and so all unauthorised practice of law statutes are designed deliberately to suppress marketplace competition from new comers into the profession.³⁰ The reality however is that while on one hand it is good to regulate the practice of law to protect legal consumers from unscrupulous persons on the other hand the profession could have significantly developed if competitions are allowed and regulated instead of completely prohibiting it. In a number of cases in the US, many of the traditional restrictions on advertisement and bar imposed scheduled fees were struck out by US Supreme Court. And since 1977 the US Supreme Court held in *Bates v State Bar of Arizona*³¹ that lawyers do have the right to freely advertise their services because

²⁸ And those who are licensed to practice law in one jurisdiction may also be able, without license but by the use of internet, offer legal services in other jurisdictions

²⁹ G. C. Leef, 'Lawyer Fees Too High? The case for Repealing Unauthorised Practice of Law Statutes, available on <http://www.cato.org/sites/cato.org/files/serials/files/regulation/1991/1/reg20n1c.html> accessed on 12th May, 2014

³⁰ 433 U.S. 350(1977).

³¹ Total Number of Websites & Size of the Internet as of 2013 available on <http://www.factshunt.com/2014/01/total-number-of-websites-size-of.html> accessed on 23rd Feb., 2014

advertising was commercial speech protected under Fourteenth Amendment. This decision completely upset an antiquated rule restricting lawyers from advertising their services "as a historical anachronism, which created higher barriers to entry into the legal profession and functioned to "perpetuate the market position of established attorneys".

Conclusion:

Even though many persons carry internet in his pocket only a few are benefitting from the huge untapped resources of the internet estimated to be over 48 billion pages as at 31st December, 2013 as indexed by Google alone.³² J. K Gadzama SAN, in a paper captures the situation thus:

The world is gradually marching towards a paperless society. Text messages and e-mails have replaced letters while credit cards are gradually replacing cash. The question therefore is this: "How does a lawyer fit into all this?" In a world where contracts can now be executed on line with super imposed signatures, how equipped must the lawyer be to cope? The world is ever evolving and permanently in flux. It has gradually shrunk in every aspect including legal practice and the advanced countries have therefore adjusted accordingly. This has not been the case in Nigeria...Not many lawyers in Nigeria have an e-mail address talk more of a website while some are not even computer literate. Recent innovations such as the compression of bulky statutes into software have helped to decongest the workload of lawyers who are computer literate but even the judges are reluctant to accept this most liberating of innovations. The most challenging obstacle that legal education and practice face in Nigeria today is technology.³³

³² J K Gadzama, Modernizing Legal Practice in Nigeria: Challenges and Prospects: Being a paper delivered at the 2013 State of the Legal Profession Lecture of the Nigerian Institute of Advanced Legal Studies (NIALS) at Shehu Musa Yar' Adua Center, Abuja, on August 6th, 2013; p 11 - 12, available on

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=24&ved=0CDYQFjADOBQ&url=http%3A%2F%2Fwww.gadzama.com%2Fpublications%2FMODERNIZING_LEGAL_PRACTICE_IN_NIGERIA_LATEST_VERSION_JULY_27%2C_2013.docx&ei=eT8rVLvIMfKaJqvqAM&usg=AFQjCNHQCt0yGM6dCtiCuFVd43jystocDBSA&sig2=1VFhuvhkRGg1V15SOLdOuA&bvm=bv.76477589,d.d2s accessed on 14th September, 2014

³³ Vanguard of 5th October, 2014, available on <http://www.vanguardngr.com/2014/10/appeal-court-blends-justice-delivery-technology/> accessed on 5th October, 2014

An effort to advance ICT in Nigeria through practice of e-filing, e-payments, e-service of processes and e-appearance is commendable.³⁴ I suggest that the NBA should establish a section on e-lawyering or at least a task force by NBA Section on Legal Practice to continually study the intersection of the internet, ICT and the practice of law in Nigeria and recommend where necessary, for changes in our RPC, rules of court, etc.

Faculties of law and the Nigerian Law School would need to incorporate in its curriculum the training of students on the use of ICT and internet to give them skills on e-lawyering. As the wind of commoditization of legal practice blows all over the globe because of the advancement in ICT, Nigerian clients may soon prepare digital legal services of online legal services companies over the traditional legal services of brick-and-mortar law firms. Online document automation and legal services companies like LegalZoom, Nolo, Rocketlawyer, LawDepot, USLegal, CorpNet, BizFilings etc will invest million of dollars in Nigerian legal practice market. And then the only option for Nigerian lawyer could be in the saying 'if you can't beat them, join them'. So the time for change is now!

³⁴ Vanguard of 5th October, 2014, available on <http://www.vanguardngr.com/2014/10/appeal-court-blends-justice-delivery-technology/> accessed on 5th October, 2014