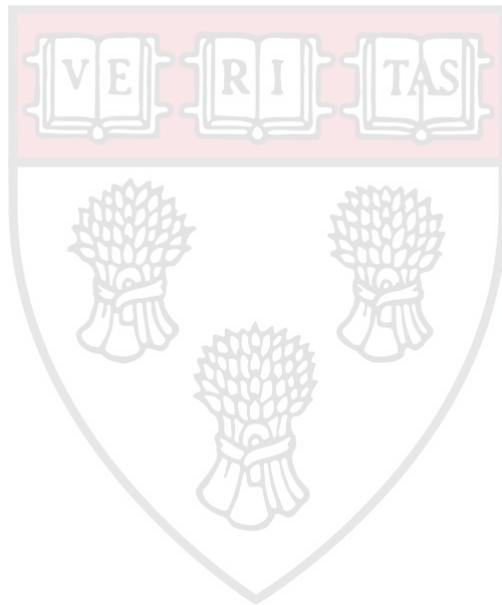


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Virtual Services Whitepaper

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I. Introduction

This paper was written for the 2012 Legal Services Corporation Technology Summit to provide ideas for how virtual services can increase access to justice for low-income persons.¹ More specifically, the paper addresses use of virtual services to provide legal information and legal advice, and to handle court business including hearings, interpreting, filing, and ancillary programs.

Until recently, technology was often viewed as a barrier to access to justice for low-income persons. Efforts to use the web or adopt technology-based services were met with vocal concern for the people who would be left behind for lack of technology skills or access. Providers working directly with low-income persons often expressed concerns that technology could not adequately address the unique needs of their clients and that their clients could not use technology and needed face to face assistance and traditional paper approaches. Shifting dollars to technology programming was seen as gutting traditional legal services for the poorest among us, who had the greatest needs for access to justice.² These concerns were real and important to voice, to spur efforts to overcome barriers and use technology effectively.

At the same time, advocates for use of technology were strategizing, testing approaches, and publishing results.³ With the successes and lessons learned from these early projects, and steady growth in adoption and use of technology by the public, the place of technology in access to justice efforts has been cemented.

II. Definition of Virtual Services

“Virtual Services” does not have a set definition. It could be defined as any method to communicate other than face to face, and any method to provide information other than by print materials. This broad definition encompasses communication by well-established means like the telephone and video-conferencing, and the provision of information via websites or email.

¹ The author wishes to acknowledge contributions from John Freeman, Marcia Koslov, and Pam Harris.

² For an overview of concerns over use of technology in the legal aid community, see **The Role of Technology in the Access Solution, 2005 p. 11** by Katherine Altener, Michael Genz, Michael Hertz, Bonnie Hough, Harry Jacobs, Glenn Rawdon available on www.SelfHelpSupport.org

³ Altener, *Ibid*; Julia Gordon, Equal Justice and the Digital Revolution, Using Technology to Meet the Needs of Low-Income People, 2002 http://www.selfhelpsupport.org/library/folder.43860-Articles_Reports

More specific definitions exist for e-lawyering and virtual law practice. The ABA Law Practice Management section, e-lawyering Task Force provides this definition:

“eLawyering is doing legal work - not just marketing - over the Web. Pioneering practitioners have found dramatic new ways to communicate and collaborate with clients and other lawyers, produce documents, settle disputes, interact with courts, and manage legal knowledge. eLawyering encompasses all the ways in which lawyers can do their work using the Web and associated technologies. Think of lawyering as a "verb" - interview, investigate, counsel, draft, advocate, analyze, negotiate, manage - and there are corresponding Internet-based tools and technologies.”⁴

Stephanie L. Kimbro, in her book *Virtual Law Practice*, states that virtual law practice is a form of e-lawyering.

“A virtual law practice is a professional law practice that exists on-line through a secure portal and is accessible to both the client and the lawyer anywhere the parties may access the Internet.”⁵

In a court setting, virtual services may include web-based self-help centers, remote interpreting, remote court reporting, phone and video conferencing for court hearings, payment of fines on-lines, access to court records on-line, e-filing, classes via video conferencing or other services. Many of these approaches have been in use for some time, and court conferences often showcase implementations.⁶ Court, Bar, National Legal Aid and Defenders Association, and Legal Services Corporation conferences continue to highlight new technologies and provide a way for lawyers to keep up with evolving approaches in technology and justice system applications.

⁴ See <http://apps.americanbar.org/dch/committee.cfm?com=EP024500>

⁵ Kimbro, *Virtual Law Practice: How to Deliver Legal Services Online*, 2010 p. 4

⁶ For example, the 2007 Court Technology Conference included presentations on remote interpreting, use of video for court hearings, and available technologies. <http://www.ctc10.org/sites/S69/index.php?p=781> Sessions on cloud computing, mobile technologies and going paperless were featured at the ABA 2012 Tech Show <http://www2.americanbar.org/calendar/TECHSHOW/Pages/ProgramDetails.aspx>

III. Use of Technology by Low-Income Persons

Data from the Pew Internet and American Life Project, *Trend Data – Who’s Online 2011*⁷ shows that internet usage rises significantly at the \$30,000 household income level.

	% who use the internet
Total adults	78
Race/ethnicity	
White, Non-Hispanic	79
Black, Non-Hispanic	67
Hispanic (English- and Spanish-speaking)	78
Household income	
Less than \$30,000/yr	63
\$30,000-\$49,999	85
\$50,000-\$74,999	89
\$75,000+	96
Community type	
Urban	79
Suburban	80
Rural	72

Even so, 63% of adults below \$30,000 are using the internet. For context, a family of four earning \$28,813 in 2012 would be at 125% of the federal poverty level. 125% is a commonly accepted level below which free legal services and fee waivers from court fees are granted.

The same Pew Report also shows a high percentage of people using cell phones, at all income levels. Eighty-four percent of people with household incomes between \$30-40,000 own a cell-phone. This drops to 80% for \$20-30,000, and 74% for incomes below \$10,000. In the under \$10,000 bracket, 21% of the cell phones are smart phones. The prevalence of cell phones should mean that clients are easier to reach, that they can realistically use a phone to call for assistance while using a website or on-line resource, and that texting and mobile applications are important delivery and communication methods.

⁷ See http://pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf

IV. Virtual Services

A. *Websites and Legal Information:*

Legal information is now commonly provided by website, rather than print materials. Websites are available to everyone with internet access and a robust body of legal information has been developed that is free and high quality. For courts and legal services, publishing on-line saves printing and postage expenses, gets information out into the community where clients and their advocates and helpers can find and use the information, and helps reduce the circulation of outdated (and perhaps legally inaccurate) versions of legal resources. Funding for print materials has largely been eliminated or slashed with tight budgets, and web resources are the replacement.

Website content often includes links to other information, allowing for effective integration of materials in place of writing your own. For example, a court may provide a brief overview of divorce procedures, and link to a legal aid booklet for a more detailed explanation of divorce issues.

Websites are also used as the repository for materials that replicate workshops, or other services formerly provided in person. A variety of tools are available to guide someone through completion of forms and procedures, or to provide general legal information on a topic. Professional video production with on-camera talent, although still popular, is not the best option today. Videos are typically expensive to produce, and difficult to update. Inexpensive alternatives are readily available that are fairly easy to master, can be used in-house, updated easily, and thus adapted to changes in law/policy or revised based on user feedback for maximum effectiveness. In-house videos are used by some programs, but without professional “talent” to appear in the video, the on-camera narration can actually detract from the overall effectiveness.

An inexpensive yet effective alternative to using live talent on camera is to use tools like Camtasia, GoToWebinar, and Adobe Captivate which add voice-over to a slide show that may involve text, pictures and animation. These productions typically allow the viewer to control the pace, go back to repeat a “screen”, and effectively replicate the experience of having someone sitting with you, pointing out places on a form to enter information and talking you through the process.⁸

⁸ Examples:

Arkansas Legal Tube videos at <http://www.arlegalservices.org/legaltube>

MN Child Support motion tutorials at <http://www.mncourts.gov/selfhelp/?page=4559>

MN Criminal Expungement tutorial at <http://www.mncourts.gov/selfhelp/?page=332>

Some websites also use decision tree tools to guide the user to select the correct materials or identify their legal issue. The Montana State Law Library uses this approach with divorce forms.⁹

A2J Author is typically used with Hotdocs for document assembly,¹⁰ but can also be used to guide parties through a process or decision. An example is the New South Wales, Australia Law Access website.¹¹

LawAccess NSW is a free government telephone service that provides legal information, referrals and in some cases, advice for people who have a legal problem in New South Wales.¹² Similarly, pursuant to an LSC grant, the Legal Aid Society of Louisville is developing an A2J Author “Legal Research Assistant” triage tool, crafted specifically for use in Kentucky public and law libraries.¹³

Forms for legal actions are another significant component of content for legal websites. Document assembly tools are available from non-profit and for-profit vendors, to integrate instructions in an interview to collect needed information to create forms. Cases that involve multiple forms with repetitive information benefit from this approach as the information need only be entered once. In addition, the integration of the instructions results in more accurate completion of forms, because separate “instructions” are often unread.

Ideally, website content includes live support via phone, live chat, email, texting and co-browsing. Website users may struggle to find materials on a site, or have questions about the materials. Highly visible support links encourage people to persevere and not move on to a different site. Phone, chat and email should be complementary approaches. Email is important because it is available 24/7. The website user can always send a question, although the site needs to clearly state when the user can expect a response. Chat¹⁴ and phone offer immediate or more immediate response and the benefit of back and forth conversation to clarify the question and response. However, most organizations are unable to staff phone and chat 40 hours per week, much less 24/7.

Texting is used by the Utah State Courts Self-Help Center. The staff person uses Google Voice, which provides a free text number accessed on a regular computer.¹⁵ The

⁹ See <http://courts.mt.gov/library/marriage/a1.mcp>

¹⁰ See A2J author at <http://www.a2jauthor.org/drupal/?q=node/55>
Hotdocs at <http://www.hotdocs.com/>

Law Help Interactive at <https://lawhelpinteractive.org/>

¹¹ See www.lawlink.nsw.gov.au/lawlink/lawaccess/ll_lawassist.nsf/pages/lawassist_interactive_guides

¹² See http://info.lawaccess.nsw.gov.au/lawaccess/lawaccess.nsf/pages/about_us

¹³ See Grant 10060 http://tig.lsc.gov/sites/default/files/TIG/2010_TIG_Awards%5B1%5D.pdf

¹⁴ LawHelpMN.org and an increasing number of other statewide legal services websites for clients offer live chat navigational assistance.

¹⁵ Source: email from Jessica Van Buren, Law Librarian, Utah State Law Library

staff person reads and responds to the texts on a computer, not a phone, while the customer is using her phone.

Co-Browsing software allows the client and the staff person to screen share. Various products exist, but one example of a commercial product is TeamViewer. This relatively inexpensive product is downloaded to the staff computers and a link is added to the public website. To initiate co-browsing, the client clicks the link and reads a code to the staff person over the phone. The staff person enters this code and the computers are connected. Either person can terminate the screen sharing. Now, the staff person can assume control of the client's view, and navigate the client to appropriate resources or trouble shoot use of a document assembly tool. Forms can be opened and filled out together, with both people seeing the same thing. TeamViewer does not require the client to download anything, and the connection process is quick and easy.¹⁶ Libraries often use co-browsing software, and co-browsing is also being added to the LiveChat features on some legal aid websites.

People using websites in public places may also receive face to face support from librarians, court staff, and others. To be most effective, strategies are needed to engage support personnel and keep them up-to-date on website content. Initial and periodic update training will insure a comfort level for helping. Non-legal providers often express concerns about helping with legal questions. Those concerns include a lack of familiarity with legal resources, and concerns about unauthorized practice of law. Training should address both areas of concern.

Librarians and other helpers can receive on-going support and training by making use of legal website support features. For example, the Minnesota Courts Self Help Center website has a phone support line for the public that law librarians will call when helping patrons. The librarian can often summarize the issue and get to the point quickly, saving time. The librarian may also place the call (instead of asking the patron to call) out of a desire to gain knowledge for future interactions. In the author's experience¹⁷, support personnel like librarians are also key persons to give feedback on the usefulness of the website and emerging legal needs to add to the site.

Courts, legal services and law libraries should be partnering to guide people to websites and to high speed access locations and support services. Rather than working on parallel tracks, planning and resources should be shared. Partnership can also include shared support services. For example, staff from different partner organizations could be

¹⁶ See Teamviewer <http://www.teamviewer.com/en/index.aspx?cdsplit=D> used by the Minnesota Courts Self Help Center www.mncourts.gov/selfhelp

¹⁷ The author is the manager of the Minnesota Courts Self Help Center.

trained to support users on more than one site¹⁸, to allow staff to refer people to the other site and continue the support, or expand support hours by dividing up support times.

Developers and providers of virtual legal services count on public libraries as access points for high speed internet. Law librarians have been leaders in supporting and training public librarians about print and on-line legal resources. Librarians in California, Wisconsin, Minnesota, Montana and other states have worked extensively with public libraries and should be consulted on how to best prepare public librarians for questions about legal websites.

Not to be overlooked as a foundational key to success for delivery of legal information is good website design, writing, content, and usability for people with low-literacy, disability or LEP¹⁹ challenges. Even simple tools, like programs built into word processing software to assess reading grade level, can assist with this.

Other examples of legal information provided virtually include legal research assistance and virtual communities. “Ask-a-Librarian” is available at many law library sites. Patrons can contact the library via email and receive legal research help. Planning is underway to extend the “Ask-a-Librarian” service through development of a kiosk library that enables a user to work directly with a librarian using a “Skype” like service. The kiosk computers would contain only online databases and forms but would be linked directly to a reference desk in a law library. The librarians would be able to assist the user in finding accurate information, the appropriate form and directional services for completing that form.²⁰

Virtual communities are also a means for providing legal information. The legal community could sponsor virtual communities to engage groups with a shared interest for activism, support, updates, and other interaction.

B. Legal Advice

Although every attorney today uses technology in the practice of law, some practitioners only offer virtual law services, never meeting the client in person. A key to this approach is a secure client portal that the client and attorney access via log-in credentials over the internet. This secure portal protects the confidential nature of the communications and work product, unlike email which is generally considered to be non-secure. Especially in family law cases and restraining order situations, concerns that an

¹⁸ For instance, Legal Services State Support staff that take chats through its LiveHelp tool are trained on both LawHelpMN.org and MN Courts Self-Help Center web content.

¹⁹ In developing non-English materials, it is also important to consider their accessibility and the website’s capacity to also offer translated navigational content.

²⁰ Kiosk information provided by Marcia Koslov, Law Librarian, LA County Law Library

adverse party may have access to the client's email account exist. Resources should be carefully reviewed before undertaking a virtual law practice to understand the practical and ethical issues.²¹

Richard S. Granat and Marc Lauritsen, co-chairs of the ABA/LPM eLawyering Task Force, offered predictions for eLawyering trends in the next five years in the September/October 2011 issue of the ABA Law Practice Magazine, Virtual Practice Issue.²² The main points include:

1. Firm Services Provided through Client Portals.
2. Web-Enabled Document Automation. These systems generate a first draft of a document instantly, making it ready for the lawyer's review, analysis and revision.
3. Interactive Advisory Applications. As with document assembly, online advisory applications enable clients to answer questions through an interactive questionnaire. But instead of a legal document being created, the application generates conclusions by manipulating a series of if-then statements, providing a legal answer to the client immediately.
4. Nationally Branded Networks Delivering Services Online.
5. Courses on Sophisticated Law Practice Technology in law schools.
6. Extensive Use of Cloud Computing to Augment In-House Resources. Skepticism about cloud computing will dissipate and its use will become widespread... Client-facing applications such as client portals, web-enabled document automation and interactive advisors, will be offered by a growing industry of software as a service (SaaS) providers. Also, traditional back-office practice management solutions, such as timekeeping and billing, case management, calendaring and accounting applications, will be more widely available over the web.

As a culmination of these developments, we'll see an accelerated movement toward mobile computing, less demand for traditional firm office space, and an ever-growing number of lawyers free to move about to conduct their practice "anytime, anyplace."

²¹ Kimbro, *Ibid* footnote 5; ABA eLawyering Task Force

²² See

http://www.americanbar.org/publications/law_practice_magazine/2011/september_october/the_next_five_years.html

Most private law offices and legal services organizations are not yet adopting a full-fledged virtual law practice approach. The benefits of the virtual practice, particularly as predicted in the next five years by Granat and Lauritsen, offer potential opportunities to legal services to overcome distance barriers, better serve clients in remote areas, better distribute pro bono resources (which tend to be concentrated in urban areas), and save time and overhead expenses. The costs of the technology and learning to use it will require significant planning.

Turning from the concept of virtual law practice, virtual resources can also be used in less comprehensive ways. Websites and on-line models commonly serve as a way to find legal services, or to publicize referral services. Most legal information websites include referral links, and some, such as the LawHelp sites, have searchable resources based on the person's zip code, city, or legal issue. The challenge with these resources is keeping them up-to-date and useful.

Do people really turn to the internet to start their search to find a lawyer? This was the subject of a poll and report from the American Bar Association. The ABA Delivery of Legal Services Committee published a report in 2011 entitled "Perspectives on Finding Personal Legal Services."²³ The report covers the findings of a 2010 poll commissioned by the ABA and conducted by Harris Interactive. The Summary of Findings includes the following:

- Use of print directories, such as the Yellow Pages, as the primary way to find a lawyer for a personal legal matter appears to be eroding and is now about the same as online searches.
- Younger adults are more likely to rely on online searches as the primary way to find a lawyer for a personal legal matter, but the extent to which online searches will expand as this population ages is unclear.
- People are not showing a great enthusiasm for the use of online models to assist in finding a lawyer for personal legal matters.
- Innovative online models, such as those that enable an exchange of questions and answers with lawyers and those that provide consumer feedback about lawyers are most likely to be used to assist in finding a lawyer for personal legal matters.
- People would not use social media avenues to a substantial degree to assist in finding a lawyer for a personal legal matter, but relatively few lawyers market their services through these avenues at this time.

²³ See

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/20110228_aba_harris_survey_report.authcheckdam.pdf

- When people would proceed on a personal legal matter without a lawyer, they report they are likely to turn to courthouse resources, including judges, court clerks and self-help centers, but are less likely to use librarians.
- When people would proceed on a personal legal matter without a lawyer, they report they are likely to turn to free online services and self-help books, but are not likely to turn to online services that charge costs.

Familiarity with unbundled legal services was also explored in the poll. The report recognizes a growing reliance on on-line searching, and little advertising via social media. In general, the legal profession and courts are only beginning to explore the possibilities of social media for legal referral, legal information and legal advice purposes.

Legal advice can also be provided on a limited scope basis through virtual means.

In Michigan²⁴, Minnesota²⁵, and Tennessee²⁶, legal advice is provided through online portals by pro bono and Judicare attorneys via legal services and private bar partnerships. Each project screens individuals for service eligibility using an online question-and-answer system, and allows eligible applicants to submit questions online. Volunteers enter through an attorney section of the websites to find and answer questions, pursuant to a limited scope representation structure, which the client is advised of at the start.

Although these systems are limited to advice, proponents²⁷ cite many advantages:

- Pro bono attorneys are enthusiastic about the system, in part because the length of the commitment is defined and does not require travel from their offices.
- Legal aid providers are afforded another referral source for those they cannot serve.
- The systems may allow for earlier intervention into legal problems.
- Clients can access the service any time of day, and without the expensive use of daytime prepaid cellular phone minutes.

²⁴ See Internet Representation Project, operated by Legal Services of Northern Michigan: <http://www.lsnmirp.org/client.php>

²⁵ See Legal Information Online Network, operated by Legal Services of Northwest Minnesota and Legal Services State Support: <https://www.lsnmlaw-lion.org/>

²⁶ See Online Tennessee Justice, operated by Tennessee Alliance for Legal Services and the Tennessee Bar Association: <http://www.onlinetnjustice.org/>

²⁷ For audio of comments by Ken Penokie, Legal Services of Northern Michigan and John Freeman, Minnesota Legal Services Coalition, at Hearings on Delivery of Legal Services through Technology, May 9, 2009 go to <http://apps.americanbar.org/legalservices/delivery/techhearings.html>

- Rural applicants have a greater chance of service, as more abundant metro area pro bono resources can be spread to more remote areas.

Regarding the last advantage, Tennessee's system is particularly intriguing in that it is offered throughout the state.

Attorneys assisting with online advice systems should be trained to understand when referrals are appropriate, since advice alone is not adequate for many clients. In addition, ethical issues regarding limited scope representation and conflicts checking should be explored with local ethics officials before implementation of online advice systems.

Legal advice can be coordinated with use of document assembly forms. In Orange County California, the Legal Aid Society of Orange County (LASOC) provides lawyer referral services for clients who are seeking either full fee or unbundled/reduced fee approaches. The lawyer referral website provides a variety of options, including attorney assisted services through Legal Genie.²⁸ Legal Genie allows the client to prepare documents using an online document assembly product, and then engage a lawyer to review the documents and provide advice for a set fee. The assembled forms are made available electronically to a private attorney for review and consultation with the client. The client can then make any recommended changes, and then the client can file the forms or e-file the forms with the court where available.

The Minnesota Court Self Help Center (SHC)²⁹ has partnered with Volunteer Lawyers Network (VLN), a non-profit corporation, to experiment with unbundled legal services delivered remotely to assist persons in answering a Civil Complaint. In Minnesota, the majority of lawyers are in a five county metro area, and persons in the remaining 82 counties can find it difficult to obtain pro bono or unbundled legal services. The SHC, operated by the Judicial Branch, serves all 87 counties via website, phone, email, and co-browsing. If someone with this need contacts the SHC, they are sent a brief intake form created with the software program Formstack, and instructed to fax or email the Complaint to VLN, which forwards the information to the volunteer attorney. The client is also sent Court information about how to answer a Civil Complaint, and a form for that purpose. The attorney and client consult by phone, the lawyer typically drafts the Answer, and the client proceeds *pro se*. This collaboration allows for timely referrals, eliminates travel, and addresses the supply and demand gap. Next, the partners plan to offer Court staff screening of divorce pleadings completed by parties using I-CAN!, coupled with legal advice from VLN volunteer attorneys in a fashion similar to the Civil Answer project, but utilizing secure portals for viewing the documents.

²⁸ www.legal-aid.com

²⁹ See the MN Court SHC at www.mncourts.gov/selfhelp

Figuring out how the attorney and client, or support person and client, can view documents together is important, as it is difficult and time-consuming to advise someone who is trying to read portions of a document to the attorney over the phone. Scanning, co-browsing, email, and fax are options, as well as secure portals and commercial and free office products designed for document sharing.

Some limited scope legal advice services use Skype or other forms of video conferencing to allow the client and attorney to see each other. How important is “seeing” each other to build trust and pick up on non-verbal cues? This is a matter of opinion and may vary with the case or client. However, the desire to see the other person can be a significant barrier, cost factor, or inconvenience. Programs should not require someone to travel to a special location where equipment is available if a phone and website are readily available and suffice. GoToMeeting³⁰ and other web-based conferencing methods can also serve to link clients, attorneys, and other persons involved in a conference and expand the reach of legal services and pro bono attorneys. Users of Skype and other video services can also experience the audio and video being out of sync, which can be very distracting.

V. When are Virtual Services Not Appropriate?

With all services, an assessment of client/constituent needs is important. Virtual services may not serve all needs or be appropriate for all persons. Inexperience with technology, disability or language issues, and slow internet connections can be reasons to limit virtual service methods. These barriers can be overcome with the support of advocates and service providers. In addition, in certain cases, virtual services can be optimal for those facing communication barriers. For example, deaf and hard-of-hearing individuals, those with speaking impairments, and those with high levels of anxiety may all benefit from service virtualization.³¹ As such, providers need to make that assessment on a case by case basis.

A common sense approach would suggest that if the time, expense and educational needs to use the virtual services exceed those for using in-person services then virtual is not appropriate. Likewise, if the attorney and client are experiencing communication difficulties, a face to face meeting may be needed. The key is to work

³⁰ See <http://www.gotomeeting.com/fec/>.

³¹ Most legal aid programs that receive LSC funding must provide “...appropriate auxiliary aids and/or other assistive technologies to persons with impaired sensory, manual, or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program’s services.” 45 C.F.R. § 1624.4(d)(1).

through initial challenges, and not use readily solvable issues as an excuse to avoid virtual services altogether.

Court based Self Help Centers generally find that less time is spent on virtual services than on in-person services. Once the party has traveled to the courthouse and invested time and money to do so, the party expects service that will justify the expenses and hassle of the outing. The MN Courts Self Help Center's average call time is just under 5 minutes, and callers are generally very satisfied with the help received. Someone who travelled to the court is likely to feel that five minutes of assistance at the walk-in Self Help Center is inadequate, even if their question was answered or need met.

Basing decisions on real information versus common belief is important (i.e. doing the research), as well as planning for continuous assessment and improvement. Well run programs have sought out information on unmet needs and will continue to do that when adopting virtual service models.

Unique issues do arise with virtual services with a lawyer/client relationship and confidential information. See Footnote 21. With adequate planning, however, these issues should rarely be insurmountable.

In addition, there is an interesting advisory opinion from the MN Lawyer Board relating to ethical obligations of attorneys regarding metadata.³² In addition to problems with sending versions of documents that open showing revisions (instead of the Final version) documents created and revised electronically have embedded information (metadata) that could be detrimental to the client. An example of metadata is the notation of the "time" the document was created or last revised or identity of the person who last revised it.

VI. Virtual Court Services

In addition to Self Help services already addressed, courts are embracing technology in many ways. As budgets shrink, court hours may shorten or court houses close. Judges and court administration may work in several counties, and seek to avoid "windshield" time and expense. Efficiency, cost savings, and demands from the bar and public are driving adoption of technology in the courts. In these instances, people expect courts to offer virtual services and make use of technology that is common in business settings.

³² Minnesota Rules of Professional Conduct, Lawyers Board Opinion 22 on Metadata; *See* <http://lprb.mncourts.gov/rules/LPRBOpinions/Opinion%2022.pdf>.

A 2009 National Center for State Courts Survey found that: “With court hours and staff time on the chopping block, an overwhelming number of courts said they are turning to advanced technology as a means to protect the public’s access to courts.”

Courts are using technology for interpreting, creating a record of proceedings, remote appearances, e-filing, and other purposes.

Improved systems have made remote interpreting highly effective. Video and audio equipment allow the interpreters to be “present” in the courtroom on a screen, with clear audio channels and excellent sound quality. The litigant wears a headset to communicate with the interpreter. The interpreter can select channels to limit who can hear the interpreter speaking, to enable side bar or confidential conversations.

The Ninth Circuit Court in Florida and the 4th District Court in Minnesota utilize advanced remote interpreter systems. The National Center for State Courts website lists reports and guides on remote video and telephone interpreting.³³ Benefits include much greater availability of languages, elimination of travel time, and ability to use professional certified interpreters at any location with the necessary equipment.

Court reporting of hearings has also changed. Stenographers have been replaced in some courts with various methods of capturing and maintaining the record. Recorded hearings can be monitored by court reporters in a central room, allowing them to monitor several hearings at once. A digital recording of the hearing, with index, can be provided to the judicial officer to review testimony before making findings. Transcripts are produced from the actual recording, rather than from the steno notes, generally improving accuracy.

Courts also use technology to enable remote appearances for classes, mediation, self-help, and court hearings. Video conferencing to conduct workshops and classes allows participants to interact visually and verbally and brings services to areas in an economical manner. Schools and universities are ahead of the justice community and can be explored as models.

Rural courts may be the leaders in remote appearances for court hearings, by necessity. Telephone conferences are routine in place of appearances, as are video hearings, either to avoid transporting in-custody parties or to allow the judge and parties to be in different court locations, have been in use for years. However, not all court participants embrace video technology as a solution. With evidentiary hearings, there is reluctance in courts to use remote hearing technology or even remote court reporting. This is an example of an area where the objections should be carefully reviewed, solutions proposed and tested, and judicial officers encouraged to rethink the assumption

³³ See <http://www.ncsc.org/Topics/Access-and-Fairness/Court-Interpretation/Resource-Guide.aspx>.

that only an in-person hearing is suitable for evidentiary hearings. The medical field is conducting some patient exams via video conferencing, and witness credibility and sharing of evidence should be surmountable also.

The Montgomery County Circuit Court in Maryland has been using web-based video conferencing technology for remote witness testimony over the last several years. The web-based video conferencing service allows for real-time communication by multiple participants through the use of a computer or mobile device that contains a camera, microphone, and speakers. The system works on any type of high-speed access such as a corporate LAN, wireless (Wi-Fi), or wired connections to cable Internet services, and cellular data services. There are many video conferencing services available today that can be used to generate a video conferencing call, i.e., GoToMeeting, Skype, ooVoo, and Cisco's WebEx. Montgomery County uses WebEx, as it provides the options and functionality the Court requires. In addition to real-time audio and video, participants may share desktop screens and documents, chat (typed) conversations, use whiteboard features, i.e., drawings, and record and save the entire video/audio call. The Maryland court anticipates that this technology will be utilized to a greater extent in the future, as the public, attorneys and court accept the technology.

RSA and Cisco Systems sponsored a seminar to explore using a design-thinking approach to courtroom design to address objections to virtual courtroom techniques. This involves engaging stakeholders, listening to concerns, observing courtroom behavior, and prototyping possible solutions.³⁴ A paper reporting outcomes includes review of courtrooms in the Netherlands and United Kingdom.

Courts are also adopting e-filing and imaging of court records as service, efficiency, and cost-cutting initiatives. E-Filing has focused mainly on attorneys, but courts and vendors are starting to make meaningful progress on e-filing solutions for the self-represented litigant (SRL). The access to justice community needs to be engaged with courts and vendors to influence e-filing rules, policies and software to insure that SRLs benefit from e-filing and e-service on equal footing with attorneys. SRLs are a very large percentage of court filers, and courts have a strong incentive to find effective e-filing solutions for SRLs to avoid maintaining dual filing systems or having to scan all SRL filings. To fully achieve the cost saving promises of e-filing, courts and attorneys need SRLs to be utilizing e-service and e-filing.

Some courts have developed e-filing solutions in-house, for some case types. Colorado's Small Claims program is one example. Other solutions use document assembly tools as the precursor to a simple e-filing process. These approaches will not fully enable SRLs to e-file. Simple methods to upload documents to an e-filing are also

³⁴ Jamie Young, "A Virtual Day in Court: Design Thinking and Virtual Courts" 2011. *See* www.thersa.org/projects/design/a-virtual-day-in-court

needed to handle pleadings or supporting documents that are not court forms, or are not included in e-filing forms projects. How to handle signatures, notary requirements, fee waivers, documents requiring judicial review before filing, and other issues also need to be addressed with policy, rule, statute and technology changes. SRL e-filing also should be viewed as one step in a continuum of support needed by SRLs to successfully access courts. Several vendors are creatively thinking of ways to achieve these goals, and are actively working with court customers to develop solutions.

This paper concludes with some general recommendations for implementing virtual services.

- Identify key collaborations between legal aid, courts, pro bono organizations, libraries, and other partners for sharing equipment, software, marketing, referrals and resources. The goal is to cut costs, share resources, and utilize compatible technology solutions.
- Use software that is free to the client, and that the client doesn't have to download to a computer
- Optimize for mobile technology
- Optimize for speed of use
- Have workstations for people in convenient locations and use these for access to legal aid assistance, court assistance, and other. Have computer, phone, printer, scanner, with instructions or tutorials to show how to use equipment, and desktop icons to view tutorials and connect to the different programs.
- Market the services. If the public doesn't know that resources are available the goal of providing some legal help to all who need it will never be met. Include website information on all pleadings or the Summons/Notice of Motion/Notice of Hearing to inform the respondent/defendant of where to find forms/resources
- Market jointly for cost savings
- Courts should work toward a statewide case management system with imaging of all filings, and on-line access to images. This would allow legal aid lawyers, pro bono lawyers, and court staff (SHC) to assist people remotely, and look at the documents (pleadings, orders, notices) that have been filed in the case. The first contact with a client may be when he calls and says "I've received a notice from the court. What do I do?"