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## The Future of Big Law: Alternative Legal Service Providers to Corporate Clients

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# THE FUTURE OF BIG LAW: ALTERNATIVE LEGAL SERVICE PROVIDERS TO CORPORATE CLIENTS

*John S. Dzienkowski\**

## INTRODUCTION

The legal profession around the world is undergoing a significant transformation. The turn of the century saw the world's largest accounting firms offer legal services through different forms of multidisciplinary practice models.<sup>1</sup> In 2007, Slater & Gordon became one of the world's first public law firms.<sup>2</sup> In the same year, the United Kingdom enacted the Legal Services Act<sup>3</sup> in an effort to modernize the delivery of legal services.<sup>4</sup> During this time period, several large national and multinational law firms—so-called Big Law firms (e.g., Brobeck, Heller Erhmann, Dewey & LeBoeuf, Thacher Proffitt, Thelen, Coudert Brothers, and Howrey)—dissolved due to financial and business issues.<sup>5</sup> Further, many firms have merged in order to better position themselves for the highly competitive marketplace.<sup>6</sup>

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1. See John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 *FORDHAM L. REV.* 83, 84–85 (2000); see also Charles W. Wolfram, *The ABA and MDPs: Context, History, and Process*, 84 *MINN. L. REV.* 1625, 1635–48 (2000) (discussing the role of the Big 5 accounting firms in the MDP debate).

2. Thomas D. Morgan, *Should the Public Be Able To Buy Stock in Law Firms?*, *ENGAGE: J. FEDERALIST SOC'Y PRAC. GROUPS*, Sept. 2010, at 111, available at [http://www.fed-soc.org/doclib/20100910\\_MorganEngage11.2.pdf](http://www.fed-soc.org/doclib/20100910_MorganEngage11.2.pdf); see also Andrew Grech & Kirsten Morrison, *Slater and Gordon: The Listing Experience*, 22 *GEO. J. LEGAL ETHICS* 535 (2009) (explaining the listing experience of the first publicly held law firm from the perspective of the managing director and the general counsel of Slater & Gordon).

3. 2007, c. 29, sch. 13 (Eng.).

4. See Justin D. Petzold, Comment, *Firm Offers: Are Publicly Traded Law Firms Abroad Indicative of the Future of the United States Legal Sector?*, 2009 *WIS. L. REV.* 67, 81–82.

5. See Jessica D. Gabel & Paul R. Hage, *The Belly of the Beast: Law Firm Insolvencies, Unfinished Business, and Jewel Waivers*, *BUS. L. TODAY*, Aug. 2013, at 1, available at <http://www.americanbar.org/content/dam/aba/publications/blt/2013/08/full-issue-201308.authcheckdam.pdf>.

6. See Ed Wesemann, *Recipes for Success: Winning in the Global Legal Market*, *COUNSEL*, Nov. 2013, at 6, 9.

Big Law firms are experiencing significant challenges in this new marketplace.<sup>7</sup> The growth of in-house corporate legal departments has resulted in a decrease in corporate client reliance upon private law firms.<sup>8</sup> The economic crises of the past ten to fifteen years that resulted from various corporate financial scandals and failures, the bursting of the housing bubble and related problems in the banking and mortgage loan industries, the dot-com boom and its subsequent crash, and the losses in unregulated derivatives markets have all contributed to a likely reduction in the need for high-dollar legal work.<sup>9</sup> In the last five years, many of the top 100 law firms have suffered significant declines in their gross revenues and have taken measures to reduce their reliance upon a leveraged model of the associate-partner pyramid.<sup>10</sup>

During the last five years, several innovative legal services models have begun to offer corporate clients an alternative to Big Law lawyering.<sup>11</sup> The stated impetus underlying this development is the need to innovate the century-old guild of lawyering that has failed to adapt adequately to the changes in the modern competitive marketplace. Clients are simply looking for alternatives to the large multinational law firms that only provide legal services through the traditional partner-associate service model.<sup>12</sup> A secondary reason for this development is the need to address the reported widespread dissatisfaction of lawyers who work in Big Law firms.<sup>13</sup> The

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7. See generally Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008) (analyzing factors that continue to influence the transformation of the large law firm and its role in representing clients in the American legal system).

8. See Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 760.

9. See Eli Wald, *Foreward: The Great Recession and the Legal Profession*, 78 FORDHAM L. REV. 2051 (2010) (introducing a symposium on the Great Recession and the legal profession and examining some of its effects). These crises, however, have resulted in an increased demand for securities and other civil corporate litigation defense counsel and for criminal defense counsel. However, this increased demand is likely to be temporary and smaller in scope than the legal work it replaced. For a brief examination of the structural changes in the legal employment market, see Am. Bar Ass'n Task Force on the Future of Legal Educ., Working Paper 11-12 (unpublished manuscript) (Aug. 1, 2013), available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/task\\_forcecomments/aba\\_task\\_force\\_working\\_paper\\_august\\_2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/task_forcecomments/aba_task_force_working_paper_august_2013.authcheckdam.pdf).

10. See Jerome Kowalski, *No Toaster for You!: Citibank's 2011 Mid-Year Legal Profession Survey*, COUNSEL, Dec. 2011, at 15-16 (providing a stormy outlook for large law firms). Many law firms have reduced their incoming first-year lawyer classes and others have reduced the retirement age for outgoing partners. The economic downturn has changed the large law firm's reliance on the traditional associate-partner pyramid. See Ribstein, *supra* note 8, at 762 (suggesting that large law firms may retain associates as employees and not in a traditional partnership track).

11. See, e.g., Rachel M. Zahorsky & William D. Henderson, *Who's Eating Law Firms' Lunch?*, A.B.A. J., Oct. 2013, at 32; Rachel Zahorsky, *Why Silicon Valley's Biggest Investors Are Betting on Alternative Legal Companies*, ABA LEGAL REBELS (Sept. 19, 2013, 8:30 AM), [http://www.abajournal.com/legalrebels/article/silicon\\_valleys\\_biggest\\_investors\\_are\\_betting\\_on\\_alternative\\_legal\\_cos](http://www.abajournal.com/legalrebels/article/silicon_valleys_biggest_investors_are_betting_on_alternative_legal_cos).

12. See Toby Brown, *The Law Firm of the Future*, HOUS. LAW., Mar.-Apr. 2013, at 34; *Virtual Law Firms on the Rise As Clients Increasingly Embrace the Model and Appreciate the Efficiency*, COUNSEL, Mar. 2013, at 1 [hereinafter *Embrace the Model*].

13. See, e.g., *Join Us*, VLP L. GROUP, <http://www.vlplawgroup.com/JoinUs.aspx> (last visited Apr. 26, 2014) (describing how lawyers can take control of their work and personal

new law firm models seek to offer highly skilled lawyers an alternative to the 2,000-hour-per-year billing model of traditional large corporate law firms. Moreover, these entities seek to confront other important work-life balance issues that the traditional large law firms have largely failed to adequately address.

This Article examines several different Big Law alternatives that have experienced significant growth during the past five years. Part I briefly addresses the problems that corporate clients have with the current practices of the large law firms. Part II introduces six different types of legal service providers that are targeting the clients of traditional large law firms. It examines their business models in detail and identifies the main ways in which these firms deliver legal services. This Part compares and contrasts how these models differ from traditional Big Law practice. Part III addresses the key ethical issues presented by the new alternatives to Big Law practice. Finally, this Article concludes with an assessment of how these alternative firms are likely to affect the practice of traditional large law firms.

Much scholarship has been written about the transformation of the legal profession, and this Article builds upon the work of others.<sup>14</sup> Some commentators focus upon the downturn in the world's economy as the primary cause of the changes in the world's legal professions.<sup>15</sup> Others argue that the traditional law firm models simply cannot withstand the economic and technological changes that have taken place in society.<sup>16</sup> This Article addresses the specific question of whether and to what extent the new and innovative ways of delivering legal services to corporate clients are affecting the traditional lawyering model. Although the changes are likely to take many years, several of these innovative firms have a significant likelihood of changing the way in which large corporate clients receive legal services.<sup>17</sup>

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commitments). One of the leading articles on dissatisfaction of lawyers working in large firms is Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999).

14. See generally MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991); JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW STRUCTURE OF THE BAR* (2005); THOMAS D. MORGAN, *THE VANISHING AMERICAN LAWYER* (2010); ROBERT L. NELSON, *PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM* (1988); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998).

15. See Jordan Weissmann, *The Death Spiral of America's Big Law Firms*, ATLANTIC (Apr. 19, 2012, 3:12 PM), <http://www.theatlantic.com/business/archive/2012/04/the-death-spiral-of-americas-big-law-firms/256124>.

16. See MORGAN, *supra* note 14, ch. 3 (detailing several fundamental changes that have had a profound impact upon the practice of law).

17. See generally Stephen Gillers, *A Profession, If You Can Keep It: How Information Technology and Fading Borders Are Reshaping the Law Marketplace and What We Should Do About It*, 63 HASTINGS L.J. 953 (2012) (challenging the legal profession to respond to the changing competition and to develop norms to serve clients efficiently and professionally).

## I. CHANGES IN BIG LAW FIRM CLIENT BEHAVIOR

From the mid-1980s until the financial crisis of 2008, large law firms grew at unprecedented rates in terms of revenue and numbers of lawyers.<sup>18</sup> Large corporate clients fueled the growth in Big Law practice as these entities developed longstanding relationships with their law firms and gave the lawyers a broad range of their legal work.<sup>19</sup> The growth of corporations and their increased need for legal services in a variety of fields, in turn, fueled the growth and transformation of Big Law practice.<sup>20</sup>

For the past fifteen years, however, corporate clients also have undertaken changes to the manner in which they receive their legal services.<sup>21</sup> First, the growth of in-house legal staffs has had a significant impact upon Big Law practice.<sup>22</sup> Corporate clients use employee lawyers to handle an increasing volume of work. Further, they often hire lawyers from their outside law firms for their in-house legal staffs, which enable them to obtain experienced lawyers to handle their work. In turn, these in-house lawyers control the work given to outside law firms.<sup>23</sup>

Second, corporate clients at one time used one law firm for all or most of their outside legal work.<sup>24</sup> Today, corporations often rely upon teams of lawyers from different law firms to represent their interests.<sup>25</sup> Some corporate clients rely upon boutique law firms for legal services in specialized areas.<sup>26</sup> Other corporations have moved some of their legal work from the law firm that used to do all or most of their work to new

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18. See Weissmann, *supra* note 15 (commenting on increasing revenue figures); see also Galanter & Henderson, *supra* note 7, at 1882–85 (examining the growth in the size of large law firms).

19. See Ribstein, *supra* note 8, at 757–59 (examining the various theories why corporations fueled the demand for Big Law services including asymmetry, reputational capital, a peak load problem, and legal capacity insurance).

20. See generally Galanter & Henderson, *supra* note 7 (examining the changes to Big Law and the legal profession in what the authors call the “elastic tournament” of lawyers).

21. Many scholars have studied the influence of corporate clients upon the structure of the profession. See, e.g., Galanter & Henderson, *supra* note 7; Symposium, *The Future of the Legal Profession*, 84 N.C. L. REV. 875 (2006).

22. See, e.g., Susan Hackett, *Inside Out: An Examination of Demographic Trends in the In-House Profession*, 44 ARIZ. L. REV. 609 (2002); Eli Wald, *In-House Myths*, 2012 WIS. L. REV. 407.

23. See Robert L. Nelson & Laura Beth Nielsen, *Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations*, 34 LAW & SOC’Y REV. 457, 457–58 (2000).

24. See David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 FORDHAM L. REV. 2067, 2077 (2010) (calling this era “The Marriage,” where “it was not uncommon . . . for a single law firm to handle all of the legal business for its major clients”). Professors Gilson and Mnookin referred to this as firm-specific capital. See Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 353–71 (1985).

25. See Ribstein, *supra* note 8, at 763.

26. See Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 86–87 (describing why corporate clients may prefer boutique law firms); see also Marc Galanter & Thomas Palay, *The Many Futures of the Big Law Firm*, 45 S.C. L. REV. 905, 916–17 (1994) (describing the characteristics that make a law firm a boutique firm).

firms who have hired away lawyers from that law firm.<sup>27</sup> Yet other corporations spread their legal work among a number of firms in order to create competition and control costs.<sup>28</sup> Still others rely upon different law firms around the world to better serve their interests in a global economy governed by the laws of many different legal systems.<sup>29</sup> A corporation that uses many different law firms for its legal work obtains the additional benefit that those firms often cannot represent other corporate clients with adverse interests against it without first obtaining its informed consent.<sup>30</sup> Some corporate clients, however, centralize legal services in a few law firms so that they can more precisely control costs through economies of scale.<sup>31</sup>

Third, years ago, many corporate clients started to use standard business budgeting and cost controls to more precisely limit outside legal costs.<sup>32</sup> These clients were among the first to pull support services away from law firms to control costs and to demand limited or no lawyer markups on related services such as delivery services, Westlaw and Lexis, and office supplies and services.<sup>33</sup> Many corporate clients “insource” discovery compliance to control costs and carefully scrutinize law firm expenses charged in a representation.<sup>34</sup> Additionally, these clients have also sought to limit high hourly fees across all representations with efforts to create innovative billing practices.<sup>35</sup> Corporations have relied upon technology to

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27. See Gilson & Mnookin, *supra* note 24, at 385 (stating that clients often focus on individual lawyers, not firms). Professors Galanter and Henderson examine the era of lawyer movement as an emerging equilibrium of lawyer movement. See Galanter & Henderson, *supra* note 7, at 899–900.

28. See GALANTER & PALAY, *supra* note 14, at 50 (describing efforts of corporate clients to control legal costs of outside law firms).

29. See Laurel S. Terry, *The Legal World Is Flat: Globalization and Its Effect on Lawyers Practicing in Non-global Law Firms*, 28 NW. J. INT’L L. & BUS. 527 (2008).

30. See MODEL RULES OF PROF’L CONDUCT R. 1.7 cmt. 6 (2013) (“Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client’s informed consent.”); see also Thomas D. Morgan, *Suing a Current Client*, 9 GEO. J. LEGAL ETHICS 1157, 1163 (1996) (arguing against a broad rule prohibiting all adversity against current clients).

31. Wilkins, *supra* note 24, at 2085–89 (describing how corporate clients have reversed the trend of using many outside law firms to using a limited, smaller number, referred to as a convergence trend, because of the advantages of higher-quality service).

32. See CORPORATE COUNSEL SECTION OF THE N.Y. STATE BAR ASS’N, REPORT ON PLANNING AND BUDGETING OF LEGAL SERVICES FOR CORPORATIONS BY OUTSIDE COUNSEL, reprinted in 18 AM. J. TRIAL ADVOC. 429, 429–30 (1994); Martha A. Mazzone, *Controlling Legal Costs: A Primer for In-House and Outside Counsel*, BOS. B.J., May–June 2008, at 12; see also Wilkins, *supra* note 24, at 2080 (noting as legal costs began to rise, law firms took measures to control costs).

33. See Susan Beck & Michael Orey, *Skaddenomics*, AM. LAW., Sept. 1991, at 3, 93 (discussing the practice of making cost centers profit makers in law firms).

34. See Christopher Danzig, *Inside Job*, INSIDE COUNS. (Nov. 1, 2009), <http://insidecounsel.com/2009/11/01/inside-job>.

35. See Richard C. Reed, *New Billing Methods Improve Efficiency and Effectiveness More Than Cost Cutting*, 3 CORP. LEGAL TIMES 43 (1993); see, e.g., William Kummel, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation, and Ownership in Corporate Legal Services*, 1996 COLUM. BUS. L. REV. 379.

modernize their own business models, thus they are receptive to technological advances that lead to innovation in legal services.<sup>36</sup>

Fourth, the decline in the use of trials and appeals in litigation disputes due to settlements at earlier stages, as well as the growth in the use of various alternative dispute resolution techniques, has changed clients' behavior with respect to how they use legal services provided by Big Law firms.<sup>37</sup> Some corporate clients have relied more heavily upon alternative dispute resolution techniques, such as mediation and arbitration, to address legal issues that were handled at one time by outside law firms in the courts.<sup>38</sup> The costs and risks of litigation have led corporations to consider these and other means to control the costs of legal services in a more systematic way.<sup>39</sup>

Fifth, corporate clients have reduced their reliance upon long memoranda that cost tens of thousands of dollars because they are written by teams of associates and reviewed by partners.<sup>40</sup> Big Law clients do not mind paying premium rates for the advice and counsel of leading partners who have decades of experience underlying their assessments of legal problems.<sup>41</sup> But they are increasingly unwilling to hire large law firms to produce overly long legal documents prepared by inexperienced, young associate lawyers.<sup>42</sup>

Finally, despite the American Bar Association's (ABA) efforts to resist the multidisciplinary practice of law movement in the United States, corporate clients have increasingly relied upon the nonlawyer-controlled

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36. See generally RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (2008). In 2008, the Association of Corporate Counsel implemented a "Value Challenge" initiative that asks member corporate in-house departments to measure the cost of legal services and to compare the costs to the value of those services to the client. See Susan Saltonstall Duncan, *Client Services and Value Innovations*, L. PRAC., Nov.–Dec. 2012, at 30, 31. This effort noted the importance of technology to the efficient delivery of legal services. *Id.* at 35; see also Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239, 247 (2000) (discussing use of software to track law firm efficiency).

37. See Patricia Lee Refo, *The Vanishing Trial*, LITIGATION, Winter 2004, at 1, 3–4.

38. The most prominent example of a shift from litigation to arbitration has taken place in the international transactions arena. For a symposium examining the resolution of international commercial disputes through arbitration and mediation, see Symposium, *International Commercial Dispute Resolution*, 15 B.U. INT'L L.J. 175 (1997).

39. See John Lande, *The Movement Toward Early Case Handling in Courts and Private Dispute Resolution*, 24 OHIO ST. J. ON DISP. RESOL. 81, 105 (2008) (examining corporate use of alternative dispute resolution).

40. These long memoranda should be distinguished from opinion letters that provide greater reliability for the client's decision in a matter. The practice of preparing opinion letters is a lucrative, but more risky, area of practice that arises in mortgage lending, sales transactions, tax planning, and securities practice.

41. See generally Mark F. Palma, *Responding to the Revolution in Law Firm Service Delivery and Growth Strategies*, in STRATEGIES FOR GROWING A LAW FIRM 47 (2014 ed. 2013) (noting that the client may be willing to pay a senior lawyer with expertise to examine certain aspects of a transaction, but not associates). Corporate clients are willing to hire elite lawyers for high-risk legal work. See MORGAN, *supra* note 14, at 119.

42. See Jefferey Ogden Katz, *My Legal Bill Is Too High! Alternatives?*, INSIDE COUNS. (Mar. 17, 2014), <http://www.insidecounsel.com/2014/03/17/inside-my-legal-bill-is-too-high-alternatives> (noting resistance to duplication of effort and by-the-hour billing by associates).

delivery of certain types of legal services.<sup>43</sup> Most Big Law clients use large accounting firms that have aggressively marketed their tax and business-related services to corporations.<sup>44</sup> Moreover, multinational corporations have had access to multidisciplinary practice firms (MDP) in Europe and elsewhere.<sup>45</sup> In addition, for many years, management consulting firms, investment brokerage firms, banks, and other entities have delivered legal services and products in connection with their nonlegal businesses.<sup>46</sup> Many of these developments involve business transactions; however, the use of e-discovery by clients and lawyers in litigation played an important role in the inclusion of nonlawyer entities in the litigation practice area.<sup>47</sup> Such practices have continued to grow despite the ABA position on the ethical rules regarding nonlawyer involvement in the delivery of legal services.<sup>48</sup>

Corporate clients continue to use Big Law firms; however, they are using them in different ways than in the past.<sup>49</sup> Complex matters that require high degrees of specialized knowledge continue to be performed by large law firms or boutique law firms. Representations that involve high-risk stakes or resolutions that potentially implicate management tenure often require the involvement of high-profile outside counsel. Traditional large law firms also handle cases that require heavy staffing because of their magnitude or time pressure.

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43. See generally Herbert M. Kritzer, *The Future Role of "Law Workers": Rethinking the Forms of Legal Practice and the Scope of Legal Education*, 44 ARIZ. L. REV. 917 (2002) (exploring the increased role of nonlawyer law workers to act as legal information engineers, legal consultants, and legal processors to perform a range of services related to the clients' legal needs).

44. See, e.g., Michael Rapoport, *E&Y Settles for \$123 Million*, WALL. ST. J., Mar. 2, 2013, at B2 (noting the aggressive marketing of tax shelters to corporate and individual clients).

45. See Dzienkowski & Peroni, *supra* note 1, at 101–17 (examining MDP practice in the United States and around the world); Memorandum from the ABA Comm'n on Ethics 20/20 Working Grp. on Alt. Bus. Structures to the ABA Entities, Courts, Bar Ass'ns (State, Local, Specialty & International), Law Sch. & Individuals 7–16 (April 5, 2011), available at [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/abs\\_issues\\_paper.athcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.athcheckdam.pdf) (examining alternative business structures abroad).

46. Many of these entities employ in-house lawyers to offer their clients legal services. In some cases, these services include the preparation of documents or forms, and, in other cases, they involve the delivery of advice. These entities have continued to operate with little or no scrutiny from the bar authorities.

47. See Jen Wightman, *A Quick Pulse on the State of Ediscovery*, EDISCOVERY BLOG (Sept. 28, 2013), <http://www.theediscoveryblog.com/2013/09/28/a-quick-pulse-on-the-state-of-ediscovery/> (providing projections for the growth of e-discovery from 2010 to 2017). This, in turn, created a legal process-outsourcing industry.

48. See Thomas D. Morgan, *The Rise of Institutional Law Practice*, 40 HOFSTRA L. REV. 1005 (2012); *Is Practice of Law Already Deregulated?*, 3 GEEKS & L. BLOG (Sept. 5, 2011, 4:32 PM), <http://www.geeklawblog.com/2011/09/is-practice-of-law-already-deregulated.html>.

49. See generally Burk & McGowan, *supra* note 26.



## II. INNOVATION IN DELIVERY OF LEGAL SERVICES TO TRADITIONAL CLIENTS OF BIG LAW FIRMS

The changes in Big Law practice have brought many reforms from within large law firms and from those who believe other alternatives exist to provide more effective and efficient legal services to corporate clients. This Part focuses upon six different entities created expressly to offer corporate clients an alternative to Big Law practice. This Part also examines the following important structural aspects common to each of these entities: (1) central features in the delivery of legal services to clients, (2) reducing law firm overhead and costs, (3) innovation in billing practices, (4) changes in lawyer compensation and tenure, and (5) the perspectives from lawyers working in alternative firms.

### A. *Development of New Types of Firms To Serve Big Law Clients*

This section introduces the basic business models of Clearspire, VLP Law Group, Axiom Law, VistaLaw, LegalForce, and Paragon. Each of these entities provides lawyers and legal services to corporate clients who traditionally relied upon large law firms for these services.<sup>50</sup>

#### 1. Clearspire

Clearspire is a two-entity legal service provider that is organized based on the concepts of a multidisciplinary practice firm.<sup>51</sup> One entity is a law firm, owned and managed by lawyers.<sup>52</sup> The second entity is a business management consulting firm that supports the law firm and its clients with technology and business advice.<sup>53</sup> Clearspire's goal is to offer legal services (and related technological and business advice) to clients in the most efficient manner possible consistent with maintaining a traditional attorney-client relationship and delivering high-quality work.<sup>54</sup> The firm practice areas mirror what one would find at a traditional large law firm.<sup>55</sup> In other words, Clearspire is a full-service firm that offers legal services in areas such as litigation, regulation, corporate compliance and deals, and bankruptcy. It boasts experience in the industries of banking, energy, healthcare, insurance, real estate, and telecommunications.<sup>56</sup>

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50. This discussion will not examine companies that provide legal forms to clients, such as LegalZoom or referral entities that send clients to affiliated law firms. Alternative legal service providers that focus upon legal-forms practice primarily serve individual clients or small businesses. The referral practice area is not addressed because it is a different model for serving clients.

51. See *The 100-Year-Old Law Firm Model Has Been Reengineered. Finally and Fully*, CLEARSPIRE, <http://www.clearspire.com/principle> (last visited Apr. 26, 2014).

52. See *id.* The entity is Clearspire Law Company, PLLC.

53. See *id.* The entity is Clearspire Business Company, PLLC.

54. See *id.*

55. See *Practice Areas*, CLEARSPIRE, <http://www.clearspire.com/practice-areas> (last visited Apr. 26, 2014).

56. See *id.*

Billed as an alternative to Big Law, Clearspire began with thirty to forty lawyers based primarily in the Washington, D.C., area, and in 2013 decided to expand to 100 lawyers with offices in New York, Chicago, San Francisco, and Los Angeles.<sup>57</sup> Clearspire has traditional law firm office space with full support staff for client interactions.<sup>58</sup> However, it also provides remote attorney workspaces where lawyers join staff in purely function-efficient offices designed to minimize overhead expenditures.<sup>59</sup> Depending upon client needs and attorney desires, legal services can be performed at the headquarters or regional offices, remote attorney workspaces, or offices established by individual lawyers.<sup>60</sup> The factors that determine where the Clearspire lawyers work include practice area, individual lawyer preference, and client demands.<sup>61</sup>

Clearspire embraces the use of technology to make the delivery of legal services more efficient.<sup>62</sup> Central to this effort is the creation of Coral, a web-based community for Clearspire employees.<sup>63</sup> Coral is an intranet hub that essentially places all of the firm's resources at the disposal of every employee.<sup>64</sup> Teams of lawyers and nonlawyers collaborate, provide feedback, analyze and supervise work, and track the progress of a client

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57. See Rachel M. Zahorsky, *Virtual Law Firm Plans To Multiply Like Magic*, A.B.A. J. (Apr. 1, 2013, 2:00 AM), [http://www.abajournal.com/magazine/article/virtual\\_law\\_firm\\_plans\\_to\\_multiply\\_like\\_magic](http://www.abajournal.com/magazine/article/virtual_law_firm_plans_to_multiply_like_magic); see also Press Release, Clearspire, New-Model Law Firm Clearspire Embarks on Nationwide Expansion (Feb. 7, 2013), available at <http://www.clearspire.com/sites/default/files/Clearspire%20Press%20Release.Nationwide%20expansion.2.7.13.PDF>.

58. See *The 21st Century Workplace*, CLEARSPIRE, <http://www.clearspire.com/21st-century-workplace> (last visited Apr. 16, 2014).

59. See *Explore More Slideshows: An Expanding Network*, CLEARSPIRE, <http://www.clearspire.com/explore-more/Built%20to%20Scale?width=940&height=590> (last visited Apr. 26, 2014).

60. See *id.*; Yvonne Wakefield, *Winds of Change Blowing Strongly*, BUS. L. & TAX REV., July 8, 2013, available at <http://www.marketiqonline.co.za/uploads/Caveat%20Legal/CAVEAT%20LEGAL%20-%202008.07.2013%20%281%29.jpeg>. One commentator notes, "About 99% of its attorneys work from home . . ." Rachael King, *Designing Offices with Mobile Employees in Mind*, WALL ST. J. CIO J. (Jan. 9, 2013, 8:05 PM), <http://blogs.wsj.com/cio/2013/01/09/designing-offices-with-mobile-employees-in-mind>.

61. Clearspire's work is assigned by a managing regional director who coordinates the work through a "practice group head, a partner leading the matter, and the senior associate(s) assigned to the matter . . ." CLEARSPIRE, A DIFFERENT KIND OF LAW FIRM (n.d.), available at [http://www.clearspire.com/sites/default/files/DifferentKindofFirm\\_whitepaper\\_0.pdf](http://www.clearspire.com/sites/default/files/DifferentKindofFirm_whitepaper_0.pdf). Lawyers make their schedule availability known to everyone through a common calendar and the available time is monitored through a workload gauge. Individual lawyers determine their own work-life balance and make their available time known to the firm, and the managers efficiently assign cases according to client demand and area of practice.

62. See Press Release, *supra* note 57.

63. For a detailed background on Coral and its development, see Steve Rosenbush, *How Clearspire Used IT To Reinvent the Law Firm*, WALL ST. J. CIO J. (Apr. 9, 2012, 4:56 PM), <http://blogs.wsj.com/cio/2012/04/09/how-clearspire-used-it-to-reinvent-the-law-firm>; Roy Strom, *Technology Transforms Pockets of the Legal World*, CHI. LAW. (Apr. 2012), <http://www.chicagolawyeromagazine.com/Archives/2012/04/Legal-Technology.aspx>.

64. See *A Community of Practice*, CLEARSPIRE, <http://www.clearspire.com/community-practice> (last visited Apr. 26, 2014). One author referred to the technological services as a third entity of Clearspire. See Maya Steinitz, *How Much Is That Lawsuit in the Window? Pricing Legal Claims*, 66 VAND. L. REV. 1889, 1891 (2013).

matter.<sup>65</sup> Coral gives Clearspire the ability to use big data analytics to provide a more efficient delivery of legal services.<sup>66</sup> A project manager analyzes a matter or representation and the attorneys are given a dashboard containing links to prior similar firm work, Lexis and Westlaw searches, and other public and nonpublic information to use in representing the client.<sup>67</sup> The Coral system enables the firm to track and monitor all client matters for progress, benchmarks, and budgeted and actual costs. Clients are given limited access to this information so they can provide feedback and measure Clearspire attorney performance.<sup>68</sup> Ultimately, Clearspire embraces a philosophy of transparency and interactivity to give clients an unparalleled level of quality and efficiency.<sup>69</sup> By giving clients access to the work performed on their case,<sup>70</sup> clients can provide immediate feedback on a representation and also assess the value that Clearspire is providing them in the representation.

Clearspire has embraced a completely different economic model to deliver legal services to its clients.<sup>71</sup> First, Clearspire favors a fee system whereby clients pay fixed fees for services that are established at the outset of a representation.<sup>72</sup> The firm believes that it has enough information about legal problems and how they can be addressed to provide their clients with fixed-fee billing.<sup>73</sup> Practice group leaders use Clearspire database information and Coral resources to identify potential attorneys for a matter and create detailed budgets, which are then submitted to clients for input and approval.<sup>74</sup> The firm believes that billable hourly fees are based upon an outdated, century-old system that is no longer viable or justifiable in

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65. See *A Community of Practice*, *supra* note 64.

66. See *Explore More Slideshows: Homepage*, CLEARSPIRE, <http://www.clearspire.com/explore-more/360%20Work%20Environment?width=780&height=480> (last visited Apr. 26, 2014). The use of technology to analyze legal problems and propose solutions presents opportunities for significant innovation in the way legal services are delivered to clients. See John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3045–46 (2014).

67. See *Explore More Slideshows: Homepage*, *supra* note 66.

68. See *Explore More Slideshows: Communicate*, CLEARSPIRE, <http://www.clearspire.com/explore-more/Client%20Empowerment?width=780&height=400> (last visited Apr. 26, 2014).

69. See *id.* “Clearspire has a presumption of transparency with its clients; they can access procedural, substantive and billing information in real time and can repurpose it for whatever reason they want.” Email from Mark Cohen, Managing Partner, Clearspire, to author (Mar. 14, 2014, 9:34 AM) (on file with author).

70. Clients can see work once the Clearspire lawyers complete their drafts of memoranda and documents. Some work is not yet ready for client review and clients are not given access to this work. Email from Mark Cohen, *supra* note 70.

71. *The New Model*, CLEARSPIRE, <http://www.clearspire.com/new-model> (last visited Apr. 26, 2014).

72. *End of the Billable Hour*, CLEARSPIRE, <http://www.clearspire.com/end-billable-hour> (last visited Apr. 26, 2014); see also Lisa Nirell, *Re-imagining What a Law Firm Can Be: Scrapping Billable Hours for a More Client-Friendly B2B Service*, FAST COMPANY (Oct. 5, 2011, 1:05AM), <http://www.fastcompany.com/1784753/re-imagining-what-law-firm-can-be-scrapping-billable-hours-more-client-friendly-b2b-service>.

73. *End of the Billable Hour*, *supra* note 72.

74. *Id.*

today's economy.<sup>75</sup> However, Clearspire will accommodate client requests to bill at hourly rates. But before the work is performed, a Clearspire lawyer will "prepare detailed Statements of Work (SOW's) that detail who will perform the work, what they will do, when it will be delivered, what assumptions have been made (for example, a range of the number of depositions), and what the price will be."<sup>76</sup>

In order to maintain its cost structure, Clearspire does not have a partnership compensation system.<sup>77</sup> Most, if not all, lawyers are employees and compensated largely on a salary basis.<sup>78</sup> However, Clearspire does have some incentive elements in its compensation structure to reward lawyers for excellent performance and client satisfaction.<sup>79</sup>

Clearspire maintains highly centralized control over the delivery of its legal services. Client matters are analyzed for how to most efficiently achieve the client's objectives.<sup>80</sup> Business and nonlaw matters are often performed by the business entity. Legal work is performed by lawyers and the law firm. And, clients obtain the benefit of a multidisciplinary practice that is controlled by lawyers. The business entity provides support through the computer system and the other back-office business functions. In 2012, revenues increased by 85 percent and are reportedly in the seven-figure range.<sup>81</sup> Because this model is based in part upon business-to-business (B2B) principles, corporate clients that are accustomed to similar approaches throughout their service chain may welcome the delivery of legal services in such a manner.<sup>82</sup>

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75. *Id.*

76. Email from Mark Cohen, *supra* note 69.

77. See *A New Model Law Firm—A Closer Look at Clearspire*, PRISM LEGAL (Sept. 25, 2011), <http://prismlegal.com/a-new-model-law-firm-a-closer-look-at-clearspire-part-1-of-2/> [hereinafter *A New Model Law Firm*].

78. *Id.*

79. One commentator suggests that if a Clearspire employee completes the work more efficiently, the savings are divided equally between the employee, the client, and Clearspire. See *Alternative Law Firms Bargain Briefs: Technology Offers 50 Ways To Leave Your Lawyer*, ECONOMIST, Aug. 13, 2011, at 64 [hereinafter *Bargain Briefs*].

80. See David Hobbie, *Clearspire—A New Legal Business Model and a Leading Instance of Technology-Enabled Legal Collaboration*, ILTA KM (May 11, 2011), <http://km.iltanet.org/2011/05/11/clearspire-a-new-legal-business-model-and-a-leading-instance-of-technology-enabled-legal-collaboration> (examining how Clearspire uses "knowledge management" to deliver legal services to clients).

81. Reynolds Holding, *Breakingviews: Law Firms Face Real Disruption from Virtual Rival* (Jan. 24, 2013), <http://www.clearspire.com/sites/default/files/Thomson%20Reuters.Law%20Firms%20Face%20Real%20Disruption%20from%20Virtual%20Rival%20-%201.24.2013%20%282%29.PDF>.

82. See Nirell, *supra* note 72 (listing four B2B strategies used by Clearspire: "1. Align your proposals and engagements around a client initiative, not your deliverables and outputs. 2. Create services and deliverables that allow your client to re-use the content without re-engaging your firm. . . . 3. Identify the thought leaders in your industry and educate them on your value-based model. . . . 4. Look beyond your services offering to refine your value proposition.") For a more detailed explanation of the reasons underlying the success of Clearspire, see *A New Model Law Firm*, *supra* note 77.

## 2. VLP Law Group

VLP Law Group, an initialism for Virtual Law Partners, has a rich history in that Craig Johnson, the founder of Venture Law Group (VLG),<sup>83</sup> helped to design the business model underlying this Silicon Valley virtual law practice.<sup>84</sup> With the downturn in venture capital markets, Heller Erhman had acquired Craig Johnson's innovative VLG into their corporate acquisitions practice group; but the dissolution of Heller Erhman spurred several partners to create an innovative new law firm. VLP was founded in 2008, the same year that Heller Ehrman dissolved.<sup>85</sup> Catherine Chinn, a former VLG partner and the head of the business practice division at Heller, brought together several Silicon Valley lawyers to help create the new law firm, VLP.<sup>86</sup>

VLP was founded upon a virtual law practice model with only senior lawyers performing the legal work for sophisticated clients. It is "a scalable and scaling" virtual law firm where each partner provides his or her own workspace.<sup>87</sup> The structure of the firm has committees for firm management, recruiting, risk management, and marketing.<sup>88</sup> There is no compensation committee as the compensation is a fixed percentage of partner billings.<sup>89</sup> However, billing rates and fee types are established completely by individual partners and not the firm.<sup>90</sup> Some partners bill hourly rates and others bill fixed fees.<sup>91</sup> This practice is grounded in the assumption that the partner is in the best position to know what to charge the client.<sup>92</sup>

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83. D.M. Osborne, *When Is a Law Firm Not a Law Firm?*, INC. (May 1, 1998), <http://www.inc.com/magazine/19980501/927.html> (describing the operations of Venture Law Group). The Venture Law Group firm was the subject of a Harvard Business School study. See *Venture Law Group (A)*, HARV. BUS. REV., <http://hbr.org/product/Venture-Law-Group--A-/an/800065-PDF-ENG> (last visited Apr. 26, 2014).

84. Two of Johnson's former law partners brought him out of retirement to help brainstorm how technology could be used to create a new law firm environment conducive to elite lawyers and attractive to clients. *The Reality of a Virtual Law Firm: An Interview with David Goldenberg*, PEER TO PEER, June 2010, at 66, 68 [hereinafter *The Reality of a Virtual Law Firm*].

85. *Id.* at 68.

86. Craig Johnson passed away suddenly in October 2009 and many of his core group remained at VLP to carry on his vision of a new innovative law firm model. *Id.*

87. Some partners rent office space and others work out of their home. Most meetings take place at the client's location. See *Embrace the Model*, *supra* note 12, at 20.

88. See Interview by Broc Romanek with David Goldenberg, Founding Partner, Virtual Law Partners LLP (May 17, 2010), available at [http://www.thecorporatecounsel.net/nonMember/InsideTrack/2010/05\\_17\\_Goldenberg.htm](http://www.thecorporatecounsel.net/nonMember/InsideTrack/2010/05_17_Goldenberg.htm).

89. Originally, the firm took 15 percent of a lawyer's billings. See Debra Cassens Weiss, *At Virtual Law Firm, Lawyers Will Work at Home, Earn 85% of Billings*, A.B.A. J. (Jul. 16, 2008), [http://www.abajournal.com/news/article/at\\_virtual\\_law\\_firm\\_lawyers\\_will\\_work\\_at\\_home\\_earn\\_85\\_of\\_billings/](http://www.abajournal.com/news/article/at_virtual_law_firm_lawyers_will_work_at_home_earn_85_of_billings/). But, in an interview, David Goldenberg stated that the firm negotiates that percentage at the time a new lawyer joins the firm. See Interview by Broc Romanek with David Goldenberg, *supra* note 88.

90. See *The Reality of a Virtual Law Firm*, *supra* note 84, at 70.

91. See Interview by Broc Romanek with David Goldenberg, *supra* note 88.

92. *Id.*

VLP has forty partners practicing in thirteen areas ranging from structuring deals (venture capital, mergers, real estate, tax, and finance) to regulatory compliance to intellectual property.<sup>93</sup> The firm lists energy and natural resources as one of its industry practice areas and Asia as its area of international expertise.<sup>94</sup> VLP seems to have organized its scope of practice around the expertise of its practice areas. As it adds lawyers, it will bring on additional practice areas. VLP expressly excluded practice areas that do not lend themselves to the virtual law firm model.<sup>95</sup> Most practice areas include two to twenty-six partners who work in the area and can provide a team approach to delivering legal services.<sup>96</sup> VLP uses highly trained paralegals to assist lawyers with the work who can similarly develop expertise within an area of practice.<sup>97</sup> The firm website does not address how it staffs emergency work or large projects; however, one would expect that VLP works closely with in-house legal counsel departments and other more traditional law firms. The VLP model seems to be an extension of the idea that clients seek the judgment of experienced lawyers and, if that judgment can be delivered by a small team of lawyers at reduced costs, the more mundane legal work can be outsourced to other law firms or legal service providers.

VLP embraces the virtual law office model as a platform for improving the lawyers' quality of life and reducing the impact upon the environment.<sup>98</sup> Working at a remote location has the potential to bring the lawyer closer to the client and thereby improve the attorney-client relationship.<sup>99</sup> Clients are also likely to appreciate the significantly lower fees because of the decentralized work environment. Obviously, a virtual law office gives attorneys much more control over their schedule and work, thereby potentially increasing job satisfaction. Lawyers in virtual law offices are also likely to rely upon digital documents and files and thus reduce the impact upon the environment.<sup>100</sup> VLP's management believes that its structure offers a balance of excellent work to lawyers who like to manage their own schedules—a life difficult to replicate in other traditional practice areas.<sup>101</sup>

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93. *Practices*, VLP, <http://www.virtuallawpartners.com/PracticeAreas.aspx> (last visited Apr. 26, 2014).

94. *Id.*

95. *The Reality of a Virtual Law Firm*, *supra* note 84, at 66, 68.

96. A review of the website's practice group areas lists between two and twenty-six lawyers available to work on client matters. *See Practices*, *supra* note 93.

97. *See Embrace the Model*, *supra* note 12 (referring to VLP's paralegals as "legal specialists").

98. *See* David Goldenberg & Lisa Stone, *Virtual Law Offices*, *RECORDER*, Mar. 4, 2013, at 16.

99. *Id.*

100. *Id.*

101. Many of these alternative legal service providers are alternatives to Big Law for lawyers seeking a better work-life balance. However, many believe that lawyers who work for corporate clients in-house do not enjoy their practice. Eli Wald has argued that lawyers who work inside of corporations often do not enjoy the benefits that they believed in-house life would offer. *See generally* Wald, *supra* note 22.

In 2008, when VLP began, it earned \$1.5 million in gross revenues. By 2013, gross revenues increased to \$12 million.<sup>102</sup> The client base and billings have increased during the corporate economic recession as clients seek to control legal costs. The goal of the firm is to follow a growth pattern that will lead to the doubling of revenues within the next five years.<sup>103</sup> VLP's current client base includes Stanford University, Silicon Valley Bank, and some of the biggest retailers in the world.<sup>104</sup> Its recent hiring of Michael Whitener, in Washington, D.C., formerly a major figure at Clearspire and VistaLaw, demonstrates its commitment to additional innovation in years to come.<sup>105</sup>

### 3. Axiom Law

Axiom Law is a Delaware corporation (i.e., subject to the double-tax system for corporate earnings of Subchapter C of the Internal Revenue code),<sup>106</sup> that is designed to transform the legal services industry for corporate clients.<sup>107</sup> Axiom was formed as a nonlaw firm to provide advice and solutions to the world's largest corporations regarding their complex legal service needs. Axiom has developed ongoing relationships with almost one half of the Fortune 100 that focus on improving the quality and efficiency of their legal service needs.<sup>108</sup> It prides itself as "the world's largest and fastest growing non-traditional provider of legal services and the only sophisticated end-to-end (as opposed to point solution) provider of corporate legal services that is not a traditional law firm."<sup>109</sup> Axiom is similar to a management consulting firm that provides detailed analyses and proposals to clients about how they should manage their legal work, but it goes further by offering insourcing and outsourcing options as part of a complete solution for the client.

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102. See Eric Young, *Virtual—Before Virtual Was Cool*, S.F. BUS. TIMES (Mar. 22, 2013, 3:00 AM), <http://www.bizjournals.com/sanfrancisco/print-edition/2013/03/22/virtual---before-virtual-was-cool.html>.

103. Elizabeth Amon, *Virtual Law Firm Grows Exponentially*, SAN DIEGO SOURCE: DAILY TRANSCRIPT (May 3, 2013), <http://www.sddt.com/reports/article.cfm?RID=989&SourceCode=20130503csrc&t=Virtual+law+firm+grows+exponentially#.UxDggV5si8E>.

104. Young, *supra* note 102.

105. See Aria Munro, *VLP Law Group LLP Welcomes Data Privacy Expert Michael Whitener, Who Joins As a Partner Based in Washington, DC*, ENEWSCHANNELS (Apr. 2, 2013), [http://enewschannels.com/2013/04/02/enc18442\\_115454.php/vlp-law-group-llp-welcomes-data-privacy-expert-michael-whitener-who-joins-as-a-partner-based-in-washington-dc/](http://enewschannels.com/2013/04/02/enc18442_115454.php/vlp-law-group-llp-welcomes-data-privacy-expert-michael-whitener-who-joins-as-a-partner-based-in-washington-dc/).

106. I.R.C. §§ 301–385 (2012).

107. Axiom Law says it is a "modern interpretation of a law firm" but it expressly states that it is not a law firm. It is not even formed as a law firm in countries that would permit this law firm structure. Its website clearly states "Axiom is not a law firm and does not provide legal representation or advice to clients. Axiom attorneys are independent and do not constitute a law firm among themselves." *Credits*, AXIOM, <http://www.axiomlaw.com/credits-and-disclaimer> (last visited Apr. 26, 2014).

108. Axiom Briefing Document 1 (n.d.) (unpublished manuscript) (on file with *Fordham Law Review*); Email from Liana M. Douillet Guzmán, Dir. of Marketing, Axiom Law, to author (Apr. 17, 2014 3:51 PM) (on file with *Fordham Law Review*).

109. *Id.*

Axiom Law offers its corporate clients several different types of insourcing services to address their specific legal service needs.<sup>110</sup> Axiom Law can assemble a team of lawyers and nonlawyers who are Axiom employees and insource them to the corporate client under a secondment arrangement.<sup>111</sup> This arrangement can send lawyers to a corporation for a project or for an agreed-upon time period.<sup>112</sup> As a second alternative, the lawyers can work at a remote site such as another law firm under parameters established by Axiom Law or the corporate client.<sup>113</sup> As a third alternative, the lawyers can work at Axiom Law, which in turn means working out of their homes on an intranet that Axiom Law has created.<sup>114</sup> Examples of insourcing include time-pressured document discovery requests that would normally cost a client \$450 per hour; Axiom Law lawyers can complete such requests at a fee of \$150 per hour.<sup>115</sup>

Axiom Law also offers outsourcing services to corporate clients that “need efficiencies across bigger pieces of work.”<sup>116</sup> When a corporation must staff a department to draft or negotiate hundreds or thousands of form contracts, or prepare a compliance program in a part of their company, Axiom Law “sets up” a model to process such projects efficiently by relying upon technology, management consultants, and lawyers,<sup>117</sup> and then they “deliver” a team in an outsourced, managed service model to the customer.<sup>118</sup> That outsourced team will have many levels of professionals,

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110. *Insourcing of Secondees*, AXIOM, <http://www.axiomlaw.com/what-we-do/insourcing> (last visited Apr. 26, 2014). Axiom is not an employment agency that provides temporary services to clients. See Email from Liana M. Douillet Guzmán, *supra* note 108. It does not employ lawyers on a contract or temporary basis. *Id.* The insourcing services are provided as part of a client solution and often used as part of the services that Axiom provides to corporations. Thus, it offers more than pure secondment as its core business.

111. Secondment occurs when a law firm sends one or more lawyer or nonlawyer employees to a client for a period of time. See Ass’n of the Bar of N.Y.C. Comm. on Prof’l and Judicial Ethics, Formal Op. 2007-2 (2007) (examining secondment of lawyers). Axiom Law states that it is not a high-end temp firm because of the length of the relationships and the benefits offered to their employees. But in Singapore, they are registered as an employment agency. See *Singapore Office*, AXIOM, <http://www.axiomlaw.com/contact-us/singapore> (last visited Apr. 26, 2014) (noting that the Singapore office is an employment agency).

112. *Insourcing of Secondees*, *supra* note 110.

113. *Id.*

114. *Id.*

115. See *Crunch Time*, AXIOM, <http://www.axiomlaw.com/case-studies/crunch-time> (last visited Apr. 26, 2014) (detailing a case study of unbundling).

116. *Outsourcing of Managed Functions*, AXIOM, <http://www.axiomlaw.com/what-we-do/outsourcing> (last visited Apr. 26, 2014). Axiom is more than a Legal Process Outsource (LPO) provider in that it does not simply replicate legal support functions at lower costs. It adds value by making those functions more efficient and of a higher quality. See Email from Liana M. Douillet Guzmán, *supra* note 108. Axiom also does not typically offer outsourcing of routine or basic work that traditional LPOs perform. Instead it focuses upon outsourcing of complex and sophisticated work that can benefit from the value that it adds to the work. *Id.* Such value often comes from the business professionals that Axiom employs to analyze the best way to address a client’s legal problems.

117. Axiom Law’s website lists “Diagnostic and Solution Design Expertise, Workflow Management Methodologies, Legal and Operational Leadership, and Global Delivery Infrastructure” as functions used in the set-up of an outsourced assignment. *Id.*

118. *Id.* (follow hyperlink “Diagnostic and Solution Design Expertise”).



lawyers, and nonlawyers, but ultimately the general counsel of the corporation or a team, partner-level lawyer will end up supervising the work. Outsourced services include “complex legal processes like commercial contracts, derivatives agreements and compliance activities.”<sup>119</sup> These services are offered globally with the detail needed to process routine transactions and compliance across different legal systems.<sup>120</sup> Essentially, Axiom Law helps corporate clients efficiently process functions that involve law or regulatory compliance with a model designed to minimize cost and ensure quality output.

These three types of services have been called the “managed services” practice of law.<sup>121</sup> Axiom examines carefully a legal matter and creates an efficient workflow to provide the highest quality of work that is required in the most efficient manner. This carefully balances legal risk with cost and often involves the client in the design of the workflow to best serve the client’s needs. Axiom has hired many “systems engineers, information technologists, and project managers” to help the team design the best way to represent the client’s legal interests.<sup>122</sup> These professionals combine their skills with lawyers to deliver high-quality legal work from end to end at a fraction of the costs of large law firms.

According to an interview on Above the Law, Axiom Law has over 1,000 employees, of which 550 are lawyers, and has \$150 million in gross revenue.<sup>123</sup> It was founded in 2000 and has been profitable since 2003. But the current structure began to be implemented in 2007. In February 2013, it received \$28 million in funding in a private placement. And, some claim that if Axiom Law was a law firm, it would be listed on the AmLaw 100 law firms.<sup>124</sup> When corporate clients seek to trim their legal budgets,<sup>125</sup> they often turn to Axiom Law for sophisticated advice on how to best staff their legal needs.<sup>126</sup>

119. *Id.*

120. See *Embrace the Model*, *supra* note 12, at 2–3.

121. Bill Henderson, *Is Axiom the Bellwether for Disruption in the Legal Industry?*, LEGAL WHITEBOARD (Nov. 10, 2013), <http://lawprofessors.typepad.com/legalwhiteboard/2013/11/is-axiom-the-bellwether-for-disruption-in-the-legal-industry-look-what-is-happening-in-houston.html>.

122. *Id.*

123. Joe Patrice, *Axiom’s Place in the New Legal Landscape*, ABOVE L. (July 18, 2013, 4:32 PM), <http://abovethelaw.com/2013/07/axioms-place-in-the-new-legal-landscape>. Axiom has offices in Atlanta, Boston, Chicago, Houston, Hong Kong, London, Los Angeles, Minneapolis, New York, San Francisco, Singapore, Washington, D.C. See Email from Liana M. Douillet Guzmán, *supra* note 108.

124. Charles Christian, *Comment: Law Firms Think They Can’t Be Substituted. New Entrants Are Delighted!*, LEGALIT INSIDER (July 31, 2013, 3:25 PM), <http://www.legaltechnology.com/latest-news/comment-law-firms-think-they-cant-be-substituted-new-entrants-are-delighted/>.

125. Axiom Law’s clients tend to be Fortune 500 companies. See *Axiom Law Is Not an LPO. But It Is One of the Most Important Companies in the Legal Services Industry*, DISRUPTIVE LEGAL INNOVATIONS (July 19, 2013), <http://disruptivelegal.wordpress.com/2013/07/19/axiom-law-is-not-an-lpo-but-it-is-one-of-the-most-important-companies-in-the-legal-services-industry/> [hereinafter *Axiom Law Is Not an LPO*].

126. *Bargain Briefs*, *supra* note 79, at 64.

#### 4. VistaLaw

VistaLaw is a global network of law firms located in London, Paris, Washington, D.C., and Madrid, with correspondence relationships in eight other countries that offers “legal support and advice” to corporations and law firms.<sup>127</sup> VistaLaw’s employees are in-house and outside corporate lawyers who are available on a project basis at fees that are substantially below those of global law firms. Their competitive model includes innovative billing through low overhead and no entry-level associates. VistaLaw also has a relationship with a “legal services firm” to provide litigation and compliance support throughout the world at a cost below traditional law firm fees.

VistaLaw is primarily geared to corporate clients with small or no general counsel offices that seek representation in foreign markets. The company boasts extensive experience in foreign markets and with foreign lawyers and offers high-quality services when needs may fluctuate or be uncertain.<sup>128</sup> The VistaLaw lawyers can work in the corporate offices or remotely and bill clients on hourly, daily, or project bases. Unlike the other new law structures, VistaLaw does not appear to use technology or nonlawyer outsourcing as a selling point—instead, it offers corporate clients the kind of legal judgment that they would expect from a senior corporate lawyer. VistaLaw does highlight two functions: virtual general counsel support and lawyer secondment services to help corporate clients deal with vacancies in their general counsel offices and temporary increases in workload.<sup>129</sup>

VistaLaw includes on its website the types of corporate matters that it routinely handles for its clients.<sup>130</sup> Many of these services relate to compliance in different legal areas such as anticorruption laws, export and import controls, intellectual property compliance, and lobbying and foreign agent regulation.<sup>131</sup> Other services relate to internal corporate compliance and reporting under the corporate and securities laws.<sup>132</sup> VistaLaw also provides legal services and support for transactions including international mergers and acquisitions, structured finance as development or investment transactions, and involvement in financial products markets.<sup>133</sup>

VistaLaw is a founding member of the General Counsel Services Alliance, a group of law firms that provides legal services to general

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127. See VISTALAW, [www.vistalaw.com](http://www.vistalaw.com) (last visited Apr. 26, 2014).

128. See VISTALAW, AN INNOVATIVE LEGAL SUPPORT ALTERNATIVE FOR YOUR GLOBAL BUSINESS 3 (2008), available at [http://www.vistalaw.com/i/VistaLaw\\_Brochure\\_\(Sept\\_2008\\_ed\).pdf](http://www.vistalaw.com/i/VistaLaw_Brochure_(Sept_2008_ed).pdf) (listing representative clients); see also *Our Clients*, VISTALAW, <http://www.vistalaw.com/clients.html> (last visited Apr. 26, 2014) (providing a client list).

129. See VISTALAW, *supra* note 128.

130. *Our Services*, VISTALAW, <http://www.vistalaw.com/services.html> (last visited Apr. 26, 2014).

131. *Id.*

132. *Id.*

133. *Id.*

counsel offices and to corporations without a general counsel.<sup>134</sup> VistaLaw is the only international legal organization in that alliance. The other law firms are based in the United States and specialize in providing managed legal services to corporate clients.

In the end, VistaLaw is not so dissimilar from an alliance of law firms that essentially agree to integrate the delivery of their services.<sup>135</sup> It differs from the alliance by offering to provide general counsel services for short time periods or by placing experienced lawyers within their corporate client.

## 5. LegalForce

In 2009, Raj Abhyanker launched Trademarkia, a website that made it easy for users to search existing trademarks and corporate registrations on an innovative website for free. Trademarkia took publicly available documents and developed a sophisticated search engine for words and pictures and marks that gave the consumers access to protected trademarks.<sup>136</sup> This website has become a top-five legal website in the world, with nearly 2 million page views per month.<sup>137</sup> Users are given an option of using this Trademarkia portal to hire a law firm, Raj Abhyanker, P.C., that will represent them in filing the application with the appropriate authorities. The website states that the law firm runs a conflict-of-interest check to protect the interests of clients using this portal.<sup>138</sup> In 2010, Trademarkia filed 4,000 trademark applications and this increased to 12,000 in 2012.<sup>139</sup> Applications filed by Trademarkia are expected to exceed 15,000, more applications than any other law firm.<sup>140</sup> Gross revenues are expected to exceed \$6 million and net revenues \$1 million.<sup>141</sup>

In 2012, Raj Abhyanker created LegalForce RAPC Worldwide as a sister company to Trademarkia in order to offer a broader array of services related to intellectual property. LegalForce is a group of sixty lawyers, based out

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134. See *Mission Statement*, GEN. COUNS. SERVICES ALLIANCE, [www.gcservicesalliance.com](http://www.gcservicesalliance.com) (last visited Apr. 26, 2014).

135. It differs from a pure alliance in that VistaLaw views itself as a corporate counsel for global business and, therefore, it will properly represent the client in its international endeavors. See VISTALAW, *supra* note 128, at 2.

136. See Richard Granat, *May the LegalForce Be With You!*, ELAWYERING BLOG (June 11, 2012), <http://www.elawyeringredux.com/2012/06/articles/law-startups/may-the-legalforce-be-with-you/>.

137. *What Is Trademarkia's Vision As a Company?*, LEGALFORCE, <http://www.trademarkia.com/faqs/What-is-Trademarkias-vision-as-a-company.aspx> (last visited Apr. 26, 2014).

138. See *Trademarkia.com, Trademarkia, Inc. Terms of Use*, LEGALFORCE, <http://www.trademarkia.com/about-trademarkia/terms-and-conditions.aspx> (last visited Apr. 26, 2014).

139. See Alice Truong, *LegalForce Revs Up \$10M Fund To Help Startups Build Patent Portfolios*, FAST COMPANY (July 24, 2013, 5:34 PM), <http://www.fastcompany.com/3014799/legalforce-revs-up-10m-fund-to-help-startups-build-up-patent-portfolios#5>.

140. See *id.*

141. See Stephanie Francis Ward, *How Patent Lawyer Raj Abhyanker Developed a \$8.5M Book of Business with Trademarkia*, A.B.A. J., (Sept. 24, 2013, 9:30 AM), [http://www.abajournal.com/legalrebels/article/2013\\_legal\\_rebel\\_profile\\_raj\\_abhyanker](http://www.abajournal.com/legalrebels/article/2013_legal_rebel_profile_raj_abhyanker).

of Palo Alto, California, but with offices in London, India, and China that boasts a client base of 23,000 and a ranking of the top trademark law firm in the world.<sup>142</sup> Essentially, LegalForce is building a law firm upon the success Abhyanker has had in the trademark area by offering current and former clients legal representation in the areas of patent and copyright law, real property law, employment and immigration law, and litigation.

In 2013, LegalForce opened a storefront in Palo Alto that combines legal services, books, and computer tablets in one place.<sup>143</sup> The LegalForce Bookflip offers the public an opportunity to see a lawyer without an appointment and receive legal services.<sup>144</sup> The basic fee is \$45 for 15 minutes. The web site also permits the users to contemporaneously chat with a lawyer (“Chat-torney” video, phone, or instant message), to form an attorney-client relationship, and to receive legal services. Raj Abhyanker has announced that he intends to franchise the storefront idea and legal cafes to lawyers in other states who want to become part of the LegalForce brand.

Also, in 2013, LegalForce announced the creation of a \$10 million venture fund in order to help clients in startup ventures with seed capital.<sup>145</sup> Although the details of this venture fund are sketchy, the company seems to be following a path similar to VLG<sup>146</sup> in becoming the lawyers and protectors of the intellectual property of the startups that this venture capital fund supports.<sup>147</sup>

Although LegalForce has been compared to Rocket Lawyer,<sup>148</sup> LawPivot,<sup>149</sup> and LegalZoom,<sup>150</sup> all forms-based nonlaw firms delivering quasi-legal services, there is a major difference.<sup>151</sup> LegalForce is a law

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142. *Id.*

143. Interestingly, the notion of opening a boutique storefront is contrary to the views of the alternative firms that are trying to reduce overhead. LegalForce may have a different marketing plan that is based upon raising their level of exposure to residents of the Silicon Valley and perhaps finding the next Steve Jobs and Steve Wozniak. Also, Trademarkia spent \$1 million in Google costs to become the top trademark site, so the storefront is providing access to potential clients at a far smaller cost. See Raj V. Abhyanker, *Stanford Law School Presentation—LegalForce & Trademarkia*, YOUTUBE (Apr. 13, 2012), <http://www.youtube.com/watch?v=wEy7yP9JRhw>.

144. See Liz Gannes, *Today's Errands: Pick Up Milk at the Grocery Store . . . and Then a Trademark at the Legal Store*, ALL THINGS D (Feb. 7, 2013, 7:00 AM), <http://allthingsd.com/20130207/todays-errands-pick-up-milk-at-the-grocery-store-and-then-a-trademark-at-the-legal-store/>. Although the stated purpose of the storefront is to make individuals comfortable with legal services bundled in a location with other products and services, one could view this Palo Alto location as seeking to attract the next Bill Gates or Steve Jobs early in their career.

145. See Truong, *supra* note 139.

146. See *supra* note 83 and accompanying text.

147. Because Venture Law Group's fortunes were tied to the dot-com venture capital industry, it failed to survive an economic decline in taking companies public and was eventually acquired by Heller Erhman.

148. ROCKETLAWYER, <http://www.rocketlawyer.com> (last visited Apr. 26, 2014).

149. LAWPIVOT, <http://www.lawpivot.com> (last visited Apr. 26, 2014).

150. LEGALZOOM, <http://www.legalzoom.com> (last visited Apr. 26, 2014).

151. See Nicel Jane Avellana, *Online Legal Startups Plans To Demystify and Make Law Less Expensive—Report*, VENTURE CAPITAL POST (Jan. 25, 2014, 4:43 PM),

firm, owned by lawyers, that delivers legal services to clients, primarily in the intellectual property trademark area. Ultimately, it seeks to represent clients in the business world on many other matters. And, it targets a range of clients from the largest corporations down to the small private companies that intend to go public at a time in the future.

## 6. Paragon

A study of alternative legal service providers to corporate clients also must include a mention of the rise of legal service secondment services. One such provider is Paragon, a California-based firm that has fifty lawyers and an additional fifty specialists that are placed in general counsel offices on a temporary basis.<sup>152</sup> Paragon currently operates in California and hires California attorneys with at least six years of experience. The client list of this specialized legal temp company is impressive and includes corporations such as Netflix, LinkedIn, and Google.<sup>153</sup> Attorneys are hired by Paragon and are compensated on an hourly basis; corporate clients engage Paragon to provide these attorneys in order to “backfill for in-house counsel on leave, assist with ongoing overflow work and help manage special projects.”<sup>154</sup>

A majority of Paragon employees are mothers who wish to work and spend quality time with their children.<sup>155</sup> These lawyers can choose between opportunities that place them on site or at a remote location. The Chief Executive Officer of Paragon, Mae Tai O’Malley, once a contract lawyer for Google, decided to form Paragon to serve the needs of California corporations and hundreds of female lawyers who faced work-life balance issues.<sup>156</sup> In 2013, Paragon was expected to bill \$10 million in hourly rates averaging around \$200 per hour.<sup>157</sup>

Secondment firms, which could be formed either as law firms or as nonlaw businesses, often do not encounter the legal ethics issues that typically confront law firms, because the corporate counsel is completely responsible for supervising and managing the lawyer employees. No confidential information ever ends up in the control of the firm. Moreover,

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<http://www.vcpost.com/articles/21108/20140125/online-legal-startups-plans-demystify-make-law-less-expensive-report.htm>.

152. See Jon Jefferson, *Thinking Outside the (Big Law) Box: Boalt Alums Find Happiness on the Road Less Traveled*, TRANSCRIPT, Spring 2013, at 27, 31.

153. See *id.* at 32.

154. *Careers*, PARAGON, <http://ch.tbe.taleo.net/CH07/ats/careers/requisition.jsp?org=PARAGONLEGAL&cws=1&rid=68&source=Indeed> (last visited Apr. 26, 2014).

155. Jefferson, *supra* note 152, at 31.

156. Hollee Schwartz Temple, *Short Term, Big Benefit: Secondments Grow As a Better-Life Option*, A.B.A. J., May 2013, at 27, 28.

157. See Annie Sciacca, *Mae O’Malley: Founder and Managing Attorney, Paragon Legal*, S.F. BUS. TIMES (Jan. 10, 2014, 3:00 AM), <http://www.bizjournals.com/sanfrancisco/print-edition/2014/01/10/mae-omalley-paragon-legal-sf.html?page=all> (noting that Paragon reported \$10 million in projected revenue); see also *5 Career Makeover Success Stories*, CNN MONEY (June 29, 2011, 2:03 PM), [http://money.cnn.com/galleries/2011/pf/1106/gallery.career\\_reinvention\\_stories.fortune/4.html](http://money.cnn.com/galleries/2011/pf/1106/gallery.career_reinvention_stories.fortune/4.html) (noting that Paragon charged fees around \$200 per hour).

the major issue for the secondment firm involves conflicts checking for how lawyers are assigned to clients.

*B. Central Features of the Delivery of Legal Services to Clients*

The alternative law firms that seek to attract corporate clients away from Big Law firms seem to rely upon three central concepts as they relate to the delivery of the legal work. First, when a corporate client approaches one of these firms about a potential legal representation, these firms initially analyze the matter to determine how it can be unbundled. Second, the individual tasks of the entire representation are divided into legal work and nonlegal work. The new legal service providers will suggest that some work should be performed in-house by the client or by another law firm. They will also offer to perform the legal work that fits within their expertise and the work that can be done with efficiency. Finally, nonlegal matters will be taken out and performed by the client or a related entity to save costs, and such work is performed with superior results in most cases than if the lawyers did the work directly.

Most of the alternative legal service providers embrace the concept that corporate clients do not need a full-service law firm to perform all aspects of the transaction for the client at high lawyer rates. Instead, every matter must be analyzed and effectively unbundled.<sup>158</sup> The purpose of the unbundling is to determine who most efficiently and competently can do each aspect of the representation. Each legal representation must be examined through different lenses or prisms. The legal work should be unbundled from the nonlegal work. The high-risk, complex work should be unbundled from the routine, low-risk work. The alternative service provider seeks to put the corporate client's interest first by determining how best a matter should be handled and by whom.

Clearspire and Axiom Law offer similar unbundling approaches to the corporate client. Clearspire has two entities, a law firm and a business management firm, and those entities are made available to serve the client by most efficiently and competently resolving the issues involved in the representation.<sup>159</sup> The business entity can perform nonlegal work at reasonable rates.<sup>160</sup> Routine nonlegal work may be addressed through a system that minimizes cost while identifying aspects of the representation that need additional careful attention. Axiom Law is a nonlaw entity whose entire business model is helping clients to decide how they should best address legal work.<sup>161</sup> In some cases, the work should be performed by the

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158. See, e.g., SUSSKIND, *supra* note 36; *Will Unbundling Undo Biglaw?*, PRISM LEGAL (Apr. 21, 2013), <http://prismlegal.com/will-unbundling-undo-biglaw/>.

159. See CLEARSPIRE, CLEARSPIRE FUNCTIONAL STRUCTURE (n.d.), available at [http://www.clearspire.com/sites/default/files/Functional\\_Structure\\_whitepaper\\_0.pdf](http://www.clearspire.com/sites/default/files/Functional_Structure_whitepaper_0.pdf) (describing the two legally independent companies).

160. Prism Legal explains the efficiencies that the two-entity approach brings to clients. See *A New Model Law Firm*, *supra* note 77.

161. See *supra* Part II.A.3.

in-house legal department.<sup>162</sup> In other cases, Axiom Law may provide the lawyers or nonlawyers to perform the work onsite or offsite to the client. In addition, other work may need to be properly outsourced to meet the interests of the client.<sup>163</sup> Axiom develops long-term relationships with clients and uses these different approaches for different parts of a client's legal needs.

VLP Law Group and VistaLaw, by their very nature, offer legal services in a limited number of areas as well as in-house counsel functions for corporations.<sup>164</sup> VLP's focus is mostly within the United States, while VistaLaw addresses the needs of the corporation going abroad to do business in the international arena. Thus, corporate clients may unbundle their work to match the services of these two law firms, and the law firms may themselves unbundle the representation to address their staffing resources. VLP and VistaLaw similarly have relationships with other law firms that can handle the work that they cannot efficiently deliver from their structure.

As for nonlegal work, Clearspire and Axiom Law offer prospective clients the infrastructure to unbundle the nonlegal aspects of a representation and to address such aspects with a lower-cost, more competent nonlaw firm. Clearspire has the sister business management company.<sup>165</sup> Axiom Law is not a law firm, so by its very nature it has nonlawyer employees to perform that work.<sup>166</sup> VLP Law Group and VistaLaw rely upon referrals to nonlegal companies, as their model is to efficiently provide highly skilled legal services to the corporate client.<sup>167</sup> In all of these alternative legal service providers, the client will have access to nonlaw firm services at fees that are often negotiated at a discount from market rates.<sup>168</sup>

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162. The Axiom Law website explains the insourcing, outsourcing, and project models for providing law-related services to clients. *See What We Do*, AXIOM, <http://www.axiomlaw.com/what-we-do/> (last visited Apr. 26, 2014).

163. *See id.*

164. *See Our Services*, *supra* note 130.

165. *See supra* note 159 and accompanying text.

166. Axiom Law's website describes the legal and nonlegal employees of the firm. *See Who We Are*, AXIOM, <http://www.axiomlaw.com/who-we-are/> (last visited Apr. 26, 2014).

167. Because VLP Law Group and VistaLaw are relatively small entities, they simply do not have the capacity to handle all aspects of a complex representation. Thus, they may turn to nonlaw service providers to offer support to complement their legal services.

168. The use of nonlawyers to deliver aspects of a legal representation more efficiently often with superior results was a major argument made in the debate over MDPs in this country. *See Dzienkowski & Peroni*, *supra* note 1, at 117–27 (describing the benefits of an integrated legal and nonlegal service provider approach to client representation).

C. *Reducing Law Firm Overhead and Costs*

All of the alternative legal service providers pride themselves in addressing overhead and firm costs.<sup>169</sup> Overhead is viewed as a significant reason why legal fees have risen so rapidly in the last decade.<sup>170</sup> Each of these firms address the issues of high-rent office space by using cutting-edge technology to reduce expenses, using existing client resources to save money, developing an efficient back-office space, and avoiding reliance upon salaried associates.

One common feature of most of these new alternative firms is the elimination of the luxury office space. Most of these firms completely eliminate offices where clients can visit lawyers and their support personnel. These offices are in central locations in large urban cities with high costs of parking, security, overhead, and space per square foot. Clearspire adopts a compromise position with a few full-service offices, but only in cities that justify their existence and not for all lawyers at Clearspire.<sup>171</sup> Most lawyers work at remote locations with less expensive rent or at their own location. The idea of remote offices is to place them in locations more convenient to the lawyers and personnel and in areas with lower costs of operation. Remote location offices can have smaller work spaces and organizations that are designed for collaborative work rather than client meetings.

In order to address the efficiencies lost when a legal service provider spreads lawyers and support personnel in different locations, technology must be used as a substitute. Each of the alternative legal service providers boasts the use of cutting-edge technology to improve the delivery of legal services to clients and to cut costs.<sup>172</sup> “Technology has leveled the playing field between the virtual environment and the traditional one.”<sup>173</sup>

Clearspire and Axiom Law provide their own technology to their employees in order to ensure that each lawyer and nonlawyer is using technology needed to deliver efficient legal services to the clients. VLP Law Group requires that partners provide all of their own technology that meets the minimum standards.<sup>174</sup> Although this reduces law firm overhead costs, it places a burden upon each individual lawyer to protect against technology issues that affect competence or confidentiality.

Also related to the issue of technology is the replacement of the large support staff that most law firms have in their centralized office space. In some law firms, each lawyer is supported by two or three nonlawyer

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169. See Brown, *supra* note 12, at 35–36 (stating that the new model requires control of expenses).

170. See Katz, *supra* note 42; Edward Poll, *Under Water from Overhead? Here Are Ways To Keep Afloat*, L. PRAC. TODAY (Mar. 2008), <http://apps.americanbar.org/lpm/lpt/articles/mtt03081.shtml>.

171. See *A New Model Law Firm*, *supra* note 77.

172. See Brown, *supra* note 12, at 36 (explaining the need to reinvent front-office and back-office technology in modern law practice).

173. *The Reality of a Virtual Law Firm*, *supra* note 84, at 68.

174. See *id.* at 69.



employees. Secretaries, paralegals, librarians, and copying, mail, and delivery personnel all work to support the attorneys who in turn are representing clients. Many of the choices made with respect to back-office support personnel are similar to the issues made with respect to unbundling nonlawyer tasks in a representation. Someone has to do the functions performed by these personnel. It could become the task of the lawyer, but that would introduce significant inefficiencies. Therefore, each alternative legal service provider must determine the most cost-effective manner to achieve similar results with the new system. In some cases, individual lawyers will have their own paralegal. In other cases, several lawyers will share the same personnel. The efficient management of back-office support is central to the core idea of delivering legal services more efficiently.<sup>175</sup> In some cases, the entity may ask the client to undertake the back-office support function for a particular representation. Whatever the solution, the goal is to discover the best way to provide these services to clients given the structure of the firm.

In the traditional law firm, few lawyers would suggest to a client that client resources should be used to save costs. In part, this approach is antithetical to a full-service law office. Moreover, in part, providing services to clients at marked-up prices is a profit center for many law firms.<sup>176</sup> As long as the client is told that the firm charges the stated fees for the services, and the client does not object, law firms have an incentive to provide full-service support. In the alternative model, asking clients to take on some or all of a particular function is part of the back-and-forth analysis of how a client can save money by using the alternative legal service provider.

A final but important aspect of the reduction of costs involves the ways the alternative service providers compensate their lawyer employees. In the traditional firm, the partners hire associates and pay them a salary and bill the associates out to clients at agreed-upon rates. Salaries are payable whether associates are busy or not, and often not based upon an associate reaching a particular number of hours. Although traditional firms complain that associates rarely earn their salaries as their work often cannot be fully billed to clients and their work requires significant supervision and revision, the firms still bill clients for associate work.<sup>177</sup> These inefficiencies are fixed costs that a traditional firm must include within overhead.<sup>178</sup>

The alternative legal service providers take two different approaches. Some of them, VLP Legal Group and VistaLaw, rarely hire associates. They seek middle-level to experienced lawyers who have a book of clients

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175. See NOVUSLAW, <http://www.novuslaw.com> (last visited Apr. 26, 2014) (marketing a service for back-office support for legal document management, review, and analysis).

176. See Beck & Orey, *supra* note 33, at 93–94.

177. See Wilkins & Gulati, *supra* note 14, at 1598–1601 (examining the partner evaluation and supervision of associate work and speculating that many of these costs cannot be billed to clients other than through the firm's normal rate structure).

178. See Antone Johnson, *Why Are Lawyers So Expensive Even with the Excess Supply of Lawyers?*, FORBES (Mar. 6, 2012, 2:55 PM), <http://www.forbes.com/sites/quora/2012/03/06/why-are-lawyers-so-expensive-even-with-the-excess-supply-of-lawyers/2/>.

and who already earn their salary (firm cost) out of work expected to be performed for their clients. Clearspire and Axiom Law seem to make most individuals within their structure salaried employees. This model seems to eliminate the problems that the law firm partner-associate model places upon the cost structure of a traditional firm. By hiring employees based upon a careful analysis of staffing needs, Clearspire and Axiom Law can control their costs and charge clients legal fees on different bases than the traditional law firm. Each of these alternative legal service providers can always turn to contract lawyers if the situation requires temporary legal services in a different legal area or with a larger legal team. In any event, these alternative providers reject the old partnership-associate model as imposing a burdensome cost structure upon a legal services firm, which in turn requires excessive legal fees.

#### *D. Innovation in Billing*

Once the innovative firms reduce the costs of running a law firm, they seek to pass on the savings to clients through innovative billing. It seems as if these firms have embraced different fee structures, all designed in the end to undercut traditional large law firms by 30 to 50 percent. Some of the firms—VLP Law Group and Paragon—continue to embrace the hourly billing model. Others—Clearspire and Axiom Law—rely more upon fixed fees per representation to give clients a predictable cost structure. In the end, the goal is to demonstrate to corporate clients that high-quality legal work does not necessarily require high hourly fees. The lower overhead translates into billing rates that are 30 to 50 percent below the fees that traditional law firms charge for identical work.

The firms that bill on an hourly basis staff projects with more experienced lawyers who bill in a narrower band of fees that are significantly lower than if they were still at traditional large law firms. These firms eliminate the work of inexperienced associates who need to spend significant time learning an area of law. VLP embraces the hourly rate, but does so with an interesting feature. VLP Law Group has adopted a policy to leave billing up to each individual partner.<sup>179</sup> Therefore, partners can decide the structure of the fee that they use, and partners can set their own rates. The executive committee of VLP chose this structure, because it believes that individual lawyers will represent the firm's best interests through their own self-interest. Ultimately, the individual partner knows the value that he or she has delivered to the client in order to keep a client using VLP in the future.

Clearspire embraces fixed-fee and cap arrangements because it believes that lawyers should have enough information about a matter to assess accurately the work needed to complete the representation at the outset.<sup>180</sup>

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179. See *Hire Us*, VLP, <http://www.vlplawgroup.com/HireUs.aspx> (last visited Apr. 26, 2014).

180. See *End of the Billable Hour*, *supra* note 72; see also *supra* notes 73–75 and accompanying text (discussing optional client requests for hourly rate representations).

Law firms, not clients, should bear the risk of the work taking longer or requiring additional support.<sup>181</sup> Axiom's billing practices depend upon the service that is provided. When lawyers are insourced to a company, Axiom charges rates in the \$250-per-hour range.<sup>182</sup> But project work could be done on an hourly or a fixed-fee basis.<sup>183</sup> Clearspire and Axiom offer clients ways to manage costs of legal services by offering innovative services and billing.

Each of these providers embrace transparency in billing and staffing.<sup>184</sup> Clients know at all times the identity of the lawyers working on the representation and the cost structure for the representation. The firms negotiate aggressive discounts with nonlaw service providers and limit the markup of these costs to clients. In many instances, they urge clients to contract directly with the nonlaw firm. The alternative legal service providers minimize travel expenses and dead-time billing in their efforts to deliver the highest quality of service at the lowest cost.

Two of the firms, VistaLaw and LegalForce, indicate a willingness to become investors in client business ventures. VistaLaw states on its website that it will consider investment arrangements with the client as part or all of the fee.<sup>185</sup> Many traditional law firms have turned to client investments in different practice areas and the ethical issues of such investments have been debated elsewhere.<sup>186</sup> Of course, any time lawyers enter into a business transaction with their client, they must comply with the requirements of ABA Model Rule of Professional Conduct 1.8 in the United States.<sup>187</sup> If investments are done in conjunction with a fee, the firms must also comply with the reasonable fee requirements of Model Rule 1.5(a).<sup>188</sup> With respect to VistaLaw, complications arise when the legal practice occurs in different countries with different legal rules regarding the regulation of attorney-client transactions. Conflicts seem to be accentuated when the global alliance strives to represent corporations that may be in competition with each other in identical or similar markets or regions.

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181. See *End of the Billable Hour*, *supra* note 72.

182. See *The Rise of Axiom Law*, PRISM LEGAL (July 1, 2012), <http://prismlegal.com/the-rise-of-axiom-law/>.

183. See *Call the Cavalry*, AXIOM, <http://www.axiomlaw.com/case-studies/call-the-cavalry> (last visited Apr. 26, 2014) (describing a case study that claims savings of \$6 million compared to a traditional law firm).

184. This is accomplished through the assessment of the matter at the outset and through electronic billing that gives clients constant access to the costs of a representation.

185. See Truong, *supra* note 139; *Versatile Pricing*, VISTALAW, <http://www.vistalaw.com/pricing.html> (last visited Apr. 26, 2014) (noting the concept of investment alongside the client).

186. See generally John S. Dzienkowski & Robert J. Peroni, *The Decline in Lawyer Independence: Lawyer Equity Investments in Clients*, 81 TEX. L. REV. 405 (2002) (examining the conflicts of interests when lawyers invest in client entities).

187. See MODEL RULES OF PROF'L CONDUCT R. 1.8 (2013).

188. See *id.* R. 1.5(a).

### E. Changes in Lawyer Compensation and Tenure

The business models of the alternative legal service providers require a rejection of the traditional law firm model of hiring first-year associates and training them under the supervision of senior associates, junior partners, and senior partners. None of these firms seek to hire first-year associates. They all focus on lawyers with five years or more experience with the education and personality to fit within a relatively entrepreneurial practice.

VLP Law Group seeks to hire lawyers with significant practice experience and with a book of clients from \$500,000 to \$1.5 million.<sup>189</sup> The firm looks for lawyers with excellent credentials from top law schools who need minimal supervision and fit within the culture of the firm. Lawyers who have worked in a large team environment are often viewed as not suitable for a virtual law practice.<sup>190</sup>

The business models of these firms require a rejection of the partnership model of organization and partnership salary structure. The notions of leverage, the pyramid-profit model, and pure rainmakers are incompatible with the efforts to reduce costs. Axiom Law and Clearspire pay attorneys on a salaried basis.<sup>191</sup> VLP, LegalForce, VistaLaw, and Paragon compensate lawyers based on a percentage of what they bill to clients.<sup>192</sup> A compensation structure tied directly to work performed allows a firm to give more to the lawyers who work on the matter and to keep a small percentage for firm overhead. Lawyers do not receive any representations or contractual promises of the duration of their employment. Moreover, aside from social security and firm-wide retirement plans, no lawyers in these firms have expectations of high salaries in their later, unproductive years or of retirement salaries.

### F. Perspectives from Lawyers Working in Alternative Firms

Each of the innovative firms examined in this Article embraces the concept of hiring only highly qualified lawyers from the best law schools with experience in Big Law firms or with corporate clients. To attract these individuals, these firms embrace a work-life balance while continuing to represent quality clients.<sup>193</sup> The alternative firms allow their lawyers to set their own schedule, to work from their own location, and to freely take time off.<sup>194</sup> Of course, lawyers must give their employers adequate notice and

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189. See *Embrace the Model*, *supra* note 12, at 21.

190. *The Reality of a Virtual Law Firm*, *supra* note 84, at 69.

191. See *Axiom Global Salaries*, GLASSDOOR.COM, <http://www.glassdoor.com/Salary/Axiom-Global-Salaries-E40516.htm> (last visited Apr. 26, 2014) (listing Axiom salaries); see also *A New Model Law Firm*, *supra* note 77 (listing Clearspire salaries).

192. See *supra* note 89 (VLP Law Group); *supra* note 128 (VistaLaw); *supra* note 154 (Paragon).

193. See Brown, *supra* note 12, at 35 (examining the human resources aspect of the new alternatives to the traditional law firm).

194. See Press Release, Clearspire, Clearspire President & CEO, Bryce Arrowood, Was Featured on the May 28, 2011 Edition of Fox Business' Tom Sullivan Show (May 28, 2011), available at [http://www.clearspire.com/sites/default/files/Clearspire\\_FoxNews\\_5-28-2011.pdf](http://www.clearspire.com/sites/default/files/Clearspire_FoxNews_5-28-2011.pdf) (highlighting the importance of giving lawyers input into work-life balance); see

such flexibility may be limited once a lawyer commits to working on a particular matter.

Although many of these firms believe that clients will be attracted by the prospect of significant savings of legal fees, one firm seeks excellent lawyers with access to a client base. VLP Law Group seeks lawyers who have excellent legal skills and a book of clients, but these lawyers simply do not wish to work 2,000 hours or more to meet law firm overhead.<sup>195</sup> The trade-off to Big Law practice is a choice to have a better quality of life and to live wherever you wish to live without a major commute to work.

Lawyers who choose to work for these alternative legal service providers do face several potential disadvantages. Many of these lawyers have left prestigious firms with national and international name recognition and reputation. Clients, the judiciary, and other members of the profession immediately recognize lawyers who work at these Big Law firms as having strong credentials and an excellent practice. All of the alternative legal service providers examined in this Article have name recognition challenges. The development of brand image takes years and significant effort, and lawyers who choose to practice in these firms will undoubtedly face challenges in achieving the status and prestige of their former employers.

The effort to control overhead and cost must come at a price of a lack of stable income for lawyer employees. In many of these firms, lawyer compensation is fixed either as a salary (Axiom Law and Clearspire) or a percentage of billable hours earned by the lawyer (VLP Law Group, Vista Law, and Paragon). If an area of law declines in importance, the lawyers in that area may find themselves with much lower salaries.<sup>196</sup> A lawyer who becomes sick will similarly find that the income flow stops. Although one could say that the partnership buy-in-and-profit model is a major issue underlying high legal fees and overhead, instability of income can prove challenging for these lawyers who in the past experienced stable six-figure incomes.

Another potential disadvantage of the alternative service providers involves the type of client work that they may be able to attract from clients of the traditional large law firm. Although the alternative service providers may thrive in attracting the high-volume routine work from corporate clients, they may never be able to acquire the high-risk, high-reward lucrative work that requires the infrastructure of a Big Law firm. They may be the most efficient providers of a category of work that the Big Law firms eventually choose not to do. An example of this involves routine insurance defense work. Traditional large law firms accepted such employment from

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also Brigid Schulte, *Forsaking 9-to-5 for Flexibility, Time with the Kids*, WASH. POST, May 8, 2011, at A1.

195. See *The Reality of a Virtual Law Firm*, *supra* note 84, at 69.

196. Today, at modern law firms, partners who are in a declining practice area or who suffer health problems may similarly receive less compensation. But the traditional partnership model historically gave partners ownership rights as defined by the partnership agreement.

insurance companies to generate high volumes of work that gave associates trial experience.<sup>197</sup> But when insurance companies began to control costs and encourage settlements instead of trials,<sup>198</sup> Big Law firms refused to accept these matters for their insurance company clients.<sup>199</sup>

Alternative legal service providers must be able to attract premium legal work from Big Law clients in order to become a viable alternative to the traditional large law firms. Such work brings prestige to the law firms and enables them to attract talented lawyers. Corporate clients continue to give outside law firms the premium high-risk work and they often bring the routine work in-house. Thus, these alternative legal service providers need such work for legitimacy as they mature and grow in today's legal marketplace.

### III. CURRENT ETHICAL ISSUES IN THE NEW LAW MODELS AND BARRIERS TO FUTURE INNOVATION

The alternative legal service providers to Big Law firms are certainly mindful of the ethical issues in forming a law firm entity. Four of these entities—Clearspire, VLP, VistaLaw, and LegalForce—are expressly identified as law firms controlled by lawyers. Clearspire's website contains a white paper analyzing and defending the propriety of the relationship of the legal entity in Clearspire with the business entity.<sup>200</sup> One entity, Axiom Law, expressly states that it is not a law firm, but it helps clients receive legal services.<sup>201</sup> Paragon does not clearly state whether it is formed as a California law firm. However, few of these firms disclose how their practices fulfill the ethical requirements of representing clients.

Before examining the issues relating to the representation of clients, it is important to note that some states have specific rules on maintaining a physical office and properly communicating to clients the way in which clients can visit with lawyers and inspect their files.<sup>202</sup> Other states have moved away from the brick-and-mortar requirement, but they impose requirements that protect client access to the law firm.<sup>203</sup> Although many of these requirements have been developed in the context of routine legal services, they would apply to the alternative legal service providers discussed in this Article.

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197. See Stewart F. Hancock, Jr., *Days of Conviviality Preceded Specialization and Globalization*, N.Y. ST. ASS'N B.J., Jan. 2001, at 35, 36, 38 (2001).

198. See Chad G. Marzen, *Can (and Should) an Insurance Defense Attorney Be Held Liable for Insurance Bad Faith*, 7 VA. L. & BUS. REV. 97, 99 (2012) (discussing the pressures insurance companies place upon law firms to control costs).

199. See Herbert M. Kritzer, *The Commodification of Insurance Defense Practice*, 59 VAND. L. REV. 2053, 2080 (2006).

200. CLEARSPIRE, *supra* note 159.

201. See *Axiom Law Is Not an LPO*, *supra* note 125 (stating, as the CEO of Axiom, that this model is not a law firm and it is an entity that cannot be properly described with traditional classifications).

202. See STEPHANIE L. KIMBRO, *VIRTUAL LAW PRACTICE: HOW YOU CAN DELIVER LEGAL SERVICES ONLINE* 70–72 (2010).

203. N.J. CT. R. 1:21-1(a); Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Formal Op. 2009-53 (2009).

Once the entities comply with the institutional requirements, they must turn to the rules that address the representation of clients. This Part examines issues relating to the attorney-client relationship and suggests how each model might comply with the rules of ethics.<sup>204</sup>

*A. Effect on the Quality of Legal Services*

The most important ethics question that alternative service providers face is how the new models of legal practice affect the quality of legal services received by corporate clients. The models raise questions about quality in four distinct areas: (1) the unbundling of the client representation, (2) the training and supervision of lawyers, (3) the training and supervision of nonlawyers, and (4) the maintenance and presentation of documents.

A key aspect of these alternative models is the unbundling of the client representation.<sup>205</sup> Someone in the firm examines and analyzes the work that needs to be done to meet the client's objectives. And, in the process of this evaluation, that person needs to make choices as to who will perform the legal work, who will perform the nonlegal aspects of the matter, and who will ensure that the client's interests are properly protected throughout the representation.

The main goal of the unbundling process is to match the specific legal and nonlegal tasks of a matter with the most efficient professional. Clearspire and Axiom Law seem to provide an elaborate description of this process. Clearspire's analysis is undertaken at the law firm–entity level and the law firm uses the business entity and the Coral program as essential support systems to the representation of the client. Because Clearspire is a law firm organized as an MDP with nonlawyers having only a supporting role in the delivery of legal services, the unbundling occurs similar to the manner done by a large law firm, but the use of nonlawyers to serve the client may vary significantly from the large law firm counterpart. Instead of handling all aspects of the work, Clearspire might outsource some of the legal work and might offer the client options as to how the nonlaw work could be performed.

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204. To the extent that these law firms practice in a virtual office, many of the legal ethics issues have been identified by scholars and ethics committees in dealing with the advent of virtual law firms. See Jon M. Garon, *Technology Requires Reboot of Professionalism and Ethics for Practitioners*, J. INTERNET L., Oct. 2012, at 3; Jordana Hausman, *Who's Afraid of Virtual Lawyers? The Role of Legal Ethics in the Growth and Regulation of Virtual Law Offices*, 25 GEO. J. LEGAL ETHICS 575 (2012); Stephanie L. Kimbro, *Regulatory Barriers to the Growth of Multijurisdictional Virtual Law Firms and Potential First Steps to Their Removal*, 13 N.C. J.L. & TECH. ONLINE 165 (2012), [http://www.ncjolt.org/sites/default/files/3Art\\_Kimbrow\\_165\\_226.pdf](http://www.ncjolt.org/sites/default/files/3Art_Kimbrow_165_226.pdf). For example, state bar associations have required virtual law firms to clearly identify where they practice and such law firms may not state that their fees are lower than traditional law firms, but they may state that overhead costs are lower. See Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Formal Op. 2010-200 (addressing virtual law firm issues).

205. See N.C. State Bar, Formal Op. 10 (2006), available at <http://www.ncbar.com/ethics/ethics.asp?page=3&from=1/2006&to=6/2006> (cautioning that virtual law offices offering unbundled services must properly inform clients about the implications of a limited representation and that some limitations may be unreasonable).

Axiom Law approaches these questions from the perspective of a sophisticated management consulting firm with a specialty in legal services. A professional at Axiom Law evaluates a matter and offers a considered judgment as to how a corporate client should receive the legal and nonlegal services to properly complete the representation.<sup>206</sup> That individual will make judgments about insourcing and outsourcing work. If the representation is a recurring matter, Axiom Law may offer the client project design services to create a workflow on how to handle the matter for the future with or without Axiom Law's involvement.<sup>207</sup> As Axiom Law is not a law firm, the judgments on unbundling and work assignment are inevitably transferred to the corporate general counsel and the corporate counsel makes the ultimate decision on how the company will receive its legal services.

The other legal service providers fall within a category of law firms that are designed to give high value to a corporate client who may have already unbundled the work or who seeks advice in doing so. VLP Law Group's highly skilled lawyers offer legal work across many fields; however, their areas of practice and number of lawyers prevent a full-service approach. In those cases, lawyers handle the work assigned by the corporate client, but they also may be involved in how the work is given to other lawyers or nonlawyers. VistaLaw uses a similar approach except with the more limited view that this is a service to provide lawyers across the world for a corporate client that seeks legal services in other countries.<sup>208</sup> LegalForce often obtains clients through its trademark practice, but it has expanded its network of lawyers to offer other services to clients.<sup>209</sup> The relatively new expansion of this model leaves many open questions. Paragon as a lawyer secondment service relies upon the corporate in-house departments to assign and supervise the legal work that will be performed by Paragon lawyers. Therefore, the unbundling decisions are made at the client level, as well.

Another major issue that could implicate the quality of the legal services delivered to clients is the issue of training and supervision of lawyers.<sup>210</sup> The pressure to control overhead leads to lawyers working apart from each other and therefore endangering the delivery of quality legal services because of the lack of proper supervision. Clearspire uses the Coral

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206. See *Axiom Law Is Not an LPO*, *supra* note 125.

207. *Projects*, AXIOM, <http://www.axiomlaw.com/what-we-do/projects> (last visited Apr. 26, 2014) (explaining the project work that Axiom offers to clients along with links to case studies).

208. See *VISTALAW*, *supra* note 127 (explaining the mission and work of VistaLaw).

209. See *LEGALFORCE*, <http://www.legalforcelaw.com/> (last visited Apr. 26, 2014) (explaining how LegalForce has become an innovator in offering legal services to clients who found the firm through Trademarkia's website).

210. See Pa. Bar Ass'n Comm. On Legal Ethics & Prof'l Responsibility, Formal Op. 2010-200 (2010) (stating that subordinate lawyers practicing in a virtual firm must be supervised by a lawyer to ensure they are complying with the rules of professional responsibility); Va. State Bar Standing Comm. on Legal Ethics, Op. 1872 (2013), *available at* <http://www.vacle.org/opinions/1872.htm> (requiring virtual law firms to adapt supervision practices to ensure that those who work remotely are properly monitored).



computer software to place the entire representation on an intranet so that progress can be properly monitored by the supervising lawyer and the client. Even though the firm does not have one location for all of its lawyers, it does offer remote workspace that puts lawyers together in a working environment. Axiom Law seems to maintain centralized control of a matter as part of its management consulting practice; however, for work that is insourced to a corporate client, the in-house lawyers must assume the supervision of a matter. When a matter is outsourced to a legal team employed by Axiom Law, the entity probably relies upon the head of the legal team to supervise the delivery of the services to the client. Thus, Axiom Law seems to delegate some of those functions either to the in-house counsel or to Axiom lawyers operating outside of the entity and such delegation may lead to a potential decline in supervision.

VLG Law Group and VistaLaw perform general counsel functions for some clients and direct legal work for in-house counsel of their corporate clients. When these firms have a lawyer act as the outside general counsel, the work of these lawyers must be supervised to ensure that the client's interests are protected. One aspect of the supervision is whether the corporate client has properly structured the relationship so that these lawyers are involved in decisions that need legal support across the company. Another aspect of the supervision is whether the work actually done by the lawyers meets the standard of competence and diligence. When lawyers work in a remote location with significant control over their time, one must wonder if supervision may become even more important than if they were working in one office.<sup>211</sup>

A major disadvantage of several of the innovative law firms is the fact that the lawyers do not work side by side in practicing law. When lawyers see each other only four times a year, they simply do not develop the relationships and bonds that arise when lawyers work in an office. This lack of personal connection can create relationship and communication problems. VLP Law Group tries to address these issues by creating a committee on virtual culture and employing a Chief Cultural Officer on a part-time basis to focus on issues of culture.<sup>212</sup> This individual has the unique ability to facilitate relationship building on this virtual platform. The firm regularly holds retreats of smaller groups of partners who work in a common practice area in order to encourage working together as one team.

Similar issues arise with respect to the use of nonlaw service providers. Lawyers have an obligation to supervise nonlawyers who support the legal

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211. Technology can be used to supervise some lawyer actions such as keystrokes on a computer or a more sophisticated analysis of searches, documents accessed, or emails and phone calls made.

212. See Interview by Broc Romanek with David Goldenberg, *supra* note 88; see also *The Reality of a Virtual Law Firm*, *supra* note 84, at 68.

work of lawyers to clients.<sup>213</sup> Clearspire and Axiom Law offer clients centralized control over those functions. However, if Axiom Law and a client decide to insource the work or use a third-party provider, they may agree to delegate the supervision of the nonlawyer provider to the in-house general counsel. The other firms seem to rely primarily upon the use of corporate counsel to supervise the nonlawyers. Also, that delegation may or may not be sufficient depending on how much experience such in-house lawyers have with respect to the particular service.

### B. Client-Informed Consent

The alternative legal service providers have chosen a business model that focuses upon representing corporate clients. They presume that corporate clients are managed by sophisticated business leaders, who are experienced users of legal services. That assumption is probably less true for many corporate clients that are likely to choose these alternative structures. One would expect that innovators in industry might choose alternative legal service providers over the blue-chip corporate law firms, at least until these innovators seek to go public. Further, such innovators are less likely to be sophisticated in the law. Perhaps, however, a presumption that a client is sophisticated applies any time one of these clients has an in-house general counsel responsible for all of the legal affairs of the corporate entity.

A central concept to these new firms is unbundling and assigning the work to the most efficient legal or nonlegal service provider. A very important aspect of this is client-informed consent to the unbundling and to the limited legal services that may result after an analysis of the potential legal representation.<sup>214</sup> For many, if not all, of the clients, the firms need to educate the corporate agents about the choices that need to be made and the costs and benefits of handling the legal services of the corporation in this manner.<sup>215</sup> Essentially, these firms need to explain their business models to the client and detail how it differs from traditional lawyering. Cost is not the only consideration as the new models change traditional concepts of supervision and delivery of legal services, and the clients need to be aware that, in a sense, this is not a traditional representation.<sup>216</sup>

One of the reforms that the ABA Commission on Ethics 20/20 accomplished was a modification of a comment to Model Rule 1.1. Recognizing that many clients use different law firms to provide legal services on the same matter, the ABA House of Delegates added language

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213. See Joan C. Rogers, *Use of Nonlawyer Assistance Puts Onus on Law Firm Managers and Supervisors*, 28 *Laws. Man. on Prof. Conduct* (ABA/BNA) 689 (2012) (discussing and citing authorities on the topic of lawyer supervision of nonlawyers).

214. See MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (2013).

215. Cf. N.C. State Bar, Formal Op. 10 (2006), available at <http://www.ncbar.com/ethics/ethics.asp?page=3&from=1/2006&to=6/2006> (stating that a virtual law office that unbundles legal services must clearly disclose how the representation will be limited).

216. Lawyers must inform prospective clients about the risks that they undertake in a nontraditional representation. For example, in a virtual law practice, clients need to be informed about the risks of communicating confidential information over the internet. See ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 11-459 (2011).

to the comments on the duty of competence requiring lawyers to consult with the client and the other law firms “about the scope of their respective representations and the allocation of responsibility among them.”<sup>217</sup>

Aside from the informed consent about the manner in which the firm delivers legal services and how a matter will be unbundled, the client needs to be involved in the decisions made about supervision of the lawyers and nonlawyers in the representation. If such aspects of the case will be performed by in-house lawyers, the corporate client needs to evaluate who is in the best position to properly supervise the legal work.

A question arises whether the models adopted by these alternative legal service providers would work for smaller companies and companies without an in-house general counsel. Many of the California-based firms obviously focus on technology clients and start-up businesses. Are these firm models that rely on unbundling and delegation of supervision appropriate for companies with limited legal knowledge? Clearly, these types of clients are likely to present the most significant risks to these alternative legal service providers.

### *C. Protecting Client Confidences*

One of the core values of the legal profession is the obligation of confidentiality to clients.<sup>218</sup> Traditional law firms expend significant resources to ensure that lawyers and nonlawyers in the firm do not violate the duty of client confidentiality. The models used by these alternative legal service providers potentially complicate the duty of the lawyers to protect confidential client information because these entities rely heavily upon the use of a firm intranet accessible to clients.<sup>219</sup>

The alternative legal service providers described in this Article largely rely upon a decentralized approach to the delivery of legal services. Clearspire’s law offices and remote attorney work locations approximate the satellite office model used by traditional law firms. But its Coral software intranet portal that promises transparency risks placing much confidential client information at the disposal of anyone with an internet connection.<sup>220</sup> The other firms, VLP Law Group, LegalForce, and VistaLaw, all face similar issues as lawyers are permitted to work out of their own offices. Axiom Law as a nonlaw firm may actually inform clients that it does not normally want to receive confidential client information unless Axiom Law has agreed to manage the information as a nonlaw service provider. Axiom Law has voluntarily adopted a “Privacy Policy for

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217. MODEL RULES OF PROF’L CONDUCT R. 1.1 cmt. 7.

218. *Id.* R. 1.6.

219. *See, e.g.*, Ariz. State Bar, Ethics Op. 09-04 (2009), available at <http://www.azbar.org/Ethics/EthicsOpinions/ViewEthicsOpinion?id=704> (stating that lawyers may give clients access to online files with proper precautions).

220. Roy Strom, *Demystifying the Cloud*, CHI. LAW. (Aug. 2013), <http://www.chicagolawyer magazine.com/Archives/2013/08/01/Demystifying-The-Cloud.aspx> (describing how Coral is the paradigm cloud-based law firm computer software).

Managed Services Business.”<sup>221</sup> In part, the policy addresses the collection of personal data about clients and in part the policy reaffirms Axiom Law’s policy to take reasonable precautions to protect personal information from loss or misuse. Paragon never receives confidential information because the lawyers are placed in the legal divisions of corporations.

The question about confidentiality and placing client information on an intranet-based system occupied a significant part of the Ethics 20/20 debate. The commission decided that several provisions of the Model Rules needed to be revised to make clear to lawyers the obligations with respect to confidentiality and technology. First, the ABA House of Delegates modified Comment 8 to Model Rule 1.1 to state that lawyers must keep abreast of changes in relevant technology in their law practices.<sup>222</sup> This provision requires all lawyers to either personally stay informed about new technology and risks or hire someone who will competently perform this function. Second, the ABA added a new Model Rule 1.6(c), which imposes a duty upon all lawyers to take “reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”<sup>223</sup> This new duty added to the confidentiality rule increases the general standard for lawyers to take reasonable efforts but removes the concept of strict liability for all inadvertent disclosures of confidential information once reasonable efforts have been taken. The comments to this Rule make clear that a client may require the lawyer to implement special measures to protect confidential information that could increase this obligation to a client.<sup>224</sup> Also, other sources of law may independently increase the obligation of a lawyer to protect against inadvertent disclosure or may impose additional penalties.<sup>225</sup> These concepts clarify obligations of lawyers in all law firms, traditional and nontraditional, to safeguard client information. Therefore, the firms discussed in this Article would have obligations to ensure that the technology they use does not expose confidential client information to unreasonable risks of disclosure.<sup>226</sup>

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221. See *Axiom Privacy Policy for Managed Business Services*, AXIOM, <http://www.axiomlaw.com/what-we-do/disclaimer/> (last visited Apr. 26, 2014).

222. MODEL RULES OF PROF’L CONDUCT R. 1.1 cmt. 8.

223. *Id.* R. 1.6(c). The comment lists a series of factors to consider in determining a lawyer’s reasonableness: “sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients.” *Id.* R. 1.6 cmt. 18.

224. *Id.*

225. *Id.* R. 1.6 cmt. 19. Federal and state privacy laws often apply to lawyers and their control of information. A lawyer who violated one of those statutes would face possible civil or criminal sanctions under these other laws. See, e.g., Rebecca Bolin, *Risky Mail: Concerns in Confidential Attorney-Client Email*, 81 U. CIN. L. REV. 601, 615 (2012) (examining privacy statutes for email).

226. See N.C. State Bar, Formal Op. 10 (2006), available at <http://www.ncbar.com/ethics/ethics.asp?page=3&from=1/2006&to=6/2006> (cautioning that virtual law offices need to protect client’s confidential information).

Clearspire and Axiom Law provide significant back-office technology support to the lawyers who work in the firm. This includes providing the equipment and the software to manage the lawyers' interactions with the intranet and with other lawyers and the clients. Other firms, such as VLP Law Group, inform lawyers about the minimum requirement of technology that each lawyer must supply in their own office environment. In such a case, the decentralization of purchasing computer equipment may expose a firm to liability or disciplinary sanction if confidential client information is disclosed because of a computer security issue in an individual lawyer's computer.

To the extent that the decentralized approach to delivery of legal services is relied upon to reduce cost, one could raise the question whether such risks of disclosure justify the cost savings, and further, whether the lawyers should make those decisions or whether clients should be informed about the risks of using the technology and given the opportunity to add additional cost to protect their confidential information. This raises questions about the relationship between costs and ethical duties and how the answers to those questions fit within the standards of reasonableness in Model Rule 1.6.<sup>227</sup>

An issue related to competence and the duty of confidentiality involves the law firm's duty to maintain the client file. Traditional law firms produce and retain hundreds of thousands of pages of documents each year. The obligation to hold client files is well established in the ethics codes.<sup>228</sup> These alternative legal service providers must necessarily make decisions on how such files will be maintained and preserved. VLP Law Group has chosen not to maintain any paper files.<sup>229</sup> The firm digitized signatures and keeps them on a PDF file and all matters are reduced to electronic files. Many of the other alternative firms similarly have gone to a completely digital file system. To the extent that this decision exposes clients to risks that are not present in a traditional law firm, one should ask whether the cost savings justify the potential harm to the representation.

#### *D. Effect upon the Duty of Loyalty*

One of the most important areas of concern for traditional law firms is to properly manage conflicts of interest in order to minimize the effect of disqualifications, civil liability, and disciplinary sanction that accompany violations of the conflicts-of-interest rules. Traditional law firms have implemented sophisticated computerized and manual conflicts checking systems.<sup>230</sup> They have designated certain lawyers and nonlawyers to serve

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227. Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Formal Op. 2010-200 (2010) (stating that virtual law firms are under the same obligation to protect confidential information as traditional law firms).

228. MODEL RULES OF PROF'L CONDUCT R. 1.6, 1.15.

229. *The Reality of a Virtual Law Firm*, *supra* note 84, at 69.

230. A manual conflicts checking system serves as a back up to handle issues that the computer might not be able to process and to catch human errors in entering data into the computer.

as intake managers with a careful eye on conflicts of interest raised by new clients and representations. Also, traditional law firms work with their malpractice insurance companies to implement risk management systems to properly manage the practice of law in different areas and different jurisdictions.<sup>231</sup> In recent years, firms have employed in-house ethics counsel to provide legal advice to the law firm's lawyers on issues relating to conflicts and other ethics problems.<sup>232</sup>

The alternative legal service providers to corporate clients do not explicitly address the ways in which they manage conflicts of interest. Clearspire has designated Sheldon Krantz as its ethics counsel who serves on the legal team of the company.<sup>233</sup> They also have named DLA Piper US, LLP as its outside counsel and Jay Finkelstein as its corporate counsel.<sup>234</sup> This legal team demonstrated a commitment to the public that the legal services entity at Clearspire complies with the conflicts-of-interest rules in representing clients. Of course, the fact that Clearspire is a modern MDP with a nonlaw business entity raises questions as to how the conflicts rules apply when clients are served through the business arm of Clearspire. Is the business entity an ancillary business under Model Rule 5.7, and what are clients told?<sup>235</sup> Should the business entity owe to firm clients the protections of the ethics standards of a law firm, or is it a nonlaw service provider that will not use the rules of ethics to guide its conduct?

Axiom Law is not a law firm, but it is a consulting company that helps corporate clients determine how to best structure their legal affairs.<sup>236</sup> Axiom Law employs lawyers and in fact outsources and insources lawyers to clients. Does Axiom Law follow any rules of professional responsibility? Could it simultaneously advise two competitors on how to staff an entry into a particular market? Could the same lawyers be outsourced or insourced to corporations that are in competition with each other in the same marketplace? The public information of Axiom Law does not directly address these questions. However, Axiom does have a "Code of Conduct, Ethics & Compliance Policy" that touches upon general concepts of duties toward clients.<sup>237</sup>

VLP Law Group and VistaLaw operate in similar ways in different markets. As law firms, both of these entities must perform conflicts checks when they accept a representation. Even though most of the work of these firms is nonlitigation, the conflicts can raise issues about breach of

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231. See generally George M. Cohen, *Legal Malpractice Insurance and Loss Prevention: A Comparative Analysis of Economic Institutions*, 4 CONN. INS. L.J. 305, 332–34 (1997).

232. See Ronald D. Rotunda, *Why Lawyers Are Different and Why We Are the Same: Creating Structural Incentives in Large Law Firms To Promote Ethical Behavior—In-House Ethics Counsel, Bill Padding, and In-House Ethics Training*, 44 AKRON L. REV. 679, 703–04 (2011).

233. *Founding Team*, CLEARSPIRE, <http://www.clearspire.com/founding-team> (last visited Apr. 26, 2014).

234. *Id.*

235. MODEL RULES OF PROF'L CONDUCT R. 5.7 (2013).

236. See *supra* notes 106–21 and accompanying text.

237. See *Axiom Global Inc. Code of Conduct, Ethics & Compliance Policy*, AXIOM, <http://www.axiomlaw.com/Docs/Code%20of%20Conduct.pdf> (last visited Apr. 26, 2014).

fiduciary duty and potential malpractice exposure. Both of these entities offer to provide in-house counsel services through their outside lawyers on a temporary or permanent basis. When several lawyers in one of these law firms becomes outside counsel, the potential conflicts can be significant. These conflicts may be accentuated when those clients are in competition with each other at the present time or in the future through expansion. Additionally, when clients decide to litigate against each other, the law firm serving as outside counsel could have some significant conflicts of interest, particularly when one considers the confidential information that the law firm has acquired.

VistaLaw's website advertises its availability to become a virtual general counsel for corporate clients.<sup>238</sup> When a lawyer in an outside law firm becomes an outside general counsel for a corporation, this role may present conflicts with the law firm's representation of other clients in the same industry in different countries or in the same foreign country in different industries.<sup>239</sup> The first question one would ask is: whether, by forming a global alliance of foreign law firms, is VistaLaw considered one law firm or a number of distinct law firms? One would expect that they view themselves as separate firms, but an analysis of the sharing of revenues and expenses might change the analysis.

Another question that arises when an outside lawyer becomes an outside general counsel for a law firm involves the choice-of-professional responsibility rules that are applied to the corporate representation.<sup>240</sup> One would expect that VistaLaw, through its agreements with clients, will make clear the rules that will apply to the representation. The new comment to Model Rule 8.5 supports this position.<sup>241</sup> The structure of VistaLaw presents some interesting challenges, particularly with respect to former client conflicts of interest.

Paragon's secondment service appears to present the lowest risk in terms of conflicts of interest.<sup>242</sup> Lawyers are placed within corporate clients for short periods of time. The firm may need to be mindful of the clients that a particular lawyer has worked for in the past. But since Paragon does not represent clients and does not receive confidential information at a centralized level, the conflicts issues should be easier to manage.

The nontraditional legal service providers described in this Article present some very challenging issues involving conflicts of interest. There is not much authority on how such issues should be resolved, and very few cases or ethics opinions address these issues. The potential exposure to conflicts is significant, but these entities have chosen to innovate the

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238. *See supra* notes 127–29 and accompanying text.

239. *See* MODEL RULES OF PROF'L CONDUCT R. 8.5 (providing the procedure for choice-of-professional responsibility rules when legal representations may involve predominant effects in more than one jurisdiction).

240. Model Rule 8.5 applies to all lawyers including in-house counsel. However, corporate client activities often involve more than one jurisdiction. The application of this rule to determine the choice-of-ethics rules in an international setting is unsettled.

241. MODEL RULES OF PROF'L CONDUCT R. 8.5 cmt. 5.

242. *See supra* notes 152–56 and accompanying text.

delivery of legal services despite the risks. As with the questions of confidentiality and unbundling, clients should know and understand the potential risks they undertake when they choose to use one of these firms for their legal work.

*E. Law Firm Liability in a Limited Liability World*

Many scholars have written about the liability of domestic and international law firms and the interaction of statutes imposing general liability or limited liability upon the lawyers in the firm.<sup>243</sup> For the four entities that have organized as a law firm, one would expect that such entities seek to qualify under the professional legal liability statutes of their jurisdictions.<sup>244</sup> Even though such entities have chosen the limited liability status, a question arises as to how one would apply those rules to a nontraditional law firm. Many of these entities do not have a formal supervisory lawyer model. They rely upon unbundling and decentralization of the work to individual teams of lawyers often under the supervision of in-house counsel. Under the concept of limited liability, one might argue that civil liability does not extend beyond the lawyers working on the matter. But, one might argue that limited liability statutes should not apply to such nontraditional firms. Some of these firms may argue that their representation agreements with clients delegate the supervision and control functions over their lawyers to in-house general counsel, so the limited liability model should apply. That argument, however, does not address the point that legislatures did not contemplate the kinds of firm structures described in this Article when they drafted and enacted those limited liability laws.

The liability issues also may become more complicated when the firm lawyers become outside general counsel to the corporate clients. VLP Law Group notes that many of its lawyers assume a role of general counsel or part-time general counsel to their clients, offering a set number of hours per

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243. See, e.g., Mary C. Daly & Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 GEO. J. INT'L L. 401 (2007) (examining liability issues of outsourcing legal work to foreign lawyers and nonlawyers); Susan Saab Fortney, *Seeking Shelter in the Minefield of Unintended Consequences—The Traps of Limited Liability Law Firms*, 54 WASH. & LEE L. REV. 717 (1997) (examining the various approaches to limited liability and their effect upon the assurance of quality legal services); Robert W. Hamilton, *Registered Limited Liability Partnerships: Present at the Birth (Nearly)*, 66 U. COLO. L. REV. 1065 (1995) (examining the origins of statutes authorizing limited liability entities for professional partnerships); J. Benjamin Lambert, *Professional Liability and International Lawyering: An Overview*, 77 DEF. COUNS. J. 69 (2010) (examining issues of liability of lawyers who practice law in the international arena).

244. The Clearspire Law Company is formed as a professional limited liability company under District of Columbia law. See CLEARSPIRE, *supra* note 159. LegalForce RAPC Worldwide is a professional corporation under California law. See *About*, LEGALFORCE, <http://www.legalforcelaw.com/about/> (last visited Apr. 26, 2014). VistaLaw International is a limited liability company organized under District of Columbia law. See *Our Locations*, VISTALAW, <http://www.vistalaw.com/locations.html> (last visited Apr. 26, 2014). VLP Law Group is an limited liability partnership organized under California law. See *About VLP*, VLP, <http://www.vlplawgroup.com/About.aspx> (last visited Apr. 26, 2014).



week at a fixed price, with the corporate client relying upon the VLP lawyer to answer legal questions from officers and employees.<sup>245</sup> The undertaking of such a role may potentially expose the partner and the firm to enhanced responsibilities and liability. First, the corporate bylaws and structure may place upon the chief legal officer certain duties. Second, often the law and regulatory structures impose upon in-house counsel obligations of compliance and attestation. Third, an individual operating as de facto in-house counsel who does not physically work in the company may have certain knowledge imputed to him or her in a manner similar to the information that an in-house counsel is assumed to have within the corporation. Finally, the question arises whether these outside lawyers essentially lose their status as outside lawyers and become part of the corporation for the purpose of examining their duties.

A final consideration about liability raises questions about assets and insurance. Traditional law firms often maintain a significant reserve or fund for self-insurance against malpractice claims. The fund constitutes one source of assets, but the firms also have other physical assets that are available to cover claims.<sup>246</sup> The alternative legal providers described in this Article do not seem to embrace the concept of aggregating funds; therefore, much of the revenue collected is paid out to the lawyers. Thus, how do these firms deal with the concept of self-insurance? And, what kind of insurance do they carry for the services that they are providing to the clients? These questions of insurance and assets potentially interact with and affect the concept of firm liability of these alternative service providers.

#### F. Unauthorized Practice of Law

The formation of a firm to represent corporate clients in multiple jurisdictions across the country and around the world necessarily raises questions about unauthorized practice of law. Corporate clients and traditional large law firms have often ignored issues of licensure as a matter of practice. However, the recent amendments to the Model Rules and the ensuing state registration requirements have in turn tightened the organized bar's control over certain forms of unauthorized practice in corporate representation.<sup>247</sup> A key question is how these alternative firms address some of these issues and requirements.

On a basic level, one would expect that each of these alternative legal service providers has a duty to verify that its lawyers—whether employees, independent contractors, or affiliated attorneys—are licensed to practice

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245. *The Reality of a Virtual Law Firm*, *supra* note 84, at 70.

246. Traditional law firms may own buildings or hold valuable leases that have appreciated. They also possess accounts receivables from hourly or fixed fee clients. And, they may own personal property such as books, computers, furniture, and art. These assets could be used to satisfy a malpractice judgment.

247. See Arthur F. Greenbaum, *Multijurisdictional Practice and the Influence of Model Rule of Professional Conduct 5.5—An Interim Assessment*, 43 AKRON L. REV. 729, 731 (2010).

and are in good standing with the disciplinary authorities.<sup>248</sup> The failure to monitor whether lawyers are licensed to practice law would be problematic. A duty to verify licensure does not end with the employment of the lawyer; it must continue to monitor whether lawyers remain current on bar dues, court memberships, and continuing legal education requirements.

On a more complicated level, the question becomes who is responsible to make sure that lawyers are licensed in the states in which they work or in the legal area that covers their work.<sup>249</sup> Unauthorized practice issues can arise when lawyers physically work in jurisdictions in which they are not licensed or on matters involving a jurisdiction that is outside of their licensure.<sup>250</sup> One would expect these alternative firms to control carefully such behavior, but it is possible that because these firms represent corporate clients, the clients themselves simply do not care about unauthorized practice of law issues.<sup>251</sup> These clients may also take the position that, if they work under the supervision of an in-house lawyer who is properly licensed, these concerns go away.<sup>252</sup> However, the recent state bar efforts to more carefully control in-house corporate lawyers indicates that alternative firms may face scrutiny under unauthorized practice of law rules.

An interesting question arises about state licensure when a law firm lawyer for VLP or VistaLaw becomes an outside general counsel for a corporation located in another jurisdiction. How do the in-house general counsel registration requirements apply to such a lawyer?<sup>253</sup> Will the lawyer need to properly register with the state bar of the corporation's jurisdiction? In such a situation, a California lawyer may be working on corporate matters in other states and such conduct may fall within the in-house counsel registration requirements. The language of the individual state registration regulations may resolve these questions, but one might suspect that few jurisdictions have considered these issues relating to alternative law firms when they developed their regulatory structures.

The discussion up to now has focused upon the alternative legal service providers organized as law firms. Axiom Law is not a law firm, but its

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248. See MODEL RULES OF PROF'L CONDUCT R. 5.1 (2013).

249. See *id.* R. 5.5; cf. Ill. State Bar Ass'n, Op. 12-09 (2012), available at <http://www.isba.org/sites/default/files/ethicsopinions/12-09.pdf> (holding that an Illinois lawyer could not create a virtual law office with a lawyer licensed in and residing in another state when most of the work would be performed for Illinois clients).

250. See N.C. State Bar, Formal Op. 10 (2006), available at <http://www.ncbar.com/ethics/ethics.asp?page=3&from=1/2006&to=6/2006> (cautioning that virtual law offices need to be mindful of unauthorized practice of law issues).

251. Charles W. Wolfram, *Sneaking Around in the Legal Profession: Interjurisdictional Unauthorized Practice by Transactional Lawyers*, 36 S. TEX. L. REV. 665 (1995).

252. MODEL RULES OF PROF'L CONDUCT R. 5.5(d)(1).

253. See ASS'N CORPORATE COUNS., <http://www.acc.com> (last visited Apr. 26, 2014) (compiling in-house counsel registration rules); see also Carol A. Needham, *The Changing Landscape for In-House Counsel: Multijurisdictional Practice Considerations for Corporate Law Departments*, 43 AKRON L. REV. 985, 997-1001 (2010) (examining several state licensing systems that provide for limited admission for in-house counsel). As an outside firm in-house counsel, the lawyer may need to comply with the individual registration requirements in the state in which the corporate work is performed.

website clearly talks about delivery of legal services and access to lawyers. All of these lawyers are employees of Axiom Law. Is this firm engaged in the unauthorized practice of law? When Axiom Law outsources a legal problem to a team of lawyers it staffs, is that not similar to the problems that would be raised if Wal-Mart offered legal services through an office of lawyers? Is this an MDP of lawyers and nonlawyers who are working in a management consulting firm focused completely upon the delivery of legal services? One possible answer to these questions is that ultimately Axiom Law places its lawyers and legal services completely within the control of the in-house general counsel of the corporate client, and the consulting services are billed separately from the legal fees that the lawyers earn for their work.<sup>254</sup> The question remains whether the bar authorities could successfully assert a substance-over-form unauthorized practice of law argument against the Axiom business model.<sup>255</sup>

Another potential concern with each of these alternative legal service providers is the way in which they use nonlawyers in delivering quasi-legal services. When unbundling a matter, the firm must make a choice about how to best staff the services that need to be performed. In some cases, legal work or quasi-legal work may be assigned to nonlawyers. When those nonlawyers are in a firm, the lawyers supervise this work and ultimately take full responsibility for the nonlawyer's involvement in the practice of law. Such supervision may be more difficult to implement and it may lead to claims that the lawyers are engaged in helping unsupervised nonlawyers in the practice of law.

A final issue that arises with VistaLaw and any other firm that offers services or legal advice in foreign jurisdictions is whether American lawyers are engaged in the unauthorized practice of law in other countries. Or, if these firms are using foreign lawyers, whether the financial relationships between the American lawyers and the foreign lawyers may in some way implicate violations of the ethics rules. Those violations could include fee splitting or more basic questions about the supervision of outsourcing. These questions become more complicated because the clients of these firms are multinational corporations often represented by in-house lawyers with licenses from other foreign countries. Very little authority exists on the application of legal ethics rules from different jurisdictions when lawyers and clients participate in international transactions.

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254. See Henderson, *supra* note 121. Professor Henderson calls Axiom a managed service provider who serves as a general counsel's outsourcing agent. Only clients with a general counsel can use Axiom as it uses this structure to comply with the rules of unauthorized practice and sharing fees with a nonlawyer.

255. Professor Henderson says:

I am sure that a state bar regulator, taking a very formalistic approach, can take issue with Axiom's construction of Rule 5.4, which prohibits profit-sharing between lawyers and nonlawyers from income generated from the practice of law. But the purpose behind Rule 5.4 is to preserve lawyer independence so that the quality of the underlying legal advice won't be compromised by the nonlawyer's pursuit of profit.

*Id.*

## CONCLUSION

The legal marketplace for large corporate clients is changing and traditional large law firms have experienced many consequences. They have had to deal with the increasing role of corporate counsel, the pressures against high fees and overhead, the decline in large-scale litigation, and the general decline in legal work. The legal service providers studied in this Article seek to address the perceived failures of Big Law and to attract corporate clients that seek efficiency in the manner in which legal services are delivered and charged to them.

These alternative legal service providers have the potential to deliver high-quality work at lower costs. These firms may also attract excellent lawyers who value work-life balance issues more than the prestige of the Big Law firms. The structures of these entities adopt some radical changes from the traditional law firm structure. However, the changes seem to have a significant effect upon the cost structures of the legal work performed by the lawyers in these firms. Innovation and competition are working to provide alternatives to corporate clients. The alternative service providers have demonstrated an ability to grow in size and to increase gross revenues despite the recent decline in the economy.

The innovation that lies at the core of most of these alternative service providers involves a sophisticated unbundling of the legal project. Through the use of technology, business management practices, and sophisticated judgment, these alternative firms break down a representation into routine work, referred to as a commodity, and work that requires sophisticated judgments.<sup>256</sup> They present the client with a customized blueprint on the most efficient way to deliver high-quality legal services through the use of different lawyer and nonlawyer service providers. This approach to offering legal services to corporate clients does present several risks. Corporate clients may have too much confidence in judgments about how legal and nonlegal services should be properly unbundled. Historically, the legal profession has considered the issue of unbundling in the context of serving clients who cannot afford the complete services of a lawyer.<sup>257</sup> These efforts have led to questions about whether lawyers should be able to help clients or unrepresented parties represent themselves with the lawyer providing legal services only on a narrow aspect of the entire representation. The unbundling used by alternative law firms to corporate clients are asking corporations to consent to delegate part of the work to lower-cost providers. But whether such unbundling is truly in the interest of corporate clients is open to question. Will the quality of the work remain consistent after it is unbundled? And, who will bear the risk of mistakes in

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256. See MORGAN, *supra* note 14, at 94 (noting the transformation of law practice from problems requiring complex analysis to a series of commodities that can be addressed through routine legal services).

257. See generally AM. BAR ASS'N STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES, ET AL., REPORT (2013), available at [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/ls\\_resolution\\_and\\_report\\_108.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_resolution_and_report_108.authcheckdam.pdf).

unbundling? The alternative legal service providers rely to a significant extent upon nonlawyers in their work to reduce cost. A weak link in the provision of these services may be the reliance upon nonlawyers and outsourced services. Of course, someone ultimately will need to be responsible for these judgments, but the risk exists that the services will not meet the standards of practice provided by Big Law firms.

This Article has presented the models of six different types of alternative service providers. Three of these models seem to have the most upside for transformative change in the representation of corporate clients. Clearspire's two-entity approach with salaried lawyers and fixed-fee billing may provide corporate clients with the advantages of the MDP, but one controlled by lawyers who have a strong incentive to deliver efficient legal services. The Coral software increases the sophistication of the analysis of the matter and offers unparalleled transparency that is likely to be welcomed by most clients.

Axiom Law offers corporate clients a management consulting firm's analysis of every single legal representation.<sup>258</sup> It is as if a client were to hire McKinsey or Bain & Company to analyze how best to deliver legal services in a particular representation.<sup>259</sup> And, once the analysis is complete, Axiom Law offers corporate clients a sophisticated analysis on how they should address these legal needs by (1) using the client's own lawyers, (2) insourcing lawyers and nonlawyers to be supervised by the client's general counsel, or (3) outsourcing the work to Axiom Law's outside law and nonlaw professionals. Axiom's focus on helping Fortune 100 clients with their complex legal problems from a business perspective poses a major challenge to large law firms.

LegalForce is a law firm associated with a technology that has the potential to revolutionize the practice of trademark law. The technology has the potential to attract large numbers of clients that need trademark services in a very short period of time. These representations can generate significant revenue for LegalForce, which in turn can lead to the development of a sophisticated network of lawyers to serve the broader legal needs of this large client base. The challenges of this model, of course, involve maintaining the creativity of the networks of high-quality legal counsel at reasonable fees in their markets.

This analysis does not intend to denigrate the contributions of the three other legal service providers: VLP Law Group, VistaLaw, and Paragon. Each of these firms has the potential to become a mainstay in representing corporations, but on a smaller, less transformative scale. VLP brings experienced lawyers with judgment to represent corporate clients without the overhead and associate base. VistaLaw places corporate lawyers

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258. Professor Henderson notes that Axiom Law is likely to be a bellwether for disruption in the legal industry. *See* Henderson, *supra* note 121.

259. *See* BAIN & COMPANY, <http://www.bain.com> (last visited Apr. 26, 2014); MCKINSEY&COMPANY, <http://www.mckinsey.com> (last visited Apr. 26, 2014). Both of these management consulting firms employ lawyers and offer consulting services related to a corporation's legal matters.

experienced in international and multinational transactions at the disposal of general counsel. Essentially, VistaLaw offers corporate clients and in-house counsel access to a trusted network of lawyers around the world. Paragon may transform staffing at corporate in-house counsel departments and, in turn, may allow corporations to handle more work and time-pressured work internally. The use of such lawyer-staffing mechanisms by in-house legal departments will affect the legal work that is currently assigned to outside traditional large law firms.

Nevertheless, competition from these legal service providers is a welcome development in the legal marketplace. Innovation depends upon ideas, trial and error, and corrective measures. To the extent that these entities rely upon nonlaw service providers, clients may receive high-quality work with significant efficiencies. Law firms may develop relationships with new support providers that produce significant innovation in the delivery of the legal services. More importantly, these alternatives to Big Law also will force traditional large law firms to become more efficient and to change the old ways of billing and legal representation.

In 2013, the Commission on Ethics 20/20 completed its work on the revision of the Model Rules to accommodate practice in the twenty-first century. Although the members of the commission produced many excellent working drafts and papers, ultimately, they presented few important changes to the Model Rules. The only changes that significantly affect the practice of alternative service providers relate to the outsourcing of work to outside lawyers and nonlawyers and the need of lawyers to keep abreast of changes in technology. Those changes mostly codified existing law and practice. For many observers, Ethics 20/20 was a failed attempt to modernize the ABA's code regulating lawyers in this country.<sup>260</sup> The ABA continues to embrace the view that the Model Rules adequately address the issues that arise in the practice of law. In reality, however, legal practice continues to evolve and modernize, and the ABA has little or nothing to say about how the state bar authorities should address these developments.<sup>261</sup> The regulatory structures of the legal profession should address, not ignore, innovations such as the development of alternative legal service providers that seek to represent Big Law clients.<sup>262</sup> The ABA's inability to

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260. See John S. Dzienkowski, *Ethical Decisionmaking and the Design of Rules of Ethics*, 42 HOFSTRA L. REV. 55, 91 (2013).

261. A very interesting commentary suggests that American regulators' decisions to allow Clearspire and Axiom Law to have nonlawyers raise capital and hire lawyers to deliver legal services may be a sign that the practice of law is already deregulated in the United States. See *Is Practice of Law Already Deregulated?*, 3 GEEKS & L. BLOG (Sept. 5, 2011), <http://www.geeklawblog.com/2011/09/is-practice-of-law-already-deregulated.html>. Another commentator notes that he sees cracks in the U.S. regulatory structure. See Sam Glover, *Is It Time for Non-lawyer Ownership*, LAWYERIST (Sept. 24, 2013), <http://lawyerist.com/time-for-non-lawyer-ownership/> (quoting Andy Daws, Riverview Law's North American Vice President).

262. For a very interesting article about the role of regulatory structures upon innovation, see Ray Worthy Campbell, *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, 9 N.Y.U. J.L. & BUS. 1 (2012).

implement effective reform will eventually decrease the profession's influence in the self-regulation of lawyers.