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## Embrace Inevitable Change in Legal Services Profession, Conference Speakers Say

By RAY PINKHAM

The practice and business of law is changing and those who innovate will have the upper hand. That was the main theme of the opening session of the Fall 2015 National Legal Malpractice Conference, held Sept. 16-18 in Scottsdale, Ariz.

The gathering was presented by the ABA Standing Committee on Lawyers' Professional Liability.

Speakers made clear that the ways in which legal services are provided to clients has changed dramatically and attorneys will become increasingly dependent on technology to remain competitive in the industry.

They offered a wide variety of perspectives on a number of issues, including the ways in which technology and consumer demand will shape the next evolution of the legal industry.

### Most Significant Changes

Monica Bay, a Fellow at the Stanford Center for Legal Informatics, said she sees a future in which lawyers become more like "long-term concierges." She indicated that automating certain repetitive functions would free up lawyers to do other, more interesting tasks.

Bay predicted that associate roles would change dramatically, leading to a 30 percent decline in the number of associates.

But panelist William Henderson, a professor at Indiana University Mauer School of Law, told attendees his view is that the emphasis on technological change is misplaced. He said the essential issue is not a technology problem, but rather a people problem.

He explained that although many in the legal profession believe it may be easier to simply write a check and solve problems through better technology, emphasis should be placed on the skills of the individuals using that technology.

Henderson offered a Tennessee-based company, Counsel On Call, as an example of a company that is making money using people that big law firms no longer want, doing jobs that law firms simply don't want to do.

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According to panelist Karen Dyck, a member of the steering committee of the Canadian Bar Association Legal Futures Initiative, the most significant driver of change is client demand. Clients are looking to lawyers to provide a customer service experience that is similar to that in other settings, she said.

These expectations, she said, may have an impact on claims against attorneys because of clients' desire to get more for less, which itself is a result of the current economic circumstances of both individual clients and corporate clients.

In addition, Dyck said she sees more ways for consumers to interact directly with the legal system. She explained that historically, lawyers were the doorway to the legal system, but with the advent of technology and tools such as LegalZoom or Rocket Lawyer, consumers can access legal services without using lawyers in the traditional sense.

Moderator James Calloway, director of the Oklahoma Bar Association Management Assistant Program, agreed that consumer demand is a significant factor leading to change in the industry.

He compared consumers' ability to quickly and efficiently interact with a doctor or dentist online to the experience of interacting with a lawyer, where, Calloway said, an individual has to call to set up an appointment two weeks in advance to even find out if the lawyer can help and how much it is going to cost.

### Innovation in the Legal Industry

Next, the panel reviewed how the legal industry is innovating and what types of changes they expect to see as law firms and legal service providers experiment with new and different business models.

Henderson said although lawyers are good at identifying and analyzing risk, there is also a risk of doing nothing when the current business model for law firms is not working well.

Dyck said she sees a narrowing of the definition of reserved or restricted legal services that may result in fewer unauthorized practice of law prosecutions. She recommended bringing other professional services providers "into the tent," resulting in greater collaboration and a potential expansion of the marketplace.

Approaching legal problems through the lens of innovation means a shift in mindsets and a willingness to embrace risk, Dyck said.

Calloway agreed, saying there are really two standards in the legal profession: perfection or malpractice.

Instead of one significant mistake affecting a person's entire career, there should be better quality control and an acknowledgement that mistakes will happen, he said.

One primary form of innovation the panelists described is the rise of online, do-it-yourself, legal document assembly services. Although these tools may be affordable and easy for attorneys in solo and small firms to learn, they said, attorneys will likely need to increase the volume of transactions to maintain their revenue stream.

However, they cautioned that more cases and matters may lead to more administrative issues for routine, often low-paying, legal work.

For example, if attorneys use a LegalZoom-type model in providing such a service, extreme care must be taken to avoid errors. If such an error slips by in the development of such a system, it may be replicated hundreds of times for hundreds of clients before the error is caught.

### **Access to Justice**

Another theme of the discussion was that there is an incredible opportunity in providing legal services for the approximately 80 percent of Americans who cannot find or afford legal assistance.

Henderson said there are many lawyers for organizations, but an atrophy of lawyers for individuals. He suggested that companies such as LegalZoom, Avvo and Rocket Lawyer are game changers for the legal industry because they are tapping into a significant latent market of individuals who cannot afford lawyers.

Dyck suggested there should be a responsible liberalization of regulation of legal services providers and that regulations could be loosened without harming the public.

She explained that firms need to be able to access capital and should be able to operate in an environment that allows for a certain level of experimentation and permission to fail.

Bay said one of the biggest problems remains a lack of diversity and the fact that women still make less in big law firms than their peers.

### **Innovation in Law School and CLE**

The speakers also recognized that significant student debt burdens are causing problems for law schools, and

they said few law schools have embraced a new approach.

Henderson suggested the problem is that the legal profession focuses on inputs into the system—e.g., LSAT scores and other academic statistics—and there is no punishment or reward for changing the system.

In some instances, he said, law schools “waste smart people's time” and faculty are rewarded for academic output and publishing articles. Buyers of legal education, law firms and other employers, do not want to discriminate based on an education that is done well or done poorly, he said.

Henderson told the audience the person who has collaboration skills and other data and technological skills will “clean the clock” of someone who is just smart and hasn't actually learned anything during his or her three years in law school.

Dyck said the same issues are present regarding continuing education for lawyers: emphasis is placed on hours and quantity and not the quality of the program or the increased learning achieved.

The current situation reflects a desire to simply comply with regulations and CLE requirements, with little or no emphasis on gaining the skills or expertise in areas that lawyers really need such as accounting, business, negotiation and project management, she said.

Her recommendation is that there should be a shift toward lifelong learning and a focus on outcomes and not simply on inputs. She admitted that how to do that remains a mystery and would require a significant paradigm shift.

### **Crystal Ball**

The speakers gave the audience their view of the future of law.

Bay said law firms that have survived the latest upheavals are the ones that specialize and do not try to be “everything for everybody.”

Henderson emphasized the importance of using teams and processes to reduce mistakes and drive up quality.

Dyck stressed the importance of data and metrics to determine whether lawyers are achieving the desired outcomes for clients.

Calloway circled back to the issue of technological skills, saying a lot of what makes lawyers more effective and happier involves the use of technology.