

LSBA, ATJ Commission

Create Modest Means Online Legal Directory

Attracting Moderate Income Clients: Why Expanding Your Client Base Can Increase Your Bottom Line

By Amy E. Duncan

In March 2016, Mary's husband Ron was diagnosed with a progressive brain disorder called Lewy body dementia. At the time of the diagnosis, Mary had a full-time job as an office manager earning \$24/hour. Ron was self-employed, but eventually gave up his business due to the effect the disorder was having on his ability to work. On Mary's income, Ron's Social Security and Medicare, Mary was able to care for Ron until his condition became so debilitating that he required 24-hour medical attention. With limited funds, Mary started the stressful process of getting Ron's legal affairs in order before placing him in a senior nursing facility that could care for him full time.

Mary first sought assistance from local nonprofits and legal aid organizations but quickly found out that she did not qualify for free legal aid. Although she couldn't afford an attorney at the going rate of \$250 an hour, she was willing to work with an attorney at a reduced rate, say \$50-\$75 per hour. Because of the time sensitivity of the matter and not knowing where or how to find an attorney she could afford, Mary went ahead and handled her family's legal affairs — succession, power of attorney, etc. — on her own. Mary knows that working with an attorney would have greatly alleviated the stress of handling these matters while working full time, taking care of her husband, and coping with the grief of losing her husband to an aggressive disease. But, without access to affordable legal services, she felt she had no choice but to handle it on her own.

Mary's story is the story of many people in the United States with legal matters that go unaddressed by the legal profession. Mary's family falls into what is known as the "justice gap." This is the gap between being able to afford market-rate legal services and qualifying for free legal aid based on one's income. Mary is in the middle. She makes too much to qualify for free legal aid, but not enough to afford the going rate. So she, like many others, decided to take on a complex legal matter and all of its attendant consequences on her own.

Mary's story, in terms of income, is even more common in Louisiana. Louisiana is home to 4.684 million people, making it the 25th most populous state in the United States and the 10th most populous in the South.¹ Sadly, Louisiana also has the third highest poverty rate in the nation, with 20 percent of people falling below the poverty line—\$24,340 for a family of four.² Median household income in 2012-16 was \$45,652, meaning that half of the households in Louisiana make this amount or less. That is nearly \$10,000 below the national statistics.³ About 1.3 million people in Louisiana match Mary's economic circumstance. They fall between 200-400 percent of the poverty guideline set by the Census Bureau, meaning they make above the eligibility guidelines for free legal aid.

A national study by the American Bar Association (ABA) found that half of low- and moderate-income American households are facing one or more situations that could be addressed by the civil justice system. The same report concluded that nearly two-thirds of moderate-income households with civil legal needs were not finding their way to the justice system.⁴

The legal profession has responded to alarms about the lack of access to legal representation for the public with initiatives to fight or fill cuts to legal services programs, to promote lawyers providing free services through pro bono assistance, to develop resources for self-represented litigants, and to allow for the unbundling of legal services. Lawyers have even raised ideas about taking matters outside of the legal system and away from the need for a lawyer—allowing diverse services to be provided by non-lawyer professionals.⁵ However, many believe the answer to reducing the gap in accessible legal services is the legal



profession's sincere commitment to making changes to the current market fee rates.

The Current and Future State of the Legal Market

The legal market, with regard to price, is becoming more and more competitive. Despite the demand for legal services, the Bureau of Labor Statistics (BLS) suggests that "more price competition over the next decade may lead law firms to rethink their project staffing in order to reduce costs to clients." BLS expects clients, both private and corporate, to cut back on legal expenses by demanding less expensive rates and scrutinizing invoices. They predict that work previously assigned to lawyers, such as document review, may now be given to non-lawyers, such as paralegals and legal assistants, and routine work may be outsourced to other lower-cost legal providers.⁶

These types of responses to price competition place continued pressure on the job market, particularly for new lawyers. In 2016, 73 percent of the graduates of 204 ABA-accredited law schools had full-time jobs that required law degrees. This is after seeing a 7 percent decrease in class size due to lower enrollment.⁷ Considering the supply of trained lawyers without work along with the demand by the middle class for affordable legal services, one would think this would translate into lower costs and more legal needs being met. Yet, the cost for services continues to rise.⁸

When compared to other industries,

the legal profession has been slow to adapt to changing trends—trends that ultimately affect the cost for services. Technology, for instance, is changing the traditional workflow approach. The traditional approach usually means legal advice handcrafted by lawyers (some in partnership), delivered on a one-on-one basis with the output being documentation, and, generally, the charge for the services computed on an hourly billing basis. With this approach, most legal services have become unaffordable to their consumer users. By incorporating new technologies, attorneys are able to reduce the time and cost spent on tasks such as document assembly and other responsibilities that typically consume an attorney's time.

In terms of the future of legal services, commentators have predicted radical changes to the legal world over the next two decades, with cost being the focus of the changes. Richard and Daniel Susskind's book, *The Future of the Professions*, suggests that technology, and specifically artificial intelligence (AI), will have a fundamental impact on the legal industry and the role of lawyers in the future. They argue that the current professions, including legal, are unaffordable and antiquated, with the talent of the best enjoyed only by a few.⁹ At the other end is the growing supply of technologically driven alternatives to traditional legal service, leading to increased momentum of the DIY movement in which clients turn away from traditional law firm services.

In a competitive landscape for legal

services, attorneys and law firms should be willing to incorporate new approaches to delivering legal services, specifically to reach middle-income consumers whose legal needs are not being met. By being proactive and adapting to the changing market for legal services, attorneys can save time and money, grow their businesses and increase access to affordable legal services. Below are some ways attorneys can adapt to the changing landscape and incorporate cost-effective legal solutions into their business models to meet the legal needs of modest means clients.

Make Services More Accessible to Modest Means Clients and Adapt to Changing Markets

Leverage Technology to Increase Your Reach

Technology is playing a fundamental role in the transformation of the legal profession. This transformation can translate to time savings for attorneys and cost savings for consumers.

For instance, new programs that systemize document assembly allow attorneys to generate high-quality documents after straightforward interactive consultations with users.¹⁰ Some automation programs are even offered within cloud-based case management programs.¹¹

Companies in Silicon Valley are even offering AI programs to attorneys (some at no cost) to increase affordable access to justice — programs that can help quickly identify bad case law, find similar case law, or summarize the facts of a case.¹²

There are also legal technology programs available to save both the clients' and attorneys' time. One example is end-to-end online credit processing payment programs like LawPay that allow customers to pay for attorney services online. Additionally, case management software programs now have automated processes for collecting on past due accounts.¹³

These are just a few ways new technologies are changing how lawyers' practice — ways that can positively affect the attorney's bottom line and translate into cost savings for clients.

Offer Affordable Pricing Options for Clients with Limited Means

By now, most U.S. law firms have the option of an Alternative Fee Arrangement (AFA), broadly defined as charging for legal services in any method other than the standard billable hour. However, there's a difference between simply having that option and affirmatively engaging with a client to determine what fee model best meets his or her needs. In a broader context, actively offering clients AFAs could greatly increase the perception of value and promote trust in the firm-client relationship.

For modest means clients, their ability to pay will depend on their income. Some billable-hour pricing options, like sliding scale, may work for middle-income clients, if the fee structure is based on their income. For instance, attorneys may work on a sliding scale in which they reduce their hourly standard rate by 75 percent for people falling between 200-250 percent of the poverty guidelines, 50 percent for people falling between 250-350 percent, and 25 percent for 350-400 percent. When the billable hour acts as a disincentive to efficiency, flat fees can increase transparency giving the client an opportunity to determine whether he or she can afford to pay for the services.

Increase Transparency in Pricing so Consumers Know What to Expect and Don't Shy Away from Seeking Legal Assistance

The allusion and mystery of the cost for legal services simply does not work for a family with limited means. The lack of price information has been raised as a culprit for people not obtaining the legal advice they need.¹⁴ When people engage services in most consumer markets, they expect to receive actual or even estimated costs before agreeing to the transaction.

Most professional services offer transparent pricing. Why should the legal industry be an exception? For many areas of law — including immigration, DUI and traffic, and minor criminal cases — transparent pricing is offered by way of fixed fees. In setting affordable rates, understanding the time and costs associated with a particular matter will be key to determining price. The Chicago Bar Foundation's Pricing Toolkit for attorneys seeking to serve low- and moderate-

income clients is a helpful resource that provides a step-by-step process in setting fee arrangements alternative to the billable hour, such as a flat fee rate, to meet the legal needs and budgetary restrictions of the population.¹⁵

Use Limited Scope Representation to Dip into the Untapped Market

Limited scope representation, sometimes referred to as unbundled legal services, is a way for attorneys to address consumer demand and increase legal access for middle-income consumers. Limited scope representation is governed by Rule of Professional Conduct 1.2(c) and is defined as an agreement between an attorney and client in which the attorney represents or assists the client for part, but not all, of the client's legal matter. A Louisiana attorney may undertake limited scope representation of a client in a divorce case by agreeing to handle the custody dispute, but decline to handle the community property partition. Or an attorney may handle a products-liability case for an employee injured on the job, but decline to handle the worker's compensation matter. There are many possibilities within the realm of limited scope representation — as long as the scope of services provided is reasonable and the requirements under Rule of Professional Conduct 1.2(c) are met.¹⁶

In a DIY culture where information can be accessed at the click of a button for free, some people, especially those with limited means, are less inclined to seek full representation services at an unknown cost to be later determined. In the proper context, offering limited scope representation can make access to legal services affordable and, if done correctly, can be profitable for the attorney by increasing his or her client base.

How is the LSBA Addressing the Justice Gap?

Each month, the Louisiana State Bar Association (LSBA) receives more than 500 calls from people seeking legal counsel, many of whom fall within the justice gap. Recognizing this dilemma facing middle-income families, the LSBA, through its Access to Justice Commission, created a Modest Means Committee in 2016. After studying the need, surveying Louisiana

attorneys and analyzing national programs, the committee created the Modest Means Online Legal Directory. The directory is designed to connect attorneys offering affordable legal services with Louisiana residents falling at or below 400 percent of the poverty line. The attorneys offering affordable rates do so by way of a sliding scale based on the client's income, flat fees, or by offering limited scope representation subject to the requirements of Rule of Professional Conduct 1.2(c).

How Can Attorneys Join the Directory?

The Modest Means Online Legal Directory is open to all active Louisiana attorneys in good standing who offer reduced-cost legal representation to people falling at or below 400 percent of the federal poverty line. To sign up, follow these steps:

- ▶ Go to: www.lsba.org/ATJCommission/ModestMeans.aspx.
- ▶ Complete the one-hour, on-demand CLE on "Ethical Considerations for Representing Clients with Limited Means" (see fee waiver opportunity below).
- ▶ Take a brief survey.
- ▶ Complete the online application form.

Once the attorney completes the process and is determined eligible to participate, the attorney's name, photo, contact information, practice areas and types of affordable legal services offered will be listed in the directory.

The directory is accessible to the public through the LSBA's new "Find Legal Help Portal" designed to connect the public with the full spectrum of legal services available in the state. The portal, located at www.LSBA.org/goto/FindLegalHelp, includes options for hiring an attorney, legal aid and "pro bono" programs, self-help resources, and online and telephonic assistance.

In addition to the portal, the LSBA also operates an online legal answers page called LA Free Legal Answers, <https://la.freelegalanswers.org/>, where people falling below 250 percent of the federal poverty guidelines can post legal questions and have them answered by attorney volunteers.

Conclusion

Distribution of legal services in the United States is often compared to the profile of a martini glass. At the very top, where the glass is the widest, is where Big Law and Big Corporations mix and the majority of the spending on legal services occurs. The thin base of the glass represents free legal services provided to the poor. The stem represents small businesses and middle-class families waiting for affordable legal services to become available.

The legal profession needs to devote energy to focus on the stem, an untapped market in many respects, for which people can afford to pay for services at affordable rates. With predictions of increased price competition in the legal market and people not seeking legal assistance for problems that require an attorney, now is the perfect time to improve internal processes within your law firm to better meet the legal needs of the middle class.

FOOTNOTES

1. U.S. Census Bureau, Tables, Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2017, available at: <https://www.census.gov/data/datasets/2017/demo/popest/state-total.html>.

2. U.S. Census Bureau, QuickFacts Louisiana (last visited April 9, 2018), available at: <https://www.census.gov/quickfacts/LA>.

3. *Id.*

4. Am. Bar Ass'n., "Legal Needs and Civil Justice: A Survey of Americans" (1994), available at: https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/downloads/legalneedstudy.authcheckdam.pdf.

5. Ann Juergens, Faculty Scholarship, "Valuing Small Firm and Solo Law Practice: Models for Expanding Service to Middle-Income Clients," 39 Wm. Mitchell L. Rev. 82-83 (2012), available at: <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1249&context=facsch>.

6. U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook: Lawyers (last modified Jan. 30, 2018), available at: <https://www.bls.gov/ooh/legal/lawyers.htm>.

7. Press Release, Am Bar Ass'n., "ABA legal education section releases employment data for graduating law class of 2016" (May 11, 2017), available at: https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2017_employment_data_2016_graduates_news_release.authcheckdam.pdf.

8. Gabe Friedman, "Report: Law Firms Jacking Up Rates, Demand Flat," Bloomberg Law, Nov. 13,

2017, <https://biglawbusiness.com/report-law-firms-jacking-up-rates-demand-flat/> (Law firms increase billing rates by four percent based on a report by the Citi Private Bank Law Firm Group).

9. Richard and Daniel Susskind, *The Future of the Professions: How Technology will Transform the Work of Human Experts*, 3 (Oxford Univ. Press, 1st ed. 2015).

10. In Louisiana, Ayla Legal Systems offers state-specific document assembly and generation program. To learn more, go to: <http://www.aylalegal.com/>.

11. Clio Case Management is cloud-based software that offers document automation within its program. To learn more, go to: www.lsba.org/Members/TechnologyServices.aspx.

12. Ross Intelligence, a company in Silicon Valley, created EVA, an AI system available for free. To learn more, go to: <https://rossintelligence.com/ross-new-coworker-eva/>.

13. Clio Case Management Software provides this within its platform.

14. See, Solicitors Regulation Auth., "Price transparency in the legal services market" (January 2018), available at: <https://www.sra.org.uk/sra/how-we-work/reports/price-transparency-legal-services-market.page> (Solicitors Regulation Authority (SRA), the body that regulates solicitors and law firms in England and Wales, commissioned a comprehensive study to determine whether firms should be required to publish price information after the Competition and Markets Authority (CMA) found that the lack of transparency of legal service price information weakened competition and meant consumers did not get the legal advice they needed).

15. Justice Entrepreneurs Project & Chicago Bar Found., "Pricing Toolkit for attorneys seeking to serve low- and moderate-income clients" (March 21, 2016), available at: <https://chicagobarfoundation.org/resources/practice/pricing-toolkit/>.

16. The Louisiana Supreme Court has made *Notice of Limited Appearance* forms available online for Family Law and Non-Family Law cases (see, <https://www.lasc.org/rules/supreme.asp>). The Alabama Access to Justice Commission has published a helpful presentation on limited scope representation presented by Sue Talia available at: <http://www.alabamaatj.org/i-can-help/limited-scope-representation/>.

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