



COVID-19 as an impetus for necessary change

An associate's view: Over time, our practice of law bends towards a more perfect profession

By SARAH MADAN

The legal profession is notorious for its late adoption of advancements in technology. Curiously, most practitioners remain wedded to old approaches and processes. The COVID-19 pandemic has restricted access to the traditional in-person nature of litigation and practice, and, to a great extent, continues to do so. With apprehension, the practice of law had no other choice than to adapt to the latest technologies and trends in the workplace. These new approaches to a PI practice have been shown to be reliable, durable, and more efficient.

Technology has fundamentally changed the practice of law

Until recently, it was commonplace for most attorneys to spend upwards of 10 to 20 hours a week traveling for court appearances, depositions, and mediations. The ABA's 2019 *Profile of the Legal Profession* reported that roughly one-fourth of lawyers did not telecommute at all. When COVID persisted and cases could no longer be stalled in hopes of in-person hearings, virtual litigation began with a surprisingly smooth transition.

In a time of mass technological literacy in much of California, communicating with counsel and clients became seamless compared to the drawn-out in-person meetings of the past. Platforms such as Zoom and BlueJeans have simple user interfaces that borrow from familiar applications such as dialing a phone number, allowing even a novice tech-user to successfully appear remotely. With remote appearances, depositions, and mediations as the new normal, the legal profession has been able to effectively eliminate unnecessary travel time and costs. Going forward, it should be the exception, not the rule, to drive hours to a conference room, arrange for accommodations, and coordinate meeting clients when virtual platforms have proven efficacious at almost no cost to the firm or client.

Certainly, there are challenges associated with remote working. The law is a heavily regulated industry with an extensive list of professional rules that must be adhered to. Rule 1.1 of the ABA Model Rules of Professional Conduct states that a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology. The State Bar of California requires that those unfamiliar



with technology must either become familiar with it, consult with or delegate to someone who is familiar with it, or decline to represent the client.

Law firms must invest in learning and developing sophisticated cyber-security policies to protect client information and support employee remote work. Failing to have a sophisticated understanding of advancing technology can expose any practitioner to malpractice.

Traditional office culture is changing

Working from home may be a new concept for legal professionals, however, most major industries such as tech, customer service, finance, and healthcare have utilized hybrid work-from-home models for years. It is no secret that remote working offers employees unparalleled flexibility in scheduling meetings and maintaining a personal life.

Employee values are shifting, and flexible working arrangements can be the difference in keeping your valued associates and staff. Without the great equalizer of the morning and afternoon commute, attorneys are at a liberty to work hours that accommodate their schedule better than the traditional 9-5. Remote working acknowledges the inherent differences in each employee's work style and fosters the schedule that is most



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productive for them. Further, the overwhelming majority of day-to-day practice, including paralegal and support staff duties, are autonomous tasks that can be done early mornings, nights, or weekends. The idea of a collective consciousness of employees at the office has faded away these past two years. Employees see themselves as individuals and will seek a workplace that accommodates their needs before conforming to an arbitrary in-office schedule.

Zealous advocacy remains paramount

Of course, each lawyer has a responsibility to fully assess the dynamics of their case and make a judgment as to when a personal appearance is necessary. A lawyer must act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. (Rule 1.3 of the ABA Model Rules of Professional Conduct). There will always be situations where in-person oral argument should be preserved at all lengths. Dispositive motions, trials, and appellate arguments deserve the gravity of in-person hearings. Considerations that ought to be weighed before opting for a digital platform include the relationship with opposing counsel, preference of the presiding judge, capabilities of clients and purpose of the appearance. The essence of a successful hybrid remote model is careful discretion. Lawyers must be thoughtful when choosing to forgo an

in-person meeting. The quality of representation must never suffer in the pursuit of efficiency.

Differences between millennial associates and established partners

As the tides of legal office culture turn, the demographics of the legal profession are starting to reflect the talent that exists in the general population. From 1950 to 2020, the percentage of female lawyers has increased from 3% to 37% (2020, ABA National Lawyer Population Survey). If firms are open to offering prospective hires a hybrid model of traditional in-person and virtual work, we may see a more rapid increase in diversity among the profession. As of 2020, only 14.1% of lawyers were people of color (2020, ABA National Lawyer Population Survey). Despite decades of diversity efforts, there continues to be a disparity in representation among legal professionals. Perhaps a change in the profession itself is what will draw new attorneys of different backgrounds to the practice. There remains a generational dichotomy between millennial associates and established partners that tends to delay the adoption of new routines. While organizational leadership tends to favor the low-risk procedures that are tried and true, new attorneys with 40+ years in the profession to look forward to are more incentivized to push for change in the status quo. Partners need to carefully consider the benefits and risks of

embracing change and communicate their decisions clearly to associates and staff.

Adopting change

The law is a demanding profession that requires attorneys to be accessible and responsive no matter where they are. With modern technology, lawyers can draft and review legal documents, negotiate, and appear for court securely from anywhere. Technology should be a facet of the practice, not a replacement for service. Firms who neglect to engage with advancing technology and workplace trends risk incompetence in representation and stagnation of office culture. While it remains to be seen if the legal industry will embrace remote work and litigation permanently, those firms that do may see the payoff in their bottom line and retention of talent. Firms who remain fixed on a return to the pre-pandemic ways of practice risk being unable to take advantage of the inevitable change.

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