

The Post-Pandemic Future of Law Firms

BY L. WILLIAM SCHMIDT JR.



“The future ain’t what it used to be.”

—Yogi Berra

The world looks much different today than what it was or will likely ever be again. The changes we see are not necessarily new, but they are moving at warp speed. We can yearn endlessly for the past, or we can pivot to the practice of law as it will look in the future. In my five decades as an estate planning attorney, I have observed the beginning of many of the changes that are now framing the future. This article looks at some of these changes and the rapidly increasing momentum that will result in more changes in the practice and economics of law firms of the future. Of course, these changes are merely the forerunners of what to expect and how to respond, but perhaps they can help us better prepare for what’s just around the corner.¹

Technology

The technological changes that affect law practice are perhaps the most obvious. Few of you reading this article will remember carbon paper and the IBM Selectric typewriter on which errors were difficult and time consuming to correct. Today, errors can disappear with a simple back space on your computer. Entire sections of text can be erased with a single stroke of the delete key. Computers allow for more efficient tracking of records and billable hours. Legal research with the help of Google is replacing vast expensive libraries. In 2015, 35% of law firm leaders said they could envision “newbie” associates eventually being replaced by IBM Watson, a data analytics processor that uses natural language processing, a technology that analyzes human speech for meaning and syntax to answer human-posed questions, often in a fraction of a second.² Marketing, once

considered unprofessional, is now an absolute necessity. Without Zoom, it would be impossible to conduct any form of relationship with clients. And imagine life without your iPhone.

Attrition

Attrition is occurring from several sources. Due to the increased cost of a legal education and the displacement of new lawyers with technology, it will become increasingly difficult for prospective students to make the choice to enter law school. Faced with declining enrollment, several law schools have already been forced to close, including Concordia University Law School, Valparaiso Law School, and Whittier Law School.³ Others have been forced to merge for survival—University of Illinois at Chicago acquired John Marshall Law School. To entice more enrollment, some schools have lowered their admission standards, often producing ill-qualified lawyers. There are approximately 235 law schools, but only 199 are accredited by the American Bar Association (ABA) to confer a degree in the law.⁴

Here in Colorado, there’s been a dramatic increase in the number of active lawyers, a significant increase in the number of women lawyers, and an increase in the average age of lawyers.⁵ As lawyers in large firms age, the typical pyramid formation of the firm becomes top heavy. A Stanford law professor predicted several years ago that, in 15 years, two-thirds of lawyers will not be practicing law.⁶

The stress of the pandemic has forced law firms to evaluate cost-saving measures, which include decreasing office size and negotiating rent concessions from landlords (the second largest expense for most firms), cutting salaries (especially those of senior partners), reducing partner equity draws, and getting rid of lawyers who chronically underperform or practice specialty areas not in high demand by clients. Recruiting, training, and mentoring young lawyers has become especially difficult as most continue to work from home.⁷

Challenges to New Lawyers

The investment in a legal education may no longer support a return on that investment. The United States has about 1.3 million law-

yers—the most crowded profession in the country.⁸ Nationally, it's reported that there's one lawyer for every 300 people.⁹ For the class of 2019, 90% of law school graduates got jobs, but this rate is considered not predictive of the future due to decreased employment due to COVID-19.¹⁰ For example, the employment rate for the first quarter of 2020 was only 3.7%, clearly the result of the pandemic.¹¹ Burdensome debt is a real problem. In 2018, 80% of University of Michigan law graduates left with student loan debt of \$117,000.¹² Law student debt today averages about \$165,000, creating stress and resulting in deferred dreams, such as purchasing a home, starting a family, and enjoying expensive vacations.¹³ Law school debt is even more problematic for minorities. While average law school debt for white students is \$101,510, the average debt for Black students is \$196,760.¹⁴

Competition from Nonlawyers

There is an increasing challenge from non-lawyers providing cheap alternatives to legal services. Minnesota recently joined a growing number of states allowing nonlawyers to perform certain traditionally legal tasks. Arizona has eliminated the rule that forbids nonlawyers from co-owning legal services operations. The Utah Supreme Court last year approved legal reforms allowing nonlawyer ownership or investment in law firms. Law on Call is now the first US law firm owned entirely by nonlawyers and operating because of these reforms.¹⁵ Clients pay \$9 per month to get unlimited phone access to lawyers who can offer advice on business law, end-of-life planning, contracts, employment, housing, and real estate. If legal work is needed, the discounted rates start at \$100 per hour. Three lawyers and two paralegals currently work for the firm.

LegalZoom has been allowed to perform services once considered the unlicensed practice of law by providing subscription services for wills and trusts, incorporation, partnerships, LLCs, and family law. Recent employment figures show 1,200 LegalZoom employees generating \$275 million in annual revenue.¹⁶ Principal Financial Group does one better by offering free estate planning documents with its retirement plan accounts. The large accounting firms are also providing legal services. Deloitte, Ernst & Young, KPMG, and PwC employ an average of 2,200 lawyers in 72 countries; the strongest practice areas are taxation, immigration, and labor and employment. A New York task force recently hesitated to allow alternative business models such as nonlawyer ownership of firms, but it also suggested that social workers should be able to offer certain legal services and that a

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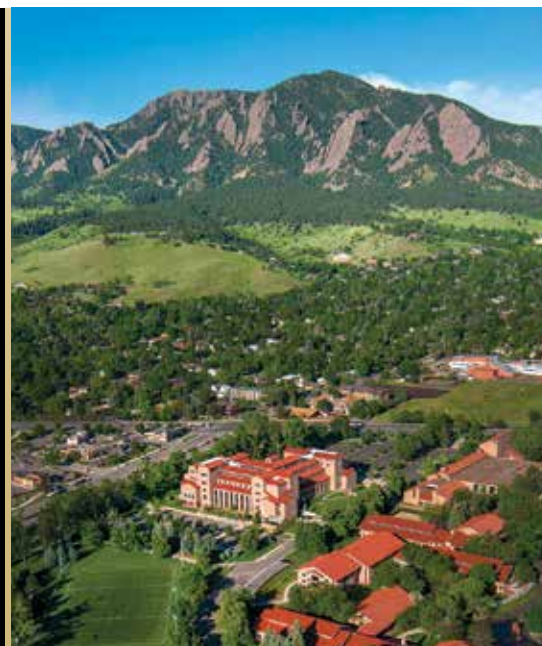
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program providing trained volunteers to give nonlegal support to unrepresented litigants be expanded.¹⁷

Advertising

Once considered unprofessional, advertising legal services is now a significant source of new business. Personal injury ads appear on television as frequently as auto sales and medical treatments for obesity. There is a vast population of consumers looking for legal help they can trust and afford. It’s been reported that 110 million consumers seek legal counsel at least once annually.¹⁸ Of these, 58 million looked for a specific legal specialty.¹⁹ Of those who looked, 57% eventually hired an attorney. Research firms report that 39% used Google for their search, 34% visited online legal forms, and 31% visited law firm websites.²⁰ Professional seminars for clients and prospects are an effective method of reaching a large population of potential clients at one time. With the potential for large changes in the tax laws from the incoming Biden administration, tax seminars will begin to proliferate.

Changes in Law Firm Structure

The traditional law firm was structured like a pyramid, with senior partners at the top, junior partners at the next level, associates further

down, and paralegals forming the base. This eventually had the potential for conflict when the senior attorneys began to work less but (in the view of the “young turks”) received an unfair portion of the firm profits. It was also tradition for young associates to strive for partnership, and when that goal was reached, they rarely left the firm. Increasingly, the legal landscape has been marked by lateral moves from firm to firm with a partner or group of partners taking their lucrative practice to a new firm where they could reap more financial benefit from their large clients. For example, the large Chicago firm of Kirkland & Ellis in 2020 had the most partner departures of any large firm, losing 54 partners through lateral moves.²¹ Without changes at the top, the threat exists that the pyramid will become inverted, with the base shrinking while the top becomes bloated.

Changing Lifestyles

The new generation of lawyers has increasingly become dissatisfied with the traditional law firm structure characterized by billable hours and lockstep to partnership. This is evidenced by an increasing lack of long-term commitment along with a desire for life balance and a willingness to sacrifice money for family, health, and community. Working from home and avoiding long commutes is becoming

more the norm. There is often a desire to use legal skills to champion social issues such as the environment, climate change, and racial equality. Partners are changing their career paths through early retirement, taking reduced salaries for spending less time working, moving to in-house counsel employment, working for nonprofit organizations, and forming boutique firms where they can control lifestyle and expectations.

Creation of the Boutique Firm

A boutique law firm is a collection of attorneys typically organized in a limited liability partnership or professional corporation specializing in a niche area of law practice. Although a general practice law firm includes a variety of unrelated practice areas within a single firm, a boutique firm often specializes in one or a select few practice areas. Legal publications sometimes refer to any small or mid-sized firm as a boutique. However, “boutique” should only apply to those firms that focus on specific areas of law, regardless of size. These firms are characterized by lower hourly rates, former large firm attorneys, often no billable-hour requirement, low overhead, flexible fee schedules, flexible work schedules, higher proportions of women lawyers, lower attrition, and use of staff attorneys with lower salaries. These firms may also adopt the “eat

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what you kill” compensation structure, which often looks more like an overhead sharing arrangement than a true partnership.

Women and the Law

Women lawyers have assumed an increasing stature in recent years. When I graduated from Michigan Law School in 1962 (before many of you readers were born), there were three women in the freshman class of 250. Two of them eventually graduated. Upon graduation, I became an associate at Holland & Hart; there were no women lawyers in the firm until 1972 when, after much soul-searching deliberation, Jane Michaels was hired as the first woman lawyer in a major Denver law firm. She later distinguished herself, becoming president of the Denver Bar Association and one of the top trial lawyers in Colorado. She recounts that early in her career, a firm client said, “I don’t

want a woman lawyer on my case.” The firm responded, “Then you probably don’t want Holland & Hart on your case because she’s the best qualified to handle this.” It has always been important to take a stand for changes in the profession that may be challenged by our clients.

Women are reported to be more likely to leave large law firms (often to form boutique firms) for a variety of reasons, including sexual harassment (50% of women lawyers recently reported instances), family commitments (58%), pressure to market and develop new business (51%), billable hours requirements (50%), lack of access to new business opportunities, and implicit or explicit bias.²² Although changing in recent years, as late as 2019, data from the US Census Bureau found women lawyers earned 80% of what their male counterparts made.²³ One reason listed

is the unwillingness of women to negotiate their salary (7%), compared to men (57%). Although women now comprise roughly half of law school graduates, they still represent a minority (20%) of high-level partners in large firms.²⁴ Many disparities are narrowing, but diversity and equality will continue to need the support of allies within the profession.

Racial Bias

Although racial equity, inclusion, and diversity as social issues have been spotlighted by recent events, the struggles of minority lawyers are not new. The ABA has been raising the issue for many years and has conducted numerous studies on the causes and solutions for this systemic issue. Although women lawyers have made much progress in recent years, women lawyers of color are often still adversely impacted. In a recent study, only about half

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of the women of color said they felt they had equal access to the kind of “high-quality” assignments that lead to exposure and advancement in an organization.²⁵ Among white men, that number was 81%.²⁶

A recent ABA Commission report recounted the frustration experienced by one Black woman lawyer in her forties:

The bias that I face as a woman of color has become the elephant in the room. It means that I have to keep proving myself to clients, peers, superiors, subordinates, even after each success. Sometimes others assume that I am not a threat because they don’t see me as a real contender for business or leadership roles. I am not seen as a viable team member until I prove that I am. Then, even once I get buy-in from others, there are those who doubt my abilities or wait for me to fail.

I feel like I have to try harder than white [men]. I feel like people don’t give me the same tools to succeed or excel. I have to make my own way without these tools for success. I face adversity even when I try to be normal. Being content is not an option for me.²⁷

Although racism may impact women lawyers disproportionately, it is also an issue affecting Black men and other male lawyers of color. For a group of Black male lawyers, the global outcry became the spark for a new survey report based on their own experiences.²⁸ Among its findings, 30% of the group’s members said they have changed jobs in the legal industry to escape bias, racism, or a hostile work environment; 74% said they faced more scrutiny than their white peers when they made the same or similar mistakes in their work product; 66% said they had

someone speculate that they had been hired because of affirmative action; and 44% said they were the only Black male attorneys in their offices.²⁹

And so the work to remove barriers in hiring, promotions, assignments, and compensation for women and people of color in the legal profession continues. Colorado is about to join a growing number of states that require attorneys to gain competence in equity, diversity, and inclusion (EDI). This would add a requirement that part of the annual CLE credits for ethics include EDI education.³⁰

Flight to the Suburbs

In the wake of the pandemic and resulting “stay at home” orders, Downtown Denver became a ghost town almost overnight. Denver Metro’s percentage of empty office space grew to 15.9% in 2020, its highest in 10 years.³¹ Citywide, office space vacancy rates doubled over the course of the pandemic.³² And in downtown Denver, nearly one in five (18.6%) of offices sat empty in the fourth quarter of 2020.³³

New technology, such as Zoom and the rise of automation, made the home office a reasonable alternative. Remote work from home actually turned out to be productive.³⁴ Long and frustrating commutes, costly downtown parking, high city center rents, and a more casual work environment (no more shirt and tie) were all positives. Unfortunately, favorite meeting spots like Racines and Zaidy’s disappeared forever, and rates of alcoholism, domestic abuse, depression, and suicide have increased.

So Much for the Past—Now What?

This discussion of the changing landscape demonstrates the Biblical wisdom that “there is nothing new under the sun.” Any attempt to forecast the future requires an understanding of events already in motion. None of these are new—they just require a resetting of our GPS to see where we are headed. The hope is that lawyers bend with the emerging landscape and societal changes rather than turning a blind eye and driving straight off the road.

CBA ETHICS HOTLINE

A Service for Attorneys

The CBA Ethics Hotline is a free resource for attorneys who need immediate assistance with an ethical dilemma or question. Inquiries are handled by individual members of the CBA Ethics Committee. Attorneys can expect to briefly discuss an ethical issue with a hotline volunteer and are asked to do their own research before calling the hotline.

To contact a hotline volunteer,
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Understanding Client Priorities

It should be obvious that trying to provide unwanted services is like pushing a boulder uphill. A study by a major bank reported the following financial concerns and priorities among its clients.³⁵

| | |
|---|-------|
| Loss of wealth..... | 88.6% |
| Mitigating income taxes..... | 84.7% |
| Taking care of heirs..... | 79.2% |
| Adequate medical insurance..... | 77.3% |
| Working with high-quality advisor..... | 72.7% |
| Sufficient money in retirement..... | 71.5% |
| Paying for kid's/grandkid's education.... | 48.3% |
| Being sued..... | 47.3% |
| Losing job or business..... | 40.0% |
| High-quality personal security..... | 28.2% |
| Taking care of parents..... | 28.1% |
| Making meaningful charitable gifts..... | 27.8% |

Your clients' priorities serve as the basis for meaningful conversations with them and assure that their basic concerns are addressed.

Maintaining Profitability

Although the traditional law firm model has been successful in the past, clients have increasingly taken more control and are demanding improved efficiency, predictability, and cost effectiveness. Clients are creating virtual teams that consist of lawyers and other financial advisors; seeking alternative fee arrangements; and using alternative legal service providers such as LegalZoom and large accounting firms. Here are some of the changes recommended by practice experts:

- Lower the cost of production. Focus on new technology and reduce antiquated systems. Are you using what you already have to the fullest capability?

- Increase volume. This will require more hours worked and may not be a solution for those already working at full capacity. It may also involve adding more personnel, which adds more overhead.

- Add new services. For example, many estate planning firms have added fiduciary options—serving as personal representatives or trustees. Lawyers have prepared the estate planning documents, have longstanding relationships with clients and their families, and thus are an obvious choice to implement a family's estate planning objectives.

- Schedule annual client meetings to review potential changes to existing planning or review new opportunities. Keep your clients close.

- Increase (rather than reduce) certain indirect overhead expenses, particularly in marketing, business development, and



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technology investments.

- Provide new-business development coaching for associates and boost investment in brand development.
- Review billing practices and introduce payment plans for services.
- Create strategic teams with accountants and financial advisors.
- Create a family office service that emphasizes a client's total legal/financial needs.

Many of these suggestions will be valid even after we emerge from the pandemic and may already be long overdue.

Review the Three Billing Practices

The traditional method of billing for legal services is hourly billing—keep track of time and bill at the end of the engagement. A Canadian appeals judge, in rejecting a court-appointed receiver's fee, summed up the problem with hourly billing:

A person requiring legal advice does not set out to buy time. Rather, the object of the exercise is to buy services. Moreover, there is something inherently troubling about a billing system that pits a lawyer's financial interest against that of its client and that has built-in incentives for inefficiency. The billable hour model has both of these undesirable features.³⁶

Conversely, flat-fee billing—estimating the time it will take to perform the service and quoting a flat fee—allows the client to evaluate

the cost versus the need for the service. Another option, value billing, focuses on the actual value of a service and is much like fixed-fee billing.

Quoting fees to a client is one of the most disagreeable aspects of our practice. Before I went to a flat-fee model, when a client asked what the proposed estate plan would cost, I could only reply, "I'm not sure. I'll keep track of my time and send you the bill once we've concluded our engagement." A frequent client response was, "I'll think about it and let you know." Many never returned. When I began quoting a fixed fee, if a client said something like, "That seems like a lot for just filling in the names on some forms in your computer," I could respond with, "I don't charge you anything for the forms. This fee reflects my experience in making sure I use the correct forms to accomplish your stated goals. This is a fee that reflects the value to your family of diagnosing an arrangement that will provide your family the demonstrated benefits of saving taxes and avoiding complications from the transfer of your wealth at death."

In addition to estate planning, many specialties are well-suited to the fixed fee/value billing model. Among its many benefits, this model:

- creates predictability
- incentivizes the attorney to work efficiently
- emphasizes value rather than time
- produces fewer fee disputes
- alleviates the need for attorneys to track time

- forces the attorney to evaluate a matter early on

- can be used as a competitive advantage.

And finally, it eliminates counterproductive charges for phone calls, a practice that simply discourages clients from keeping lawyers up to date.

Establishing Core Values

Becoming a trusted advisor involves more than just taking orders based on what clients say they want. It requires helping clients understand the consequences of their decisions to develop corrective goals and prevent future misunderstanding. Here are a few more ways to become a trusted advisor:

- Have credibility. Stay current with the latest developments. Continue professional education.
- Invest time in getting to know your clients and, depending on the legal issue, their family.
- Be willing to spend time with the client without charging for it.
- Schedule regular meetings to review past decisions and reflect on possible changes.
- Include your clients' other trusted advisors.

Review your firm's core values. What things are most important in developing the practice while still allowing a desirable lifestyle? Mary Vandenack, senior partner with the Omaha



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law firm Vandenack Weaver LLC, displays the following as her firm's core values:

- people
- excellence
- service
- wellness
- accountability
- industry forefront (being best at what we do)
- diversity
- integrity.³⁷

Firms should create a unique set of core values, but perhaps this is a good starting point.

Conclusion

Lawyers are often slow to make or react to changes. If something has worked in the past, the tendency is to repeat it. The rapid pace of change in technology today requires continual adaptation to these changes to facilitate the delivery of legal services. It is equally important to understand what clients want from their providers and to stay ahead of alternative services providers, which are steadily encroaching on areas formerly reserved solely for licensed attorneys.

"It is not the strongest of the species that survives, nor the most intelligent that survives.

It is the one that is the most adaptable to change."

—Charles Darwin 



L. William Schmidt Jr. retired after 50 years as an estate planning attorney. He was a partner and later of counsel to Holland & Hart, formed several of his own law firms, served as senior trust officer for First Western Trust, and was a senior vice president of BOK Financial Wealth Management. A Fellow in the American College of Trust and Estate Council (ACTEC), he still writes and lectures on a variety of legal topics. He has served on many nonprofit boards, including the Denver Foundation, where he is a past trustee and currently chair emeritus of the Professional Advisors Council.

The SideBar is an informal space where members can share their experiences, offer practical advice, share law-related stories, and take a lighter look at the law. Send your SideBar submissions to Susie Klein at sklein@cobar.org.

NOTES

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