

Law as We Know It Has Changed:
What Challenges Do Our Law Firms Face Post-COVID?

Two Brief Columns by Moderator, John C. Trimble, Lewis Wagner, LLP

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New Year's Resolutions After a Tumultuous 2020

I don't know that I have ever begun a column with greater conflict in my heart and my head about what to write. In the past year we faced the unimaginable challenges of COVID-19, the civil unrest following the death of George Floyd, and the deep political and cultural divisions following the November elections. We saw further erosion of public confidence in the news media, our courts, our elections, and our democracy. If all of that was not bad enough, the new year dawned with a riotous attack on our Capitol that reminded many of us of our darkest feelings from the 9/11 attack.

As I was anticipating this column, I began thinking about my own new years resolutions for 2021, and I was bit surprised to realize that I didn't have any. It wasn't that I had any shortage of things that I should improve. It was more a matter that I didn't have the emotional energy to declare resolutions and then follow them. I found that my mind has been set on the task of merely *getting through* this new year until some form of normal can return.

In talking to friends and family, I found a similar situation. Very few of them were declaring resolutions this year. It was almost as if a malaise had set in, and most of my circle (like me) are simply committed to getting through 2021 and returning to normal.

So, it against this backdrop that I must exhort myself and all of you as members of the legal profession to shake off the malaise and resolve to charge ahead into 2021 with the renewed vigor to get through the mountain of challenges, and to do what we can to make things better. Here are my suggestions:

1. **Summon Courage-** We must all do all we can to restore civility in discourse and to attempt to heal the wounds that divide us. We must have the courage to speak up and to act when others are silent or when others are speaking against our democracy and the institutions we serve. We must call on our skills of persuasion and tact to provide information to the uninformed or misinformed. We must do it in a way that is helpful and not didactic or patronizing.
2. **Protect our Civil Rights-** We have to begin with the understanding that every person we encounter has a differing view of the scope of our civil rights. Some, for example, may believe that the law does not allow *any* limitation on our right of free speech, our right to bear arms, our right to congregate, and our right to protest. There are others who believe that the public good allows all kinds of restraint of our rights if it is necessary to protect the public. The reality is that there is a middle ground, and that we lawyers are the ones who must protect that middle ground. We must speak out forcefully against extremism on either end of the spectrum. Again, that may require courage.
3. **Reopening Our Courts-** Our judiciary, our right to jury trials, and our personal legal practices will be impaired if we cannot reopen our courts when the time comes. We have all appreciated everything that our judiciary has done to keep all of us safe from the dangers of COVID. Indeed, virtual hearings, depositions, and mediations have saved our clients money, and in many ways, they have worked well. To a degree, we may want to continue the use of virtual platforms in the post-COVID era, but we will eventually have to get out of our PJs and suit up and come back to practicing law in person. Every one of us who enters the courts as part of our practice must cooperate and innovate when the time comes to reopen the courts.

4. **Support for Our Bar Associations-** Our bar associations have suffered terribly from the stay at home orders and necessities of COVID. A strong legal profession needs strong bar associations. Every one of us must renew our dues and re-engage in bar association activities. We must encourage our younger lawyers to join and get involved. This is an imperative that we cannot ignore.

On a personal level, we are going to have to reopen our law firms, restore and maintain our law firm cultures, and resume the duties of running and supporting the enterprise of law. It won't be easy. Many of us (and I am one example) have grown comfortable working from home. We have adapted to virtual meetings. We have not missed our commutes. The return to normal is probably going to be a new normal that is a combination of work from home and from office. However we do it, in person face time is going to be important to our efforts to train and mentor our teams. So, in anticipation of returning to normal in 2021, here are a few quick tips:

- **Refresh Your Practice Metrics-** If you have gotten too relaxed, then do all you can to re-energize your efforts to keep diaries, calendars, and meet deadlines. Remember to be responsive. Move your cases. Be result oriented. Refresh your skills as a problem solver.
- **Establish Social Media Discipline-** Many of you this past year, like me, have used social media more than before as a means to have a social outlet. It has been fun, but it has also been frustrating as social media has become a platform for protest. All of us need to have the discipline to make sure that our "brand" on social media is the one that best represents us. Social media is not just for fun...it is also a marketing tool. Take a close look at how you use social media and improve your practices.
- **Check Your Connections-** Because we have worked from home, we have not connected on a personal level with our law firm staff and colleagues. The same may be true for our clients and our referral sources. It is time to begin reconnecting in any manner that works for you and for them.
- **Be Ready for the Avalanche-** As COVID diminishes and the courts and the world re-open, there will be an avalanche of demands on our time. Take a look ahead and see if you can anticipate what your avalanche will be, and do what you can to prepare for it.
- **Budget-** If you don't take the time to prepare and to maintain a budget, do it now. There are many expenses that we have saved in 2020, and many of them will return. The lawyers and law firms that have budgets will be far better off than those who have not anticipated the return to normalcy. Enough said.

In summary, we have not yet emerged from any of the challenges that 2020 threw at us. But we will emerge. Every aspect of the challenges of 2020 has impacted lawyers, and we have to be leaders in our communities and educators about our Constitution and our Democracy. We all need to be part of the reconstruction that is ahead. #WillYouBeThere?

An Early Lesson from COVID: Firms Need to Engage in Succession Planning

It is an understatement for me to say that 2020 was an *interesting* year. However, from the perspective of a Baby Boomer, it was interesting on far more levels than I imagined. I am at the age in which I have friends who are retiring and others who have gotten sick and died. Some have lost spouses and have lost interest in law. Working all year from home enabled me to realize that I could use technology more fully, and that I could work from anywhere. More importantly, being home every day, and living at a slower pace, has given me a glimpse of what retirement might look like. We have spent less money, stayed well, and managed to be happy despite the pandemic. More importantly, I have figured out that after nearly 40 years of marriage to my best friend, we really are as compatible as we believed we were. In other words, COVID has been a *test drive* of how retirement might look.

I am not alone in the realizations of which I speak. Dozens of my contemporaries have had the same experience. They have worked from remote locations, and they have seen how well they could do it. They and their spouses have had a glimpse of a different slower lifestyle, and it has appealed to them. Retirement, which was previously just a distant concept, has grown more realistic. At a minimum, a significant number of my lawyer friends have decided to work fewer hours, and they are confident that they are ready to slow down.

I don't mean to seem alarmist when I say this, but for law firms, there may be a crisis looming. I know unequivocally from lawyer friends across the country that firms of all sizes have been rocked by unexpected COVID deaths of productive partners and unforeseen and sudden retirements of Baby Boomer aged lawyers. Locally, I can count at least a dozen contemporaries who have slowed down or who are discussing imminent retirement. These slow downs and retirements are happening whether the firm is ready or not.

Unfortunately, the legal profession has been slow to awaken to succession planning. Few lawyers actually have planned their retirements. Few firms have studied the impact on the survival of the firm if a high profile and productive partner dies or retires. There are a number of consequences that can endanger a firm if the firm has not planned for the departure of more senior lawyers.

The following list is representative, but not exhaustive:

- Will the firm have an immediate obligation to pay the departing partner their partner share or capital account? Can the firm do it, or must they borrow?
- Will the obligation to a departing or deceased partner saddle the firm with debt or a cash shortage?
- Will the firm be able to replace the origination of receipts that were produced by the partner and by others who worked with the partner?
- Who will pick up the work of the departing or deceased partner, and who will bear the cost of having someone get up to speed on existing matters?
- Will significant clients (who feed multiple lawyers and staff) stay or go?
- Does the firm even have a full understanding of the client relationships of the departing partner?

- Will the firm have to lay off staff or lawyers because of diminished work or financial burden?
- Will younger lawyers leave the firm because of uncertainty that results from the vacuum left by the departure or due to unwillingness to assume the debt burden?
- Will the departure of the partner change the firm culture or result in factionalism or rivalry among remaining partners?

These questions are real. Since the beginning of COVID in mid-March of 2020, firms have already struggled or collapsed from unexpected COVID deaths of lawyers or their spouses. Unanticipated retirements and work slow-downs have been rampant.

Under ordinary circumstances the experts will tell you that a good glide path to retirement and proper business succession should take 5-7 years. That means that many firms are now going to be struggling to undertake succession activities that are unplanned.

The first step to succession planning is for the firm to take a hard look to find answers to the bullet point questions above. In particular, partnership agreements must be dusted off and updated so that departing or deceased partners will receive their capital interest over time and not all at once. In some instances the firm may need to pay down capital obligations over time before the partner retires. Firms must study the origination of business so that they have a clear understanding of the percentage of the firm revenue that is represented by each lawyer. Client relationships must be scrutinized, and successors to the client relationships must be cultivated. Lastly, firms must engage in dialogue with senior lawyers and ask them their plans on an annual basis so that surprise can be avoided and planning can occur.

Because of the quantity of change that has grown out of COVID, most firms should be thinking about strategic planning. It is through strategic planning that succession planning is an easier topic to address among partners. What firms cannot do is to ignore the trend lines. COVID has changed a lot of lawyers, and the change may be permanent. I urge all my law firm friends to do a little succession planning before it is too late. We are a profession of problems solvers, and now we must address and solve our own problems before they become a crisis.

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