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Chapter 1: **COVID-19 and the rise of the 21st century law firm**

By Wayne Hassay, Maguire Schneider Hassay, LLP

The words “21st century” still conjure up notions of flying cars and vacations to Mars. While we have not gotten that far, the innovations of the 21st century are vast. Seized by businesses, technology has disrupted many industries – banking, hospitality, transportation, food service, music, and communications, to name a few. These industries have all leveraged 21st century technology that consumers now expect every day.

Twenty years into the great century of technology, where does the business of law fit into the paradigm? Although there is a strong and vocal legal tech community, comparatively speaking it is very small and considered an outlier. The legal profession has remained firmly entrenched in 19th century concepts. After all, precedent rules the profession. Looking backward is the attorney’s guide to the practice of law, which comes into play even as non-lawyers have employed 21st century technology to erode the purview of lawyers.

The precedential status quo had long been self-evidently broken. For example, for a multitude of reasons, the status quo has denied access to justice for your typical consumer. Even a resulting wage decrease for small and solo lawyers did not stymie the long-term malaise. Then an acute disease struck the legal profession – the COVID-19 pandemic. In the COVID age, partners were missing draws, associates and partners alike were dismissed. This was serious. As the pandemic raged, many law firms were forced, perhaps for the first time ever, to reconsider how business was done. Necessity became the mother of innovation.

Pre-pandemic, the legal profession had long been stalled at the crossroads of tradition and innovation. It is disconcerting that in a profession sworn to protect the public, it took self-interest and survival to spawn innovation, which in turn helps consumers and improves the profession for lawyers and staff alike. Despite this flurry of innovation that the pandemic brought to so many law firms and lawyer practices alike, the fact that some competitors have made such changes is likely unbeknownst

to those who merely hunkered down to weather the COVID storm. The pandemic caused some lawyers to make massive changes for the inner workings of the law firm – flexible work schedules, fully-remote offices, revised resource allocations, embracing new client expectations, and even casual wear while working. For those that did not just hunker down, are these pandemic-propelled innovations permanent?

The seeds of innovation

Although uncertain how this should be characterized – some lawyers may say thankfully, luckily, or coincidentally, while others may say unfortunately – the seeds of innovation existed long before the pandemic. Considering a profession stuck in a 19th century mindset, this feels shockingly unexpected.

For instance, the profession must be eternally grateful to those fringe legal technologists. As noted, effecting change in the legal profession is a steep slope. Keep in mind lawyers who first used email or the cloud were at times threatened with disbarment under the guise of confidentiality or other silly arguments. More likely the real reason was lawyers who understood nothing about technology merely sensed a threat from innovative lawyers who might disrupt the tried-and-true money-making models of the traditional law firms. It is hard to believe something as ubiquitous as email and the cloud were forced into the profession by innovators years ago and ultimately helped maintain it during the pandemic. This should be an important lesson.

More surprisingly, should the traditional law firm thank the business models operated by non-lawyers, which have long sought to disrupt the legal marketplace? There is much to learn from these organizations, i.e., online legal form providers, lead generators, legal service plans, and alternative legal service providers. Undoubtedly, pre-pandemic, the prevailing perception was these organizations sought only to erode lawyer purview. And – let this record reflect – a few of these organizations may still erode fundamental values that protect consumers. Regardless, before the pandemic, prospective clients were often hard to reach because of solicitation rules. In the height of pandemic lockdowns, prospective clients were even harder to reach. Meanwhile, these organizations with alternative business models were firmly entrenched where the clients could be safely found amid a pandemic – on the internet. Existing and implemented technology allowed these organizations to create remote communication avenues with prospective clients and provide access to justice, making them better poised to address the pandemic than the traditional legal profession.

Some Bar Associations must also be given credit for sowing the seeds of innovation. Select Bar Associations led the progressive charge while others filed failed lawsuits against alternative legal service providers. The more forward-thinking Bars issued futures reports and have task forces designed to increase access to justice in this age of technology. These Bars try to move their membership, but movement is difficult as the rank-and-file are generally bogged down in the daily practice of law.

Meanwhile, professional responsibility authorities have recently revised rules with a specific goal of modernization. Little did they know those changes likely improved or even saved some law careers amid the pandemic. Consider these recent amendments in some jurisdictions regarding:

- Virtual law offices;
- Multiple jurisdictional law practice;
- Limited scope services;
- Revised solicitation rules; and
- Non-lawyer ownership of law firms.

While each carry with it debate and controversy, especially non-lawyer law firm ownership, without these rule revisions innovation may have been curtailed during the crisis. Granted, innovation would still have occurred outside of the rules out of necessity and survival. But for a profession obsessed with the past, the timing of these revisions was fortuitous.

And then there was a pandemic...

Leading up to the first quarter of 2020, everything was steaming along fine for solo, small, and mid-sized law firms, right? Sure, practicing law was a daily grind. The hours necessary to find and service clients seemed to be getting longer and longer. Hourly rates may have increased, but did the delivery of the service change or improve? Even when clients were found, it seemed fewer and fewer could afford to pay. Who was really getting ahead? Regardless, this daily hustle was the status quo. Not great but still a living and occasionally rewarding work. What could go wrong?

Then came the pandemic, and the traditional law office model was quickly placed in a precarious position. Could lawyers even report to the

office? Lockdown orders referred to essential services. Sure, legal services are essential but not like the delivery of gasoline, police protection, or baby formula, especially when Courts are closed. In the first weeks in many jurisdictions, lawyers were not even deemed essential. Perhaps that was an oversight, but it served as a wake-up call. Who could pay rent, employee salaries, and tuition for the kids if the job was at a complete standstill? While there are pockets of tremendous success among lawyers, en masse lawyers run small businesses not unlike the café down the street. Our vaunted legal system screeched to a halt. Granted, some Courts quickly reopened but often only partially. What good are Courts with a moratorium on civil dockets? With many legal deadlines stayed, the system that drives clients to finally take advice, close cases, and hence pay lawyers, crashed. Well over a year later, some Courts have yet to fully reopen civil dockets. The legal profession has always felt immune from the ups and downs of the economy. In fact, historically difficult economic times often spawned business for lawyers. But this time was different. Even the lifeblood of law practice – servicing clients face-to-face – came to a halt.

Things were not great before and now things became a little worse. There was nothing anyone could do, right? Many, not just lawyers, merely hoped for a rapidly developing “new normal”, which was just code for the status quo plus mask wearing, hand washing, and social distancing. The seeds of innovation, however, were there. Some seized and are continuing to seize opportunities.

The rise of the pandemic-era law firm

What did the enterprising or desperate lawyer do? In lockdown they had some free time from the rat race of practicing law. So, some experimented.

Law firms had always planned to stay in touch but how many really did? Amid the pandemic, consumers were desperate for information they could trust. If only a law firm had a way to reach those consumers and in a socially distant manner. For those firms who had the seeds of innovation, for example mass emails, social media, video conferencing and live internet events, it was easy. Perhaps once considered fringe marketing efforts for a busy lawyer, these methods became a communication lifeline between lawyer and consumer. Those who employed these methods first developed trust, relationships, and convenience with consumers in the crisis. A priceless connection amid lockdowns and for the future.

Then there was the desperate search for new clients. Lawyers could no longer randomly search for clients at in-person political or community events. One-at-a-time client acquisition had been the bulwark of legal

practice. Pause and think about this ridiculous business model in the modern world. Many lawyers had been raised to believe advertising was unprofessional and even a threat to their license on the whim of an interpretation of vague terms in professional responsibility rules. Necessity, however, required better websites and an explosion of social media of all kinds. Whatever could be done quickly, inexpensively, and could reach clients became much more mainstream. It is also safe to conclude more lawyers became amenable to those non-lawyer alternative legal service organizations that were willing to work with them. Lawyers often had to do so amid murky 20th century professional responsibility rules. Here again, necessity is the mother of innovation.

When a client was found in the pandemic era, what happened next? Was an in-person meeting even permitted? If yes, what client wanted to risk a plague to see a lawyer? Certainly, lawyers were perplexed. Historically, there was only one way to see a client and that was in-person and in the office. Seemingly making a client drive to the office, often pay to park, and wait 45 minutes in the lobby was part of the overall aesthetic of hiring a lawyer. Before the pandemic, proper procedure required that a lawyer sign-up a client by making notes on a legal pad during an in-person conference while on the clock. This lawyer-centric perspective came to a screeching halt in the pandemic. Post-pandemic, consumers will not return to a less advantageous way of life. Consumers will gravitate to lawyers that offer remote meetings, robust and convenient communication by email, text, recorded or live video, electronic signatures and notarizations, lower cost limited scope services, and full-service client-facing portals.

As workloads shrunk, certainly there was a sense more work had to be found. Much had been written about an untapped market of consumer legal needs. The pandemic brought to the forefront the hope that work could be generated in high volume, remotely, and driven by technology. This is in fact one definition of limited scope services. In the bespoke world of legal services this was long ignored. Lowering the cost per unit while increasing the revenue on volume – in other words, scaling – had simply been exotic thinking. Despite limited scope rules being on the books for years, the consternation was, what if a judge did not permit a lawyer to withdraw from a case? Supposedly the innovation was deemed too risky by most because of this one occasional possibility of a dimwitted judge being unable to understand a rule. More likely the motive was, if full freight hourly work was still the norm (even if accounts receivable mounted) why charge less money for limited scope work; what if the volume never materialized? It is sad to again ponder that it took a pandemic to broaden

access to justice. It is safe to conclude, however, that the pandemic led to inquiries into document automation, artificial intelligence and the alike became more mainstream efforts.

Workloads slowed but work still needed to be done. Employees may have been forbidden to report to the office or at least some were uncomfortable with doing so. Nor could a law firm risk its workforce getting sick. It was imperative to implement the firm's disaster recovery plan. Before the pandemic, disaster recovery plans were likely the folly of a law firm's IT specialist, if indeed the firm even had an IT specialist. Amid lockdowns, imagine the shock when many lawyers discovered their phone system was not in the cloud and therefore employees could not access client calls from home. Of course, the same realization applied to accounting, document, and word processing systems. If there was no disaster recovery plan, lawyers quickly created one so that employees could work remotely. Literally overnight, thousands of virtual law offices were created by law firms that would have never dreamed of such.

Some, for one reason or another, did not implement a remote workplace. Some desired it but could not because they could not get the technology in place. On the other end of the spectrum, some lawyers did not perceive a disaster and insisted on running their businesses as near the old status quo as possible. One's perspective regarding the pervasiveness of the pandemic is not germane to this chapter. However, it is undeniable the pandemic taught many lawyers they could run their law firms remotely, at a much lower cost and therefore higher profitability. It says much about the legal profession and its relationship to tradition, that as retail and commercial office space rapidly evolves, many lawyers believe virtual legal work remains impossible. Granted, virtual or mostly virtual law firms have new organizational, ethical, and managerial challenges. It should go without saying, increased profit will carry the day. Furthermore, clients will also perpetuate innovation. Legal fees may no longer need to subsidize expensive real estate and clients crave convenience. Overall, those who got a leg up with virtual work during the pandemic have a strategic advantage.

Let us not forget how employees play into this equation. To be frank, partners want profit. Consumers want the aforementioned conveniences and, even if they do not fully understand it, need zealous advocacy by lawyers. What makes all of this come together? Employees.

The historical law firm was based on the concept of presenteeism for administrative employees and lawyer employees alike. One had to be present at the office eight or more hours a day or the contribution was unacceptable. This even required fashionable dress and generally a walk

by the managing partner's office to prove attendance. A soul-crushing routine for any self-respecting professional. The routine remained despite being long ago made obsolete by modern communication and software that accurately measures contribution.

The pandemic has annihilated law office presenteeism. Law firms that seized the uninvited opportunities of the pandemic have learned presenteeism is not the driver of success. In fact, presenteeism dampens morale. The pandemic-era law firm realized quality employees will have a choice of how, where, and when they work. The best employees are not going back to a less advantageous way of life. They will merely seek and find law firms that offer innovative solutions. A new focus must be on efficiency, teamwork, culture, and camaraderie, as opposed to always but merely being present.

The rise of the 21st century law firm

The pandemic shook all marketplaces, including law. Halting innovation was impossible while weathering the pandemic. Now as the dust settles, will the profession try to stem the tide of innovation? Consider perhaps a few small law firms shrunk or even closed their doors because they could not stay competitive. Thus, in the eyes of some, the pandemic may have culled the herd a bit and that is OK because it merely means more business for those who stayed in business. Therefore, some may consider COVID-19 a blip that effected just a few quarters of business. Now the respected profession of law must wish to get back to business as usual, the pre-pandemic normal.

The profession would be naïve to believe it can turn back the effects of the cataclysmic pandemic. Some lawyers will be more aggressively innovative than ever before. They will beat the competition, make more money, and marginalize those who watch from the sidelines. If not lawyers, then non-lawyers will engage the consumers.

The guiding light must be the consumers themselves. Historically, consumers have been viewed as rarely needing but not generally wanting legal services. But this perception is a function of the access they had to legal services. Post-pandemic, consumers will demand and receive more than ever ease of use and communication, including free market and truthful solicitation, self-help, transparency, greater affordability, efficiency, mobility, and top-notch advocacy and independent professional judgment when necessary. The innovative path focuses on the wants and needs of the consumer and not the preconceived notion of how the business of law has been done. In other words, just as every other free market industry works – lawyers, welcome to the 21st century.