

Opportunities for the Practice of Law in the Aftermath of COVID-19



As I began to ponder the preparation of my end-of-the-year President's Message, I thought about the times in which we are living. Somehow, my mind wandered back to my high school English class, and the iconic opening paragraph of Charles Dickens' masterpiece, *A Tale of Two Cities*:

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way – in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.

I cannot say whether Dickens was prescient, but I can state with certainty that he provided an apt description of 2020, a year that none of us will soon forget. As 2020 draws to a close, it's a good time to reflect on what this year has brought upon us, both good and bad, what it has meant for our profession, and what may unfold in 2021.

IT WAS THE WORST OF TIMES

2020 was, of course, the worst of times, because it was the year that brought the deadly COVID-19 pandemic to our world. The coronavirus sickened and killed our loved ones, friends and colleagues in numbers that are difficult to fathom. It upended every facet of our society, including the practice of law.

Lawyers and law firms had to adapt their business practices to comply with social distancing regulations and

shelter-in-place directives. We were forced to close our offices and practice from home. While those restrictions undoubtedly helped to protect our health and safety, and the health and safety of our families, staffs, colleagues and clients, many lawyers faced diminished business activity and cash flow shortages as a result of these changes, leading to permanent firm closures or staff reductions.

The court system on which so many lawyers rely to earn a living – and on which all of us rely to ensure a just society – shut down as well. In most cases, this prevented our members from commencing new actions for clients needing judicial intervention and causing our clients' pending matters to languish. These restrictions on the practice of law caused many of us to turn to the internet, thereby exposing the unequal access to broadband service that solo and small firm lawyers in rural parts of our state must endure.

The pandemic ushered in a ripple effect of impacts that are still being felt across the country. A devastating outcome of this public health crisis has been the economic downturn it set in motion. The negative impacts of the recession and the subsequent recovery are not being experienced in equal measure throughout our profession. Solo practitioners and small firms have been particularly hard-hit during this crisis. These effects have been compounded for small firms in rural parts of our state, where about 80% of law practices are small businesses. Legal practices focused on labor, employment and bankruptcy are likely to be in higher demand than areas of practice focusing on hard-hit industries like hospitality and travel.

Shortfalls in economic activity and firm revenue have not been the only challenge disproportionately affecting small firms and solo practices. The access to technol-

ogy and digital infrastructure needed to maintain law practices are not a guarantee for smaller firms, particularly those in rural counties which, as noted, lack reliable access to broadband internet. The NYSBA Task Force for Rural Justice delivered a report with recommendations for expanding broadband internet access to support rural practices and attract new attorneys, and the House of Delegates adopted the Task Force's recommendations in its virtual meeting on April 4.

Of course, the economic downturn occasioned by the pandemic has not affected the practice of law alone. Our state and local governments have been forced to incur substantial unforeseen expenses in battling COVID-19, while tax revenues have dwindled due to business failures and decreased economic activity. This will undoubtedly result in deep cuts in government spending and diminution of government services, including the courts. Indications are that cuts in our state's judiciary budget will be severe, and will likely result in delay in resolving litigation.

Of course, 2020 was also the worst of times because it graphically exposed rank injustice – particularly the disparate treatment of people of color in our criminal justice system.

IT WAS THE BEST OF TIMES

However, the very developments that we associate with the worst of times brought with them changes in our world – and in the way that we practice law – that arguably made 2020 the best of times. When New York State bore the brunt of COVID-19 early on, the response by members of our profession and the Association became models for successfully pivoting to technology, virtual platforms, and adapting to new ways of conducting business. We were exposed – many for the first time – to the possibilities of virtual or remote practice. Many of us came to recognize that the traditional law office model is not indispensable, and that overhead costs can be cut without impairing efficiency by reducing the physical size of an office. We pivoted to Zoom meetings and virtual courts.

NYSBA also pivoted during this period, as we have moved to serving our membership through virtual platforms. While assuming the presidency in the midst of the pandemic has certainly had its challenges, I am very proud to be leading the Association at this critical moment for our profession. In April 2020, I had the honor of presiding over NYSBA's very first virtual House of Delegates meeting, which attracted the largest number of delegates in the history of the Association. Since then,

NYSBA President-Elect T. Andrew Brown has adroitly presided over our June and November House meetings. NYSBA has also provided webinars and resources to help connect members with practical guidance for working remotely and ensuring the security of their digital workspaces.

While 2020 has opened our eyes to technology and new ways to practice law, it has also brought with it a long-overdue reckoning with racial injustice and brutality in the U.S. While the pandemic has shone a spotlight on long-standing social and racial inequities, nationwide protests in response to police brutality have sparked important reforms in New York and around the country. This is an important time for all of us to be part of the conversation in our communities to rethink the justice system and take bold action to address racial disparities and advance equality. For its part, NYSBA established a Task Force on Racial Injustice and Police Reform that is analyzing the criminal justice system and will be recommending reforms intended to rebuild trust and eliminate racism in the interactions between police and communities of color.

THE TIMES AHEAD OF US

The pandemic has accelerated many changes in our profession that were already underway. Growing trends toward remote meetings, virtual court proceedings, and e-filings have become, in the matter of a few short months, our new normal.

As we face another resurgence of COVID-19 in New York and many other states, it's important to envision the horizon of opportunities that this crisis brings with it.

The increased reliance on technology and digital conveniences is not likely to subside, even once a safe and effective vaccine is developed and the pandemic recedes from our lives. Law firms across the state, as well as the court system, will be more willing and at ease with remote working and virtual conferences and hearings. Many big law firms are treating their office spaces as optional until at least 2021, and others expect that they will retain a work-from-home option for their lawyers indefinitely. A blended approach to physical offices and work-from-home options will present a cost savings for many law firms, while these opportunities can be attractive for lawyers who want the flexibility of choosing where they live and work.

While the opportunities presented by technology and remote working will become clearer in 2021, what is

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already evident is the need for lawyers to have reliable internet access as well as security protections to maintain safe communications and an uninterrupted flow of information, even while working remotely.

These opportunities for remote work bring to the fore questions of equity for the members of New York's legal community. With the increased reliance on virtual work platforms, it is important to ensure that small firms and rural practitioners have the access to broadband internet to support their business activities remotely. It has become increasingly clear throughout this crisis that a lack of access to internet and broadband connectivity translates to a lack of access to justice, adding additional constraints to solo practices in many parts of our state that are trying to maintain contact with their clients, colleagues and the courts.

The increased reliance on technology across the legal community will change the ways we network, mentor and develop new business opportunities. Law firms that are able to pivot to new channels of connectivity are building new business activities through webinars and virtual events and conferences. This changing landscape presents new opportunities for innovative forms of engagement with clients and other lawyers.

As we look ahead and consider the opportunities and challenges that await us in 2021, I want to assure our members that NYSBA, my fellow officers and the hardworking, dedicated Bar staff are finding new ways to advocate for our profession and continue to bring you the very highest level of service.

Along with my colleagues at NYSBA, I wish all of you a happy holiday and a prosperous, healthy and safe New Year. I look forward to seeing and working with you – hopefully live – in 2021!