



by Cynthia Flynn and Anthony J. Mulkern

# LEADING LAWYERS

**The general focus of executive coaching for lawyers is not simply to solve problems but also to seek out, create, and make the most of opportunities**

**In** the past two decades, various changes in the practice of law have created strains on law firms and their managing partners that might be viewed as a virtual crisis in the profession. It is not clear, however, that law firms as a rule have successfully implemented the kind of sound management systems and organizational development that their corporate clients have long taken for granted.

One resource that some law firms recognize as the key to consistent high quality,

efficiency, and outstanding leadership is executive coaching. Before discussing how executive coaching can be useful, it is essential to first discuss the alleged crisis. According to a Johns Hopkins University study, lawyers are 3.6 times as likely to be depressed as other professionals.<sup>1</sup> This is in line with a 2016 American Bar Association and Hazelden Betty Ford Foundation study that found that 28 percent of licensed, employed lawyers suffer from depression.<sup>2</sup> A *Psychology Today* article in 2011 says that lawyers have overtaken

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Cynthia Flynn is the founder and managing partner of Hackler Flynn & Associates, a boutique law firm in Los Angeles and Irvine that focuses on employment defense. Anthony J. Mulkern is president of Mulkern Associates, an executive coaching and consulting services firm based in Glendale, California.

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dentists as the profession with the highest rate of suicide.<sup>3</sup> The same article reports that seven in 10 lawyers responding to a *California Lawyer* magazine poll said they would change careers if the opportunity arose. Those who are in the top tier of their profession in earnings may find themselves in a virtual “golden cage,” as there is little or no opportunity to replace their high incomes by other means.

The ABA and Betty Ford Foundation study also found that lawyers have a higher rate of drinking problems than individuals in other professions. The study indicates that 36.4 percent of those in the legal profession may be problem drinkers, compared with about 12 percent of other highly educated professionals such as surgeons, for example.<sup>4</sup> Women make up an increasingly higher percentage of the legal profession today, and women in the legal profession have much higher rates of problem drinking (39.5 percent) than women in the general population (19 percent), according to the study. Problem drinking among males in the legal profession (33.7 percent) is slightly higher than that of men in the general population (32 percent).<sup>5</sup> The ABA and Betty Ford Foundation study also reveals that, as a group, lawyers tend to exhibit antisocial personality disorders and narcissistic personality disorders at two to

five times the rate respectively of the general population. These facts would in themselves complicate the challenges of managing lawyers, but both personality disorders also appear to be correlated with addiction and substance abuse disorders.<sup>6</sup>

The relatively high rates of depression, suicide, and substance abuse in the legal profession are generally attributed to stress, competitiveness, and increased pressure for revenues and profitability.<sup>7</sup> Although other professions may also have high or even higher rates of stress, the work of lawyers includes helping organizations manage risk and reduce liability; thus, one might expect that lawyers would be among the first to say that management (in other organizations outside the legal profession) has a serious responsibility to look after the emotional and physical welfare of their employees and to introduce enlightened management systems to address the stresses that go with the job. In law firms, however, a culture of apparent invincibility and invulnerability, together with underlying limiting beliefs, seems to inhibit most law firms from taking such measures. Perhaps it will take litigation and/or legislation to force the issue. For those managing partners—and those who aspire to that role—who want to do better, it is important to review in some detail the nature and

sources of the pressures and stresses of the current practice of law.

One major force creating stress in law firms over the past two decades is merger and acquisition activity.<sup>8</sup> This has produced some firms that now have on staff 1,000 or more lawyers. Staff from the merged entities must be integrated, with all the differences of expectations and habits that they bring with them. It is challenging for any organization to integrate staff from separate entities into one firm with one culture and set of values and ways of doing things. Yet many of the lawyers who now find themselves in management positions with this responsibility have no formal management training and no interest in or passion for managing at all.

A second factor is that the larger the firm, the more likely it is that it will be divided into various practice areas of specialization. As cases become more complex and the potential damages to the client increase, lawyers are increasingly required to work in teams composed of other lawyers with different areas of specialty and sometimes with nonlawyers such as accountants, financial planners, and communications specialists. Effective teamwork, however, may not come easy for those who have been educated and trained to primarily exhibit traits of independence

## Case Study

For senior partners to ensure the success of their less senior colleagues, it is critical that they better understand the pressures under which the latter function. One senior partner at a firm in described how a friend who was a newly hired associate at a firm in a neighboring county called him on several occasions for advice on case assignments rather than ask clarification from her own firm’s senior staff.

“Often the directions for research,” he said, “were so vague that they could go in 50 different directions. The associate had learned that to ask questions in her firm was to be judged as stupid or incompetent. Survival required finding the information elsewhere. Unfortunately, this kind of situation is not isolated.” Thus, brutal hours frequently were spent at this firm producing reports that often failed to satisfy what the senior partner wanted in the first place.

Several factors were at play in this situation that are at odds with a well-functioning organization and client satisfaction:

- ◆ Unclear communication as to the assignment’s requirements, its purpose in the overall case strategy, and expected results.
- ◆ Fear on the part of the associate to ask for clarification or to decline the assignment.
- ◆ Perception that senior partners were either inaccessible or intolerant of a need for assistance.
- ◆ Fear that with every assignment her job was at stake—i.e., operating in “survival mode” rather than with enthusiasm and creativity.

In short, the associate was mired in the nightmare scenario of having an assignment over which she had no choice, with no clear directions, no resources within the firm for clarification, and the prospect of being fired if she did not get it right. Even the advice of a more senior friend at another firm would at best be only an educated guess.

The cascading effect of such circumstances eventually reaches the firm’s client, who is seen as demanding perfection. For an associate with a heavy case load, working seven days a week, desperately striving to grasp that for which they need more guidance, the path of least resistance is to avoid communication as much as possible with clients on difficult cases. No one wants to deliver bad news, especially if it is seen as a potentially career-ending event, and so the client is left stewing while waiting for an update that never comes until an irate call is placed to the senior partner. The subsequent scene can be ugly and may involve the termination of an otherwise high-potential associate.

While the senior partner in this case study might survive in a traditional law firm, his or her style would be an even greater liability in managing a virtual law firm. There, the time allocated for communication is likely to be less and the importance of precision and clarity in each interaction is greater. There is no alternative to a change of style in which subordinates are encouraged to probe in the spirit of “there are no stupid questions.”

and competitiveness. These traits can certainly serve a client well when a case is being argued in court or a tough negotiation is underway. Exhibiting the same traits can be counterproductive when it is necessary to hammer out a consensus with one's colleagues on the best defense or negotiation strategy.

Macroeconomics have multiplied the stresses. Before the economic crash of 2008 and subsequent recession, large law firms tended to employ large incoming classes of first-year associates. After 2008, corporate clients faced losses and cuts themselves and were increasingly unwilling to pay large firm rates.<sup>9</sup> These clients began demanding lower rates and alternative payment arrangements, and, importantly, they were no longer willing to pay the high cost of training junior associates. Some clients even refused to pay for first- and second-year associates' work at all. Large firms that failed to adapt found themselves losing business to smaller regional law firms with lower hourly rates.<sup>10</sup>

### Effects of AI

Another major factor in the changing market, particularly for litigation, is automation. Document review software, powered by artificial intelligence (AI), is becoming the default practice. E-discovery vendors can use algorithms to turn a million-page privilege review into 10,000 pages, which in turn means fewer entry-level jobs for attorneys who mostly reviewed documents at larger firms.<sup>11</sup> Many courts now accept the results of AI and predictive coding software for use in discovery. For example, in *In re Broiler Chicken Antitrust Litigation*,<sup>12</sup> the court issued a detailed order describing how the parties were to proceed with "technology-assisted review," including instructions on which search technologies to use and protocols for validating the document review.<sup>13</sup> As one commentator noted: "Gone are the days when 50 to 70 junior employees would do this type of painstaking but important paperwork."<sup>14</sup>

By the end of 2009, first-year associate hiring was down 4 percent and it plummeted another 27 percent by the end of 2010.<sup>15</sup> According to National Association of Law Placement (NALP) data, 2010 marked the first year since 1997 in which new jobs in small firms outnumbered those in firms of more than 100 lawyers.<sup>16</sup> As of 2013, large law firms also employed fewer experienced attorneys than they did before 2009.<sup>17</sup> Although large-firm hiring has rebounded to a degree, it has not returned to its pre-recession levels. Hiring data from 2017 shows that while firms of more than 500 lawyers "hired more law

school graduates than at any time since the recession, the number of entry-level jobs at those firms is still off by nearly 600 positions compared with the peak hiring measured with the Class of 2008."<sup>18</sup>

Additionally, there is now greater diversity among the types and structures of law firms. A "virtual law firm" has no brick-and-mortar office (or perhaps a minimal one), and its attorneys work remotely from their homes. Although firms experimented with the concept earlier, virtual law firms began to make headlines in 2009.<sup>19</sup> At that time, a number of virtual firms were founded by former large law firm partners, and a common feature was that attorneys in these "alternative" firms could set their own hours.

In 2018 virtual law firms grew faster—in terms of attorneys and revenue—than traditional large firms. According to *Law-360*, "The 400 largest law firms in the U.S. by domestic head count have grown between 1 and 2 percent a year on average over the past five years," and revenue growth among the largest 100 firms was 4.3 percent in 2016, with the second 100 firms growing at only 1.2 percent that year.<sup>20</sup> By contrast, the majority of "high-profile" virtual law firms have grown 15 to 30 percent a year, with revenue growth up to 50 percent a year.<sup>21</sup> Cloud-based technology has made it more convenient and more practical for attorneys to work remotely; virtual firms use these expanding technological capabilities to their fullest advantage.<sup>22</sup>

Another lasting consequence of the recession is that "boutique" law firms of the traditional brick-and-mortar type continue to gain ground with corporate clients who previously worked with larger firms.<sup>23</sup> A survey of 307 leaders of multinational companies found that 48 percent of them attributed problems with outside law firms to their fees and costs.<sup>24</sup> Their top priorities included costs as well as the need for specialized skills. Accordingly, medium-sized and even small firms are getting work previously performed exclusively by large firms.

Finally, attorney priorities are shifting, particularly those with five to seven years' experience who have large law firm backgrounds and who may be exploring their next career move. Post-recession, there are fewer attorneys in this sought-after category, and, accordingly, they can afford to be more selective. As a group, associates (at this level and others) tend to be more risk-averse and to place a high value on stability and predictability in their career paths.<sup>25</sup> They are, therefore, more likely to expect "life balance"—shorthand for

more time away from work for family and outside interests.

In light of these changes, best practices in law firm management from a decade ago may no longer apply. Even attorneys who may be well-versed in practice management at a large firm may not realize that the dynamics are different in a small firm, and attorneys who are accustomed to managing employees face-to-face may need to learn to adapt their management style should they choose to form a virtual law firm. Executive coaching can assist managing attorneys in making these transitions.

With major changes can come major stresses, which must be confronted and openly discussed if appropriate adjustments are to be made. Yet law firms tend to operate in a culture exhibiting perfectionism and infallibility with clients, skill at seeing the worst-case scenarios, no show of emotional vulnerability, and a win/lose mentality. Furthermore, law school does not teach executive management skills for senior partners, and the adversarial nature of law does not inculcate team work.

### Executive Coaching Defined

To examine how executive coaching can help deal with these issues, some terms need to be clarified. Usually "executive" refers to senior level to mid-level managers or leaders in an organization. In a law firm, the partners are executives. The same principles also apply to the chief counsel in a company that has its own internal legal department.

"Coaching" is a process aimed at developing and enhancing the executive and leadership skills of clients. The general focus is not simply to solve problems, but also to seek out, create, and make the most of opportunities. This typically involves assessment, generating alternative solutions, and carefully observing or measuring the results of trying something new. This customized approach to executive coaching involves three facets.

First, it is typically conducted in private meetings between the executive coach and the client, allowing for Socratic-style dialogue. The private nature of executive coaching allows law firm clients to discuss in detail issues that may be inappropriate to air in a group. The executive coach's role in the dialogue is to become the catalyst for the client's own development and choice of plans for action. No coach can know a firm's members and culture as well as a long-term partner. The successful coach is, however, an expert in eliciting the active engagement of the client in mastering his or her own situation. This is accomplished through insightful questioning and probing,

clear-headed assessment, clarifying the client's values and objectives, and logically drawing out the implications of the alternatives that are generated. In these ways, the client arrives at solutions and commitments that have been formed with his or her own needs and priorities.

The second facet of effective executive coaching involves mentoring or giving advice. For the coach's advice to have credibility, he or she must have a record of accomplishment in what it is that executives do that is different from what subject area specialists do, namely organizing, inspiring, leading, and developing people. The situation is analogous to hiring a golf coach to improve one's average score. One would expect from such a coach more than a series of questions, but also guidance on how to actually hit the ball, as well as feedback on one's stroke. As in sports, having a coach is not seen as a sign of weakness but rather as a commitment to excellence; all champions have one, and only amateurs do not.

A third facet of executive coaching is that of counselor. Leadership and team relationships can be among the most emotionally distressing issues clients face in their work lives. Open expression and exploration of these issues is essential to resolving them, and this requires the establishment of a high level of trust and rapport with the executive coach. This is established through empathetic listening, genuineness, and a profound respect for the client's competence. Knowing how to challenge in a supportive way and to encourage emotional as well as intellectual expression are also key.

### **Developing Leadership Skills**

Enhancing and developing leadership skills can mean different things for different clients. Some partners need to develop more flexibility in communication styles, with the ability to judge when to be blunt and candid and when to be more sensitive or subtle. Others need to learn to choose more carefully when and with whom to express strong emotions and how to communicate less destructively. For some, political pressures internal to the firm can seem overwhelming, and a coach can help the client develop perspective and effective strategies for exercising leverage. Lack of accountability may have created conflicts and disappointments, and action may be needed to "get the wrong people off the bus." Some senior partners need development as team leaders, and others need to recognize that a work group is not the same as a work team and that trying to manage it as such is a waste of time and

source of conflict. It is not unusual at the outset of an executive coaching engagement to find that a difficult situation was made worse by previous misguided attempts to resolve a problem.

### **Alternative to Depression**

Earlier, some alarming statistics were cited regarding the presence in the legal profession of depression, which can take many forms, from mild and infrequent to severe and chronic, with many causes. While executive coaching is not the same as psychotherapy, which may be indicated for severe or clinical depression, it can have great value in addressing or preventing one commonly accepted cause of depression: repressed anger. Anger at an external cause that does not find adequate external expression or resolution is deflected inwardly, producing depression.

When conflict, confusion, or fear, are not resolved in open discussion, they can easily turn into depression, with all its accompanying symptoms. The latter may include difficulty concentrating, fatigue due to difficulty sleeping, loss of energy due to poor appetite, low self-esteem, absenteeism, decreased productivity, turnover and general loss of interest in work. All of these symptoms can jeopardize a career and undermine a firm's effectiveness and reputation, especially when the lawyer in question self-medicates with alcohol and/or illegal drugs, thus producing a downward spiral.

Most law firms lack the processes or cultural acceptance for the airing of dissatisfaction, especially from associates. Executive coaching can help senior partners to clarify the sources of the dissatisfaction and facilitate the expression and resolution of the issue. Providing this coaching support is far less expensive to a firm than having to replace an associate in whom they have invested many years at great cost and whom they were hoping to develop to partner.

There is universal recognition among organizational development experts in the corporate world that the problem is not conflict itself, but the lack of skill in constructively confronting it and doing the hard work of finding solutions that all the firm's members will commit to and implement. These same practices are no less needed in today's law firms, and coaching can help to instill them.

It is difficult to say how many senior partners are likely to be fully aware of these dynamics. In fact, they may in some cases exist principally in the minds or perceptions of the associates. Perceptions, however, help determine outcomes, whether

they are accurate or not. Therefore skillful leadership is sometimes informally defined as the "management of perceptions."

Executive coaching provides the means to break this vicious cycle of unclear expectations, fear, and a sense of isolation, disappointment, and recrimination. One business law attorney explained that when he learned to explain in detail what he wanted and why, staff problems with became minimal.

Senior partners and managers of a firm often know that something is badly amiss but have difficulty separating reality from rumor, hearsay, or mistaken impressions. The first step in successful executive coaching is obtaining good data, and sometimes the perceptions are the data. How can information on these perceptions be obtained if staff members feel it is too risky to openly express their concerns?

### **Anonymous Feedback**

One singularly effective way is through an organizational assessment based on candid, anonymous feedback obtained in structured interviews conducted by the executive coach. Feedback is obtained on how the firm is faring on key effectiveness areas, such as conflict resolution, the way mistakes are treated, availability of needed resources, morale, supportiveness among team members, knowledge and skill utilization, among other areas. Once the pledge of anonymity has been made, the interviews in themselves can be a significant morale booster. Many staff say they feel the interviews are the first time in their work careers that they have ever been fully heard and listened to in depth.

After the needed data are obtained, a profile of the firm's situation emerges and is described in a report to senior partners. This, together with accompanying recommendations, becomes the blueprint for a coaching plan to produce measurable results, according to the firm's own priorities and agreed upon objectives.

Numerous benefits flow from this process. With more clarity and focus on the "what and why" of assignments, for example, "24/7" work weeks may be fewer. Life balance, a subject once taboo at law firms, has become increasingly important as young families more often than not are today two-career families. Could the higher percentage of problem drinking among women lawyers versus the general population of women cited earlier indicate that most law firms are failing to respond adequately to the fact that women make up an increasing percentage of the profession?

One attorney who benefited from extensive executive coaching observed that

client satisfaction increased once associates learned to avoid surprises, i.e., even when the news was not the best, if candid, in-depth updates were provided on a regular basis, clients' confidence could be maintained. The other "bottom line" he noted was an increase in associates' loyalty and a reduction in turnover.

### Executive Coaching in Smaller Firms

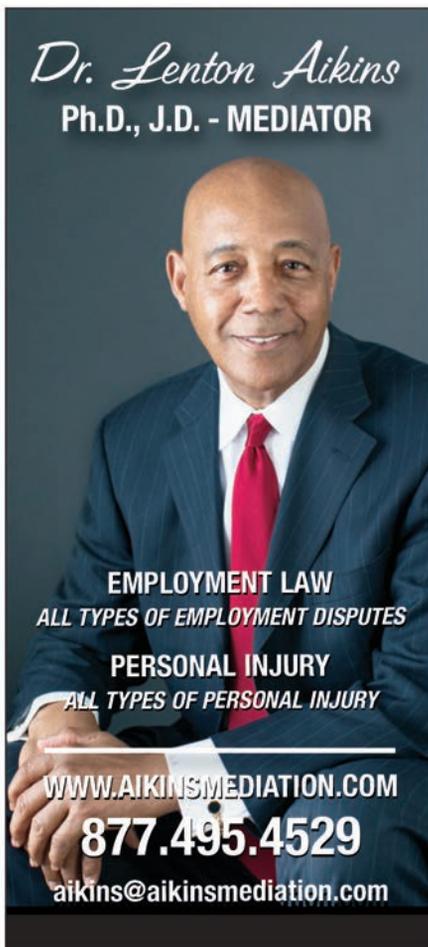
In boutique law firms, the senior partners are essentially entrepreneurs, and like most entrepreneurs, their formal leadership development is usually minimal. Take the process for hiring junior associates, for example. Most entrepreneurs spend most of the so-called interview describing the firm and what it needs from new hires, with a minimum of questioning and probing for information. Why? They have never learned to interview in a nonadversarial manner, and they do not want to offend. It is analogous to a trial lawyer representing a client in court without having been trained in cross-examination. As a result, they hire associates who tell them what they wanted to hear and are surprised that the fit is so often not right.

An executive coach can help the senior partners design a screening and interview process that will greatly enhance the chances of success and at a minimum reduce the expense and wasted time of bad hires. In the absence of this groundwork, positions are likely to remain open too long, hiring will be based upon insufficient information, and turnover will be high with a subsequent waste of training time and a shortage of capacity to grow.

Marketing a firm's services is increasingly expected of lawyers, yet it is a function that may not come naturally to most. The communications skills that lead to more effective internal operations also tend to create the poise, enthusiasm, and persuasiveness essential for gaining interest, trust, and confidence with potential clients. Moreover, time freed from internal conflict and unguided research is time available for making the contacts necessary for business development.

Regardless of the changes to come, the practice of law will always be demanding, hard, exhausting work. It attracts highly intelligent, energetic people who relish the challenge of a good contest and the satisfaction of a well-designed line of argument that wins the day. But what is true for other corporations is also true for law firms. If two organizations are in a contest for clients and one of them is characterized by outstanding leadership, loyalty, mutual supportiveness, and unified focus while the other is

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Chad Blocker, Partner • [cblocker@fragomen.com](mailto:cblocker@fragomen.com)  
Michael Boshnaick, Partner • [mboshnaick@fragomen.com](mailto:mboshnaick@fragomen.com)



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<sup>1</sup> W.W. Anthony et al., *Occupations and the prevalence of major depressive disorder*, 32 J. OCCUPATIONAL MED. 1079, 1079 (1990).

<sup>2</sup> Press Release, ABA, Hazelden Betty Ford Foundation Release First National Study on Attorney Substance Use, Mental Health Concerns (Feb. 3, 2016), available at <https://www.hazeldenbettyford.org/about-us/news-media/press-release/2016-aba-hazelden-release-first-study-attorney-substance-use>. See also Dan, *Why So Many Lawyers Suffer from So Much Depression*, Lawyers with Depression (Mar.30, 2017), available at <http://www.lawyerswithdepression.com/articles/many-lawyers-suffer-much-depression>.

<sup>3</sup> Martin E.P. Seligman, *Why are so many lawyers so unhappy?* PSYCHOLOGY TODAY, May 20, 2011, available at <https://www.psychologytoday.com/us/blog/therapy-matters/201105/the-depressed-lawyer>.

<sup>4</sup> Hazelden Betty Ford Foundation.org, Substance Abuse Disorders Among Legal Professionals, available at <https://www.hazeldenbettyford.org/education/bcr/addiction-research/substance-abuse-legal-professionals-ru-317>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See, e.g., Michael T. Matteson & John M. Ivanevich, *Merger and Acquisition Stress: Fear and Uncertainty at Mid-Career*, 8 PREVENTION IN HUMAN SERVS. 139 (1990).

<sup>9</sup> Michelle Fivel & Robert Graff, *Where Have All the BigLaw Associates Gone?* Major, Lindsey & Africa (Mar. 23, 2017), available at <https://www.mlglobal.com/publications/articles/where-have-all-the-big-law-associates-gone> [hereinafter Fivel & Graff].

<sup>10</sup> Darcy Reddan, *BigLaw's High Costs Drive Cos. Toward Boutique Law Firms*, Law360, Apr. 4, 2018, <https://www.law360.com/articles/1029437/biglaw-s-high-costs-drive-cos-toward-boutique-law-firms> [hereinafter Reddan].

<sup>11</sup> See, e.g., "How Automation Is Changing the Legal Industry," Beyond Billables (Jan. 25, 2018), <https://beyondbillables.com/automation-changing-legal-industry> [hereinafter "Automation"].

<sup>12</sup> In re Broiler Chicken Antitrust Litigation, No. 1:16-cv-08637, 2018 WL 1146371 (N.D. Ill. Jan. 3, 2018).

<sup>13</sup> *Id.* at 4.

<sup>14</sup> See "Automation," *supra* note 11.

<sup>15</sup> *Id.*

<sup>16</sup> *Employment Rate Falls Again, but Law Firm Jobs Are Up*, NALP Bulletin (Aug. 2013), available at <https://www.nalp.org/0813research>.

<sup>17</sup> See Fivel and Graff, *supra* note 9.

<sup>18</sup> Judith N. Collins, *Overall Employment Rate Up Modestly, Employment Rate in Legal Jobs Up More*, NALP 2018, available at <https://www.nalp.org/uploads/SelectedFindingsClassof2017.pdf>.

<sup>19</sup> See Robert W. Denney, *Trends Report: The Rise of Virtual Law Firms*, LAW PRACTICE, Nov./Dec. 2009, available at [https://www.americanbar.org/publications/flaw\\_practice\\_home/law\\_practice\\_archive/lpm\\_magazine\\_articles\\_v35\\_is7\\_pg12](https://www.americanbar.org/publications/flaw_practice_home/law_practice_archive/lpm_magazine_articles_v35_is7_pg12).

<sup>20</sup> Aebrá Coe, *Why Virtual Law Firm Growth Is Outpacing BigLaw*, Law360, Feb. 9, 2018, <https://www.law360.com/articles/1008959>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Reddan, *supra* note 10.

<sup>24</sup> *Id.*

<sup>25</sup> See Fivel and Graff, *supra* note 9.

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