2nd Annual Small Firm Essential Toolkit

Tuesday, Nov 10th, Thursday, Nov 12th and Thursday, Nov 19th

5:00 – 5:20 p.m.
Networking

5:20 p.m. to 6:30 p.m.
Panel 1

6:40 p.m. to 7:40 p.m.
Panel 2

Times are the same for all program dates

LACBA Zoom Webinar

If you are not a member of the LACBA you will need to create a user profile to register for this event.

6.0 Hours CLE Credit, Includes 1 Hour of Ethics Credit

Program Description

2nd Annual Small Firm Essential Toolkit

The Business of Law: Maintaining & Growing Your Practice in the Post-COVID World

Co-Sponsored by CLA’s SOLO Section

Please join us for the first program in this timely 3-part series, the Small Firm Essential Toolkit. Seasoned attorneys and other professionals will speak on our changing business environment in the time of COVID, providing strategies and inexpensive tools for improving business visibility, marketing, expanding practice areas, efficient and effective remote technologies, and getting paid.

Thursday, November 19, 2020 – Day 3

“Managing a Thriving Law Practice with the Latest, Greatest Remote Technologies”

“Getting Paid: How to Collect Your Fees Consistently”
Immigration & Nationality
Workers' Compensation

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*Trust them to Erin Joyce.*

With 30 years of experience in civil litigation, including nearly 20 as a State Bar prosecutor, Erin has helped professionals throughout Southern California avoid arbitrary and inequitable sanctions, keep their licenses and reestablish their careers through the reinstatement process. She has tried dozens of State Bar trials and appeals, and possesses a unique and comprehensive understanding of how State Bar investigations and proceedings unfold to deliver to her clients the best possible outcomes.

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- State Bar discipline
- Moral character determination proceedings
- Reinstatements before the State Bar Court
- Professional licensing
- Ethics Consultations

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THE REMOTE ADVANTAGE

EVEN BEYOND THE NEED FOR SOCIAL DISTANCING, THERE ARE MANY ADVANTAGES TO REMOTE DEPOS:

1.) Court Reporter Availability
   We anticipate a flurry of rescheduled depositions as courts reopen in the coming weeks. With the court reporter shortage, avoid the risk of not finding a reporter!

2.) Eliminate unnecessary travel time & costs
   To reduce costs during the economic downturn, shifting depositions from in-person to remote can generate significant savings without compromising quality of service.

3.) Easier scheduling
   Since most witnesses are probably more available now than ever before (and possibly opposing counsel also), finding an agreeable time for all parties should be easier.

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Does the PNC have a viable employment claim?

The Attorney’s Quick Guide To Determining Which Claims Are Worth Pursuing

Obagi Law Group, P.C.
The Employee’s Litigators

811 Wilshire Boulevard, Suite 1721
Los Angeles, California 90017
424-284-2401 | www.obagilaw.com
We pay referral fees to attorneys per the R.P.C.

This guide is informational only and not to be construed as legal advice.
**Does The PNC Have A Viable Employment Claim?**

Nearly all of the PNC claims you will field will involve at least one of three primary elements. As you evaluate the viability of the claim, keep these three elements in mind.

### Discrimination Against a Protected Class
- Age (over 40)
- Ancestry / national origin
- Disability (mental and physical)
- Familial status
- Gender expression
- Gender identity
- Genetic information
- Marital status
- Medical condition
- Military / veteran status
- Pregnancy status
- Race / color
- Religion / creed
- Sex / gender
- Sexual orientation

### Illegal Adverse Action / Disparate Treatment or Harassment
- Increase in co-workers' pay / cut in PNC's pay
- Promotion for co-worker / demotion for PNC
- Loss in title
- Refusal to hire
- Termination / threat to job security
- Transfer to another department / location
- Unwanted sexual advance / touching
- Using sexually suggestive language or describing sex acts
- Using racist language / displaying racist images
- Telling offensive jokes about protected class(es) of people

### Retaliation for Taking Part in Protected Activity
Most common protected activities:
- Filing a workers' compensation claim
- Alerting law enforcement or other government agencies about the employer's about illegal activity
- Safety-based actions, which includes filing a complaint with Cal / OSHA or other agency regarding working conditions
- Requesting reasonable accommodations to work with a disability
- Complaining about discrimination or harassment in the workplace
- Refusing to participate in illegal activity

### Other Potential Causes for Employment Claims

#### Wage / Hour Claims
- Was PNC misclassified as independent contractor?
- Was overtime rate of pay appropriately made to PNC?
- Did employer provide paid rest and meal periods as required?

#### Disability Discrimination (15+ employees)
- Did employer fail to engage in the process to determine reasonable accommodations?
- Did employer discriminate / retaliate based on disability?

#### Medical / Family Leave Claims (50+ employees)
- Did PNC make protected request for family medical leave?
- Did the employer properly evaluate and respond to request?
- Would employer have taken the action without PNC having ever made the request for leave?

#### Workers' Compensation
- PNC must be an employee, not an independent contractor
- PNC must have workplace injury or occupational illness due to work environment
- Did PNC give sufficient written notice re. medical condition?

#### Privacy Violations
- Did employer intrude on PNC's reasonable expectation to privacy,
- OR did employer retaliate / harass / discriminate after making the privacy violation?
Does The PNC Have A Viable Employment Claim?

Basic Analysis

The steps below will assist you in determining the validity of the PNC's employment claim.

**STEP 1**
Does the employer have 5 or more employees?

*If no, FEHA may not apply.*

Does the employer have 50 or more employees?

*If no, FMLA and CFRA may not apply.*

**STEP 2**
Did the employee engage in protected conduct resulting in retaliation?

*OR*

Did the employer engage in unlawful discrimination or harassment?

**STEP 3**
Did employee sustain adverse employment decision?

**STEP 4**
How long ago was violation?

*Check appropriate statute of limitations for the claim.*

**STEP 5**

**The Retaliation Path**
- What protected conduct prompted the retaliation?
- Was the protected conduct or complaint in writing, otherwise memorialized or witnessed?
- How soon after the protected conduct did retaliation occur?
- Was the retaliation in writing?

**The Discrimination / Harassment Path**
- What evidence of discriminatory animus or harassment exists?
  *(Think documents or friendly witnesses)*
- How much time elapsed between discriminatory or harassing conduct and the adverse employment conduct, if any?
- Were other employees similarly treated or terminated?
  *(Layoff, reduction in force inquiry)*

**STEP 6**

Did the employee suffer money damages?
- Loss of wages
- Loss of healthcare insurance, other benefits

Did the employee suffer non-economic damages?
- Does the employee need psychological treatment or therapy?
# Does The PNC Have A Viable Employment Claim?

## The Introduction

Here are the questions you should ask a PNC at intake.

1. **How did PNC hear about your firm?**
   
   *When you ask this question, tell the PNC you love to send a thank you to your referral friends and partners.*

2. **PNC Identification information**
   
   - Full name
   - Age
   - Phone number
   - Email address
   - Mailing / physical address

3. **Information on employer in question**
   
   - Is subject of complaint PNC's current or former employer?
   - Name of company / and any employees pertinent to the complaint
   - PNC's last / most recent job title with the employer
   - Number of employees employed by employer (to the best of the PNC's knowledge)
   - How long had / has PNC been employed by this employer?

4. **Nature of complaint**
   
   - If no longer with the company, how did PNC leave company? *e.g., fired, laid off, quit*
   - Date of separation or other adverse employment action
   - Type of unlawful conduct PNC was subject to
     *Discrimination, Retaliation, Harassment*
   - For each type of conduct, ask PNC to provide details of the conduct
     *For discrimination complaint, please provide basis for discrimination.*

5. **Details of / additional information in support of complaint**
   
   - Ask PNC to provide as much detail as they can about how their employment ended or the type of adverse action(s) taken against them that they believe are unlawful or wrongful, and which led PNC to seek legal counsel
   - Are there any documents (text messages, emails, voicemails) evidencing the claims above? If so, what types and who has them?

6. **Financial information / damages**
   
   - Types of damages sustained
   - Last salary / rate of pay
   - Hours worked per week
   - Does PNC recall signing an Arbitration Agreement?
   - Did PNC sign a severance package or settlement agreement with the employer?
   - Has PNC ever filed for bankruptcy?

7. **Is there any additional information the PNC would like your firm to know as to why they are contacting you?**
   
   *If intake is done online / via questionnaire, end with thanking PNC and assure them a member of your firm will contact them promptly.*
Tara Hattendorf is a strong advocate with a compassionate heart. Tara strives to make the litigation process understandable and seamless for our clients. She works throughout the life of a lawsuit to ensure that our clients' goals are at the forefront, and she works diligently to get our clients great results.

Tara supports senior counsel at Obagi Law in all aspects of civil litigation, including pleading preparation, law and motion practice, discovery, conducting and defending depositions, arguing at hearings, assisting and leading settlement discussions, and upholding our stellar reputation for constant contact with our clients.

Already, in her first year with the Obagi Law Group, exceptional examples of results she has achieved for clients include a $250,000 settlement for a retaliatory wrongful termination and quid pro quo sexual harassment, and a $385,000 settlement for a client in a textile industry breach of contract dispute.

Tara developed her passion for law and justice through her undergraduate journalism studies. Subsequently at the USC Gould School of Law, Tara gained invaluable experience at the California Office of the Attorney General in the Civil Rights Enforcement Section. She also clerked at Public Counsel in the Center for Veterans' Advancement. During her final year of law school, she served as a Senior Copy Editor of the Southern California Review of Law and Social Justice.

Tara graduated from Pacific Union College, summa cum laude, with a B.S. in History, Political Studies and Ethics, and a minor in Public Relations & Journalism. She earned a J.D. from the University of Southern California Gould School of Law, with a Certificate in Entertainment Law. Tara was admitted into the California Bar in December 2019. She is also admitted to practice in the Central and Northern Districts of California.
Mr. Rosen, a graduate of UCLA School of Law, Class of 1985, has practiced law in California for 35 years. He is a member of the Los Angeles County Bar Association panel of attorney-client fee dispute arbitrators. He has served as an arbitrator in fee disputes. He has represented both lawyers and clients in fee arbitration matters and fee dispute litigation matters.
Managing a Thriving Law Practice with the Latest, Greatest Remote Technologies

I. Introduction - Disclaimers

A. Obagi Law and I have no pecuniary interest in your using any of the products that are mentioned below, except SaneBox if you use our referral code

B. Products / Tools I recommend are limited to my knowledge; I am not a law tech expert; I am just, pretty good with tech

C. No Cyber Security Assessment has been conducted on the programs mentioned in this video. Look out for FBI’s Cyber Threat Assessment & Tips to LACBA, coming to the Small Firm Section in December 2020 / Early 2021

II. Basic Training: Good Email

A. Must Haves:
   a. Easy Conversion, Printing / Organization
   b. Searchability
   c. Outlook Compatibility, if you use it
   d. Tagging to a Matter / Compatibility with Practice Management Software/CRM

B. Google / Gmail for Business
   a. Inexpensive, monthly
   b. Gives your staff a way, other than Facebook, to access sites/ easy login
   c. $5 per user
   d. Includes analytics for website
   e. Emails are @yourdomain.com
   f. Large storage; can increase as needed
   g. Litigator Key: Easy to print to PDF conversation
   h. Reads first to last, rather than last to first
   i. Chrome Login: Store passwords, save usernames, log back in each day

C. Other Apps
   a. G Suite Sync for Outlook
   b. SaneBox
      i. Black Hole Training (Spam)
      ii. Filtering / Moderately Smart Filter
      iii. Referral Code https://www.sanebox.com/signup/14d018552b/c
III. **Daily Meeting**

A. Use Dropbox Paper to Set Agenda/ Put a New Date and new agenda at the top; preserve all past ones for reference.
B. Discuss new laws, legal opinions, emergency orders.
C. **Check** what are people working on.
D. Public constructive criticism / educational feedback that is shared with whole team.
E. Commendations – Public Compliments
F. Open Up the Floor to Your team – Get constructive feedback yourself
G. Occasionally meet on Zoom
H. Wellness / Team Building

1. **Mask Assessment**: [www.whatsmymask.com](http://www.whatsmymask.com)
2. **Print Survey**: [https://www.printsurvey.com/](https://www.printsurvey.com/)
3. **Kolbe Assessment** [https://www.kolbe.com/kolbe-a-index/](https://www.kolbe.com/kolbe-a-index/)
IV. Hardware & Tools

A. Slow, Stalling, Crashing Computers Demoralize and Reduce Efficiency

1. Check in with your team about the performance of their hardware? Black Friday sales; get some. Dell.com has good deals.

2. Computer Min Specifications
   
i. **Processor**: i5 (laptop), i7 (desktop) or better processor (engine speed)
   
   ii. **Memory**: 4-6 GB for laptop; 8 GB min for desktop; speed for multiple processes at once. Think: Slack, Outlook; Browsers for Practice Management
   
   iii. **Hard Drive**: Solid State Hard Drive (SSD); inexpensive, but most average CPUs will offer you HHD. HHD is spinning drive, SSD; so speed performance is much faster with SSD. Ideally 512GB, or 1TB. Ideally, has 2 drive/secondary drive.

B. Cloud Backup & Team Syncing

1. **Dropbox for Business – Paid Subscription**
   
i. Note: Best searches for archived files are done on the website.
   
   ii. Easy to add people, remove and wipe the files off their computer.
   
   iii. Smart Sync Feature: Local or Cloud by file or Folder

2. Box (Caution: problem with long file names)
3. Google Drive
4. OneDrive, are all reliable providers
C. **Scanner: PlusTek SmartOffice 286 Plus**

1. Comes with Extra Roller
2. Good Customer Support
3. Fast OCR; quickness limited by your computer’s capabilities

D. **OCR/ Bating / Watermarking / Signing Doc Software**

1. **PDFXChange Editor (Single Payment, Multiple Licenses w/ years of licenses)**
2. Adobe Acrobat (Subscription monthly payment, Frequently Updated)
3. **Get your cursive electronic signature to your team.** Let’s your team finalize for you when you’re on the go.
   i. Take a picture of your signature on a blank paper, or scan it in as a PNG (Preferably)/ JPEG;
   ii. Get it onto your computer; email it or upload via Dropbox etc. in a handy folder
   iii. Add to your Signatures in the PDF app so it can be quickly applied.
   iv. MS Word, insert picture; right click it; click the arrow to the right of Send to Back, and choose “Send Behind Text” and now you can apply to your signature block and it’s ok if it overruns your signature block. Your letters look like they were scanned, without the fuzziness.
E. Dictation Programs: Dragon Dictation

1. Not great, but good enough.
2. Crashes with Outlook; work around it in Word.
3. It takes discipline to dictate; but pays off in time savings especially in emails to clients (use simple language for clients, not a lot of citations).

V. Practice Management Software

A. Decide on Scope First

1. How much do you want to rely on a software?
2. What’s the burden to switch away?
3. Will it work well with increased volume?
4. How much will it cost as you grow?
   i. Attorney users v. non-attorney price difference?

B. Must haves:

1. Time entries;
2. Automatically recuring reminders on outstanding & invoices;
3. Interest accrual re unpaid invoices;
4. Combination of outstanding invoices
5. Work Flows:
   i. Caution: **Automatic Calendar Events vs. Task Addition Workflow**
   ii. Document the Workflow before systematizing it i.e. pdf checklist / workflow
6. Lead Tracking:
   iii. Source of Lead: likely last branding seen, not real source
   iv. # of Leads: Qualified to unqualified
   v. # of Intakes Conducted (Non-attorney should conduct intake)
   vi. # of Consultations Set
      (Paid Consults for Hourly work; Free consults for qualified contingency based leads only)
C. **Docusign Capabilities:**

   1. **Infotrack / SignIt** - $3 per signature - [https://www.infotrack.com/](https://www.infotrack.com/)
      1. No charge if cancelled without signature
      2. Upload Document
      3. Drop Signature / Date / Initial requests In
      4. Identify Name and Email of Client
      5. Send
      6. Add as Expense in Client Matter

   2. Some CRMs have their own, like Clio

D. **Other Features:**

   1. Calendaring synchronization w Matter
   2. Email tracking / filtering by matter: easy chronology for any team member to see whether they are part of the email thread

E. **Software Options – Each has a flaw, or dozen**

   1. Clio / Clio Grow
   2. Practice Panther
   3. My Case
   4. Litify
   5. Smokeball:
      6. Harvest: Basic Client Time Tracking and Reminder Invoicing, but clean, quick, easy and inexpensive
   7. Freshbooks
VI. Team Communication (Min. Team Size = You, or You plus 1)

A. Slack / competitor MS Teams is growing in popularity
   1. One channel per client matter
   2. One-touch email address generation for each matter
   3. Notification settings can be adjusted
      i. Notify me each time a message is posted
      ii. Notify me when I am tagged
      iii. (Will notify you when an email is sent to the channel)
   4. Easy reminders re messages
   5. Can call / video each other (Note, range of vision gets wider on Slack Video than on Zoom)
   6. Channels for other subject matters:
      i. Tips from / for trial;
      ii. Notes for trial prep in particular case
      iii. Tips re “Settlement Agreements”

B. App Add-Ons
   1. Workast: Easiest tasking ever.
      i. Tasks assigned to threads
      ii. Type: /todo “/todo @support prepare summons civil cover sheet, addendum” then set date and time
      iii. Can set assignee after you select descriptor
      iv. Can edit date or add date if one is not mentioned
      v. Home page to see all tasks; easily bookmarked on web browser
   2. Google Calendar, reminders and auto-status updates

VII. Document How to Do Repeat Processes

A. Why?
   1. Reduces Training Time and Expense;
   2. Increases the reliability of your team’s work when they can refer to something;
   3. Allows somebody to step in your shoes or support you, in case of...
Managing a Thriving Law Practice with the Latest, Greatest Remote Technologies

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i. Disability
ii. Vacation
iii. Wellness break / Work life balance

B. Build Your “How To” Video Library

a. No need to be on Camera
b. Screencastomatic v. Loom for Screen / Self Recording
   i. Produces a file; can store on your computer or on cloud
C. **Document Repeat Calendaring Protocols in PDF**

1. CMC Deadlines
2. Pretrial Deadlines – Discovery Cutoff, Expert Exchange
3. FSC Deadlines: Witness list, jury instructions, etc.

D. **Trainual = Online Manual Building Software**

1. Loom is most compatible video recorder for Trainual
2. New Process? Task “/todo add _______ to the Trainual”

VIII. **Efficiency Mindframe: “Key Stroke & Mouse Click Reduction”**

1. New Matter Template Folder

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Date</th>
<th>Time</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Pleadings</td>
<td>9/9/2019</td>
<td>5:35 PM</td>
<td>File folder</td>
</tr>
<tr>
<td>2. Discovery</td>
<td>9/9/2019</td>
<td>5:35 PM</td>
<td>File folder</td>
</tr>
<tr>
<td>3. Correspondence</td>
<td>9/9/2019</td>
<td>5:35 PM</td>
<td>File folder</td>
</tr>
<tr>
<td>5. General</td>
<td>10/28/2020</td>
<td>2:27 PM</td>
<td>File folder</td>
</tr>
<tr>
<td>6. Trial</td>
<td>6/30/2020</td>
<td>9:11 AM</td>
<td>File folder</td>
</tr>
</tbody>
</table>
1. i.e. in Pleadings/Drafts: Prefilled docs with firm name, contact info etc.
2. Discovery

3. Correspondence
IX. New Clients and PNCs

A. Preliminary Intake (Light)
   1. Don’t scare the PNC away with questions;
   2. Ask enough to adduce if you would be interested or could help;
   3. Once engaged, can send them the deeper dive questionnaire.

B. Use A Program, not Word for PNC & New Client Intake
   1. For example, Typeform / Google Docs
   2. Plug into website seamlessly;
   3. Feeds into PNC Slack Channel
   4. Prints to a nice PDF for the file (Avoid handwritten scribble from clients)
   5. Practice Management Software, like Clio has this built in.

X. Hiring

A. Indeed; pay per applicant or hire;
B. Crafting Job Posting
   1. Description needs to resonate with the type of person you want;
   2. Get Specific about duties and role
   3. People are interested in growth; what are the opportunities in your firm
XI. **Other Recommended Apps**

A. **Lex/Ruby Reception:**
   1. No reason to be consuming your time answering the phone.
   2. No reason to pay somebody fulltime to do only that.

B. **Text Message Clients from Your PC / Mac with Office Line #**
   1. Podium.com
   2. ZipWhip.com
   If you serve individuals rather than institutions, it is how they communicate.

C. **SendinBlue** – Firm Newsletter

D. **Canva** – Easy Graphic Design for Marketing
   1. **Come up with the message**
   2. **Hire a recent grad part time to design and push out**

E. **Instagram & Facebook** Ads

F. **Bench.Co** – Bookkeeping – Inexpensive, Regular – Good, not Great

G. **Doodle** – Coordinate a good time for a meeting with a group, i.e. multi-party litigation meet and confer scheduling.

H. **Virtual Assistant:** [https://outsourceaccess.com/process/](https://outsourceaccess.com/process/)
   1. Basic, low level assistance
   2. Repeated, regular simple processes

**Final Tip:**

**VLOG.** Set up a studio in your office or home: lights, tripod and string microphone that plugs into your phone. Record videos that serve existing clients, and educate potential new clients about your practice area. Become the attorney that is educating the others, the most, via video on YouTube or Vimeo. Ensure the descriptions include key words.
Zein Obagi is the founder and lead counsel at Obagi Law Group, P.C., in Downtown Los Angeles. Serving a diversity of clients throughout the greater L.A. metro area and all across the state, Mr. Obagi offers exceptional and effective advocacy to those who are dealing with legal challenges involving any of the following and more:

- Employment law litigation for matters involving harassment, discrimination, and whistleblower and other unlawful employer retaliation;

- Business litigation and partnership disputes with a particular emphasis on the cannabis industry and business debt collection.

Mr. Obagi has earned a reputation as a tenacious and aggressive trial attorney who zealously pursues the most favorable outcomes on his clients' behalves. His list of successes is varied and many, including a $2.73 million jury verdict in cannabis litigation, enforcing judgments against a wide range of defiant institutions such as the Mexican government and regularly attaining 6-figure employment litigation settlements for plaintiffs. Of course, all case results are fact dependent and no attorney can guarantee any result.

A 2005 graduate of UC Berkeley, Mr. Obagi attained his J.D. from the University of Southern California Gould School of Law in 2008. While in law school, he was a member of the Hale Moot Court Honors Program, and he received the highest score in his class for "Contracts."

Mr. Obagi is admitted to practice in California, including the U.S. District Court for the Central, Southern, Eastern and North Districts of California, the U.S. Court of Appeals for the 9th Circuit, and the Supreme Court of the United States. In 2019 and 2020, SuperLawyers identified him as a Rising Star.
Building the law firm of the future

HOW TECHNOLOGY WILL HELP MANAGE AND RESHAPE YOUR LAW FIRM

In years to come, I believe that we will look back on the COVID-19 global pandemic as a marker in time that separates an old paradigm of business operations from a new one. These past months have provided us with a small glimpse of what the future will require of a law firm to succeed.

Before the pandemic, law firms could operate successfully in much the same way they had for the last decade. With the arrival of 2020 and all of its surprises, law firm operations have had to radically shift to survive.

Many firms, from solo practitioners to large national firms, have had to scale back their practices or suspend normal operations, while they rethink their systems and processes. In contrast to this, more “progressive” firms have thrived through this period – discovering new opportunities and efficiencies along the way.

I consider myself very fortunate to lead a firm that has not only weathered the stay-at-home mandate but has continued to grow through it. Below, I outline many of the technology decisions and investments we have made, that have helped our firm progress through these unprecedented times.

Good planning and good fortune

I can recall with great clarity the moment I realized that we were about to experience an unprecedented interruption in the way we go about our daily lives. No official stay-at-home announcement had been made, but I could see the writing on the wall.

Expecting an official order to close our office doors to come down at any time, we acted quickly to ready ourselves for remote work. With dozens of staff, each with different home situations, this could have presented many potential challenges.

Considering all of the variables that come into play, with an interruption at the scale we have experienced, our transition to remote work was nearly seamless. This was in large part due to the technology investments we had made over the years. The only downtime we experienced was the time it took our staff to pack up their in-office workstations and take them home.

Most of our staff were up the same day, and all of our staff were fully operational the next morning, working remotely from their homes.

One thing that we were committed to, from the beginning of the statewide shutdown, was to ensure that we would have no lay-offs and that every staff member would continue to be paid as expected. As if there wasn’t enough stress and anxiety in everyone’s lives, the last thing I wanted our team to worry about was their paychecks. It was important for me to deliver this message to our team in no uncertain terms.

Proper planning allowed us to provide security, stability and certainty to our entire team, during an incredibly uncertain time. Team members spent no time or energy wondering whether they would have their jobs. This allowed us to focus our energies on the task at hand – representing our clients and moving their cases forward in this new reality.

The future is now

At the time of this writing, our world is still filled with uncertainty. There is no end to the pandemic in sight. The courts are working at minimal capacity and there is no plan to bring back civil jury trials anytime in the near future. Further adding to the stress of what the future holds for our clients and our cases is the backlog that the courts will have to go through. It could be years before the courts catch up.

Given the current state of things, we must no longer consider the law firm of the future some theoretical far-off ideal to strive for, but rather an imperative that must be implemented today. Without radical change to tools, methodologies and approach, many law firms will simply not survive.

Fundamentals remain the same

While change is necessary, it is not always easy. If the task at hand seems overwhelming, it is important to take a step back and recognize that the law firm of today and of the future still adheres to the same fundamentals as it has over the last century. It is only how those fundamentals are achieved, that changes.

There was a time when the fax machine was seen as a progressive threat to the established way of doing things. Scary at first, the fax machine is no longer a threatening device. Similarly, today’s technology may be intimidating to the uninitiated, but there will come a day when its benefit is understood and accepted. If you think about it, most law firms today don’t have physical fax machines, but they do have the ability, through technology to send and receive faxes. It is this exact adoption of technology that will help drive continuity in an industry that has traditionally been the slowest to innovate.

We are very intentional about our approach when it comes to technology. Over the years, the goal with all of our technology investments has been not to chase shiny new trends, but to facilitate the fundamental needs of our firm in an efficient and cost-effective way. It is important to watch and have an open mind in the developing technologies and how you can use them in your practice.

You may find that some new technologies are not a good fit for your firm, but you can only know that if you test and understand the ways in which the solutions are designed to function. A sure way to stay behind is to outright dismiss technology because the current way you’ve been operating is easy or comfortable and worst of all what you are currently doing “works.”

See Torkzadeh, Next Page
Communication with potential clients

The world is becoming increasingly connected, and with the explosion of this interconnectedness has come a plethora of new channels through which we can be contacted.

If you are a firm that relies on advertising, it is no longer enough to only offer a phone number. To succeed, you must now be willing to engage your potential clients where they are and with their communication habits. Your potential clients have more information and options available to them than at any other time in history. If contacting you is too difficult, they can and will move on to the next option without giving it a second thought.

At our firm, potential clients can contact us by well-established means of business communications such as telephone, fax, mail, and email. But they can also reach us through a number of emerging channels – like our phone app, via text message, through social media, by web conference, or on a web chat. Afterall, you don’t know where your next client will find you, and what their preferred method of communication is.

Whatever the mode of communication, you want to be there and available when a potential client decides they are ready to contact your firm. Discounting any of the above ways to engage potential clients can be a serious detriment and unimaginable missed opportunities to your practice.

If you can’t measure it, you can’t improve it

To be effective and efficient, I encourage you to leverage tools that aggregate and measure activity on these channels. If you are not measuring these channels, you are potentially wasting time and money to support something unnecessarily. Similarly, you may be inadequately resourcing channels that are working.

It is possible to monitor individual channels at their source, but there are a number of tools that will centralize these communications in a single place. In our firm, we have dozens of social media profiles and directory listings. Watching each one and responding promptly is just not feasible. We utilize Sprout Social to do this for us, but there are other similar tools – Buffer and Hootsuite are two big players in the space that come to mind.

Communication with clients by phone

When we were forced to leave our office, the principal concern that we had was how we would be able to remain accessible to our existing clients. Fortunately, we were well-positioned for the task.

Years prior, we had elected to use a cloud-based VOIP (voice over IP) phone system. One of the offerings of our particular system is an app for mobile phones. With the app on, each staff member’s mobile phone is indistinguishable from their desk extension. This allows our team to take calls wherever they are. We elected to use a system called Jive that was acquired by RingCentral in the last year. The option we selected has worked well for us, but there are a number of similar options like Nextiva, Grasshopper, Ooma, and Ring Central.

Whichever option you choose, this is one of the most important technology decisions you can make immediately. Cut the cord and don’t look back. The days of having a desktop phone that can only be answered while you are at a desk, or having to manually forward and unforward, are over.

Cloud-based phone options allow you and your entire team to work seamlessly from anywhere in the world. Each team member’s cell phone is now as powerful, if not more so, than the traditional wired desktop phones. Most of these solutions have reporting functionalities that will also provide you with incredible data from which you can take action.

Communication with providers

Like many of you reading this, our firm has to deal with a very large volume of faxes. While we would prefer that this was not the case, it is the reality of doing business with medical providers, hospitals, opposing counsel and courts. Like our phone system, we tackled this by opting for a cloud-based solution. Our firm went with a virtual fax solution product offered by RingCentral.

By liberating faxes from the confines of a local machine, our entire staff has access to faxes sent to our firm. There are many other alternatives to virtual fax vendors. You need a virtual fax solution where all of your faxes can be accessed online or in your email and by as many staff members as you need.

Internal communication and collaboration – video conference

Operationally, internal communication was by far the biggest challenge we faced as a firm when we began working from home. One of the many conveniences afforded to you in an office setting, is the ability for meaningful and complex communication. You can meet one on one, in groups, with supporting documents, and so on. In a remote setting, these conveniences are largely lost.

Our phone system allowed us the ability to speak one-on-one. The problems began to arise when multiple people needed to be involved in a conversation – whether it was a strategy session among our leadership team, a huddle within a department, or a creative collaboration among the marketing team. For this, we turned to the video conferencing platform, Zoom.

Regardless of the video conferencing platform (of which there are many), the important thing is that you are able to converse as a group, share screens, and restore much of the non-verbal dialogue that is lost in voice-only calls or written words.

What we found effective is to set a schedule of regular meetings and stick to it. That way every team member knows to block out a specific day(s) and time(s) for these critical meetings. Our department leads meet regularly several times a week.
and each attorney team meets twice daily with the rest of their support staff – once in the morning and a close-out meeting at the end of the day.

Messaging

When we switched working context, we found that many of our staff began using email as an asynchronous method of communication between one another. This quickly became problematic for a number of reasons – speed at which information was conveyed, people being excluded, attachments disappearing, and information and document versions getting out of sync.

To solve the asynchronous communication problem, we turned to Slack – a collaboration and communication messaging platform. Slack and its competitors allow you to create one-on-one chats, as well as channels for larger groups to communicate within. It supports the sharing of documents and rich media and allows participants to quickly scan for information relevant to them. This has been a critical part of our internal communication and an effective way to deliver important messages across 50+ team members in real time.

Case, client lead and document management systems

At the center of our firm are three applications that are all web based, meaning they can be accessed in a web browser from anywhere in the world with an internet connection (or on our cell phones if there is no internet connection). They are our case management system, our new client lead management system, and our document management system.

From day one, we recognized the value of web-based technologies. By leaning into them and investing heavily into web-based solutions, it has made our firm more nimble. I encourage you to look at your existing software and if you have to remotely log into a server or rely on a third-party server to access your information, seriously consider a web-based alternative.

The limitations of physical paper files has been made abundantly clear by the COVID-19 pandemic, as has the limitations of on-premises (server-based) case management software. While much of this can be overcome through the use of VPNs, it falls short of the nimbleness and flexibility you get with a cloud-based system.

Security

One aspect that is easier to control in an office setting, is information security. The law office of tomorrow will not only be concerned with how work gets done, but how it is done in a way that safeguards sensitive information. As a firm, we have implemented tight controls on who can and cannot access certain information, and who can and cannot add or revoke that access. We have also set up timeouts, password controls, and other measures to mitigate risks.

If you have not already made it a part of your processes, regular auditing of security protocols is something that should not be neglected and should be calendared to revisit on a regular basis. There are many security solutions available which can track, monitor and notify you of suspicious activities on your systems. These solutions can record web activity, keystrokes and much more. It is certainly worth the time to determine if such a solution is right for your firm.

Driving growth

Healthy things grow – whether it is growth in income, growth in staff, or growth in reputation – healthy things grow. Legendary College and NFL head coach Lou Holtz said, “In this world you’re either growing or you’re dying, so get in motion and grow.”

As a firm, we do not want to simply get through the current global crisis, we want to come out of it better than when we went in. So, whether you are navigating your firm through today’s challenges, or envisioning the firm of tomorrow, you should not only be looking for how to survive, but how to thrive.

Casting vision and team alignment

I have found that most of the people you actually want on your team, want to be a part of something greater than themselves. They are looking for opportunities to play a part in something much bigger than they can achieve on their own.

In a law firm setting, the grind of the day-to-day tasks can blind us, and them, from the truth that we are actually making a meaningful impact in people’s lives and helping them through the hardest periods of their life.

Whether your law firm of the future is remote or centralized in an office, you should find ways to address your team, to remind them of the role they are playing in helping others. And, paint a picture before them of how much more the firm can do and how they can contribute to having a positive impact on your clients and our communities.

In my firm’s current context, vision-casting happens on a bi-weekly all-hands huddle over Zoom. It has been a powerful and effective way for staff to see their larger team of co-workers, to remind them of the important work we are doing, and to cast vision for what is to come. Having this team alignment and understanding is an absolute must for every firm. The vision you have for your practice must be shared with the most important people who are going to help get you there – your team.

Toward a data-centric firm

Technology plays a critical role in helping us monitor the effectiveness of our staff and processes. Measurement and reporting is always a key consideration when we evaluate potential technology for our firm. When evaluating solutions for your own firm, the tools measurement and reporting capabilities should not be overlooked. If you don’t have an easy way to run reports or export data, it may not be the best solution as you look to build your law firm of the future.

In our firm, the effectiveness of each department is measured against a set of...
key performance indicators (KPIs). The purpose of the KPIs is not to micromanage, but to identify trends of under-performance and inefficiencies. The KPI we have set, and the KPIs you set at your firm, should not be a burden to you or your staff to calculate. They should be reportable by your software or be something that is quickly calculable or automated.

What we have found is that the most valuable data, that provides the clearest insight into the health of the firm, is not data from a single system, but the output that we get when we marry two or more data sets together. For that reason, we have invested heavily in bespoke reporting automation and data visualization.

The firms of tomorrow will certainly recognize the value of data and will make investments to make their data work for them — and that the health of their firm can be read from a dashboard.

Setting goals
As intelligence in the tools we use increases, so too does our ability to lead our employees. By measuring their performance, we can compare this month’s output to last month’s, one employee’s work product against another’s. It helps us to identify points where we can praise, points where we can coach, and points where more significant actions can be taken.

With good intelligence, it becomes easier to set performance goals and monitor how an employee is tracking against those goals. Because most of this will be transparent, an employee knows when they are exceeding expectations, or failing to meet the standard. Numbers don’t lie and there is nothing worse than a team member who believes they are doing a great job, but in reality, the numbers suggest otherwise.

At our firm, we believe in full transparency in this data and KPI reporting. Every Monday, a report is circulated firmwide for everyone to see. This report is broken up by department and is organized by each individual team member by name. A similar report, but in greater detail is circulated on a monthly basis. Nobody likes to see their name at the bottom of their respective department. The power and motivation public accountability can have on a team member’s performance is incredible and is often undervalued. I suggest you try this and watch as your staff works harder to get to the top of the weekly report — and for some, to avoid being at the bottom.

Hiring by the numbers
One place where the value of quality data may not be immediately apparent, is in the hiring of new employees. By measuring staff performance, it is easy to identify who your top performers are in each of your roles. When you are ready to bring a new recruit onto a given team, it makes sense to hire someone who tests similarly to the all-star on personality and IQ tests – this should increase the probability that the new recruit will find success.

It is impossible to assess a candidate’s abilities through an interview and resume. Over the years, we have learned the hard lessons of this fact. One of the hardest things to do is to have to let go of a hire that wasn’t a good fit. Often, it could be months, and unfortunately, maybe even years before you realize you have an ill-fitted team member.

Several years ago, we became very intentional with our hiring and recruitment. Our current recruitment and hiring process includes a 10-step process which includes four personality and cognition assessments, video-recorded interviews, phone interviews and assignments. At each one of these 10 steps there are indicators for which we eliminate candidates. While some may consider this overkill and burdensome, it has saved us from a tremendous amount of heartburn and allowed us to identify all-stars who we are fortunate enough to have on our team.

I suggest having a process in place other than just looking at a resume and conducting an interview, where you can identify key players who will join you and contribute to your vision and service to your clients.

Lastly, just because someone has experience, doesn’t make them a good fit for your firm. Implement a way to filter candidates and make sure their personality is the right fit for you, the rest of the team and firm culture. It doesn’t matter what Joe Smith or Jane Doe has done in the past for one of your competitors – are they a good fit for your firm and do they understand your vision?

The future, and the place of remote work
While restrictions have loosened around returning to offices, at this present moment, a new wave of COVID-19 is surging in the United States, with record numbers of people being infected each day. Our leadership team has made the decision not to have our full staff return to an office setting for the foreseeable future. In fact, I am now reconsidering the necessity of having all of our staff working from a single office.

While remote work presents some challenges, it also offers many benefits for both the firm and the employee. For the firm, the chief benefit is the ability to grow our staff without the physical limitations that come with an office building. Over the last four years, we have had to move our primary office three times as we reached the physical capacity of each of these spaces. With a remote workforce, physical space is no longer a concern. A firm that has embraced modern communication tools and connected technologies does not necessarily have to concern itself with the space limitations of conventional office work.

In 2019, I started a co-working office solution for lawyers called LawWorks to serve as an alternative to the traditional law office and embrace technology. Members have access to all of the technology solutions needed to plug-and-play an entire firm and run a practice. No more long-term leases or investments in furniture, printers and supplies. Members can use conference rooms, huddle rooms or use the open workspace or phone
booths as they see fit and only pay for what they use. Forward-thinking office solutions like LawWorks in Irvine or JusticeHQ in Downtown Los Angeles and other cities will prove to be at the forefront of helping lawyers build the law firms of the future.

Final thoughts

The law firm of tomorrow is not about reinventing the practice of law. It will always demand our focused effort, our creativity, our desire to uphold justice and service our clients. However, the tools we use to manage our practice will always be in a state of flux.

Today’s world requires that we work remotely, and we must adapt to survive. Tomorrow may and most likely will place new, unforeseen demands on our practices. Regardless of what is to come, it is imperative that we continually seek out processes and tools that keep us efficient, flexible and ready to adapt.

Reza Torkzadeh is the founder of TorkLaw. He is a longtime member of CAALA, CAOC, AAJ and an Honorary Board Member of the Los Angeles Trial Lawyers’ Charities.
GETTING PAID

LACBA
November 19, 2020

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AGENDA

1. Intake
2. Declining Representation
3. Retainer Agreement
4. Management During Representation
5. Addressing Client’s Issues
6. Formal Collection Efforts
7. Avenues to Seek Redress

INTAKE

The Golden Rule:
Avoid Matters that Will Not Be Profitable

- Nature of representation
  - Rule of Professional Conduct 1.1(a) – Be Competent
  - It will take you more time to get up to speed, or it will get you sued for malpractice

- Conflicts of Interest
  - Rule of Professional Conduct 1.7, et seq. – Don’t Have Them
  - Conflicts can render your services useless, or will get you sued for breach of fiduciary duty
INTAKE

Other Considerations:
• Goals of representation / Reasonableness of Expectations
• Ability to Pay / Value Shopping
• Fee sensitivity
• Negotiation of fee deposit
• Prior experience with lawyers
• Conflict with prior counsel
• Gut instinct
• Credit Check?

STATEMENTS TO BE WARY OF:

<table>
<thead>
<tr>
<th>What they say…</th>
<th>Code for…</th>
</tr>
</thead>
<tbody>
<tr>
<td>“I don’t care what it costs!”</td>
<td>“What it costs doesn’t matter to me because I am not going to pay for it.”</td>
</tr>
<tr>
<td>“I’d rather pay you than them!”</td>
<td>“I am not going to pay anyone.”</td>
</tr>
<tr>
<td>“This is a matter of principle, not money.”</td>
<td>“I am not going to make rational decisions, will allow this case to drag on even when settlement makes sense, and will not pay you.”</td>
</tr>
<tr>
<td>“Lawyers are money-grubbing crooks!”</td>
<td>“I do not respect you, will not respect the value of your services, and will not pay you.”</td>
</tr>
</tbody>
</table>
DISCOUNT REQUESTS

“Friends and Family Discount” – Don’t do it, dummy!

But, if you must:
• Link discount to timely payment
  • Pay this bill within 10 days of issuance and get 10% credit reduction on next month’s bill
• Bill the full rate, then show the reduction.
  • Don’t allow a discount to be ambiguous as to the original sum due.

DECLINING CLIENTS

• **Written communication** declining representation
  • Do not allow this to be ambiguous

• **Alert** declined client to upcoming dates/deadlines

• **Don’t take a position** on the merits of the case
  • Another attorney may see it differently
  • You don’t want to be on the hook if a statute is blown because you discouraged bringing an action
RETAINER AGREEMENT

• Written
  • Cal. Bus. & Prof. Code 6147 – Contingency
  • Cal. Bus. & Prof. Code 6148 – Not Contingency

• Signed by attorney and client
• Copy provided to the client
• Comprehensive

Consequence for failing to obtain a written retainer: only entitled to a “reasonable fee”

CRITICAL PROVISIONS

• Full compliance with B&P §§ 6147 or 6148
• Advance Fee deposit and explanation of how it is handled, application to invoices, “Evergreen,” and IOLTA
• Unambiguous disclosure of hourly rates
• Unambiguous disclosure of cost arrangements
• Right to increase hourly rate with notice
• Advance trial deposit
• Provision allowing for lien on recovery
  • With caution that a lien may constitute an adverse interest and the client has the right to consult with independent counsel
• Cross-matter lien language if representing client in multiple matters
• Manner of calculation of fees in future matters in the event of no new retainer agreement
• Client to alert attorney to questions or concerns with the charged fees
• Disclosure re Malpractice Insurance [Hance v. Super Store Industries (2020) 44 Cal.App.5th 676]
• Disclosure re Fee Splitting with referring counsel [Reeve v. Meleyco (2020) 46 Cal.App.5th 1092]
CRITICAL PROVISIONS

- Clear Scope of Representation
- Matters outside scope of representation – insurance analysis/tender; tax advice
- Statement about when representation will begin (not until you get your retainer and deposit!)
- No guarantee of outcome
- Estimates and predictions are not guarantees
- Scope of duties
- Client obligations
- Late fee, amount, manner of calculation
- Handling of funds obtained in representation
- Manner in which agreement may be modified
- Document Retention Policy after representation
- Risk of paying the other side’s fees and costs in the event of a bad outcome

PROVISIONS TO CONSIDER

- Re: Attorney - Client Disputes
  - Mediation as prerequisite to formal dispute
  - Mediation as prerequisite to right to prevailing party attorneys’ fees
  - Binding arbitration
  - Prevailing party attorneys’ fees
  - Almost every case is mediated; consider providing Evidence Code Section 1129 mediation disclosure with engagement agreement
COMMUNICATION

Failure to communicate with clients is the most common case of complaints to the State Bar. If clients are unhappy, they will likely not pay you!

- Regular communication
- Prompt Responses
- Avoid surprises
- Discussion of upcoming events, expectations, range of costs

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INVOICES

- Exercise of billing judgment
- Frequency
  - Monthly
  - Staggered
- Task descriptions
  - Task v. Block Billing
- Manner of delivery
- Bill for increased trial deposit
- Attention to total amount billed
  - The client doesn’t care if the money goes to experts, it is still a “legal bill”

Invoice Format

Full Billing information for each entry:
- Time
- Rate
- Timekeeper
- Narrative
- Amount Charged

Detailed explanation of costs incurred
Trust balance
Timekeeper Summary

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BUDGETS

- Set **client** expectations
- Need to be continually updated
- Need qualifying language and caveats

---

CREDIT CARD PAYMENTS

**PROS**
- Fast
- Easy
- Online

**CONS**
- Service Fee
- Protest by unhappy payor
- Can create liability risk if service provider is not used to issues unique to law firms / trust accounts
ADDRESSING CLIENT ISSUES

- Newly identified conflicts of interest
- Requests for fee discount
- Failure to make timely payment
  - Periodic statements to slow payors
- Lack of communication/follow through
- “Cocktail party” lawyering
- Max allowed arrearages

FORMAL COLLECTION EFFORTS

- Should you seek redress?
- Risk of malpractice cross-complaint
  - Statute of limitation strategies
  - Insurance coverage issues
  - Non-renewal or premium increase
- Right to recover attorneys’ fees
- Amount owed
  - State Bar Reporting — 3 or more malpractice claims within 12 months
  - Self-Representation/Outside Counsel
AVENUES TO SEEK REDRESS:

Mandatory Fee Arbitration
  • Overview
  • Statutory Scheme
    • Business and Professions Code § 6201 et seq.
  • Process
  • Post-Award Procedures

Litigation/Binding Arbitration

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GETTING PAID

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Patrick Maloney graduated cum laude from the University of San Diego School of Law in 1998. While in law school Patrick served on the San Diego Law Review and was inducted into the Order of the Coif. Patrick formed the Maloney Firm, now a nine lawyer litigation firm, in 2012. Patrick has represented lawyers or their former clients in disputes with one another for nearly 20 years, in hundreds of cases, including cases for legal malpractice, breach of fiduciary duty, and disputes over unpaid legal fees.

From 2016 through 2019, Patrick served a three year term on the California State Bar Committee on Mandatory Fee Arbitration. He currently sits on the Executive Committee for the Los Angeles County Bar Association’s Attorney Client Mediation and Arbitration Services Program. In these roles, Patrick has trained fee arbitrators and participated in a number of fee arbitration proceedings, both as an arbitrator and representing clients.

Patrick is the president of the South Bay Bar Association. He has received an AV-rating from Martindale Hubble, was recognized as a rising star for several years and has appeared in the Super Lawyers list each year from 2015 to the present.

After practicing at a litigation boutique in Santa Barbara and a regional firm in Downtown LA, Gregory Smith joined The Maloney Firm about three and a half years ago. Since that time, The Maloney Firm has recovered more than $25 million for their clients in legal malpractice cases and saved them multiple millions in excess legal fees through litigation and fee arbitrations. Greg’s practice also includes representing clients and individuals in a number of industries in business disputes involving contracts, trade secrets, corporate governance, and shareholder rights. Greg is general counsel for boxing reigning pound for pound champion, Canelo Alvarez, and has been instrumental in guiding his career for the last several years. Greg has been selected as a Super Lawyers Rising Star every year since 2016 and was named to Super Lawyers Up-and-Coming 100 list for 2020.

Greg has been on the board of directors of the DTLA Bar Association for the last five years and currently serves as its treasurer; he has also coached high school and junior high school mock trial teams.