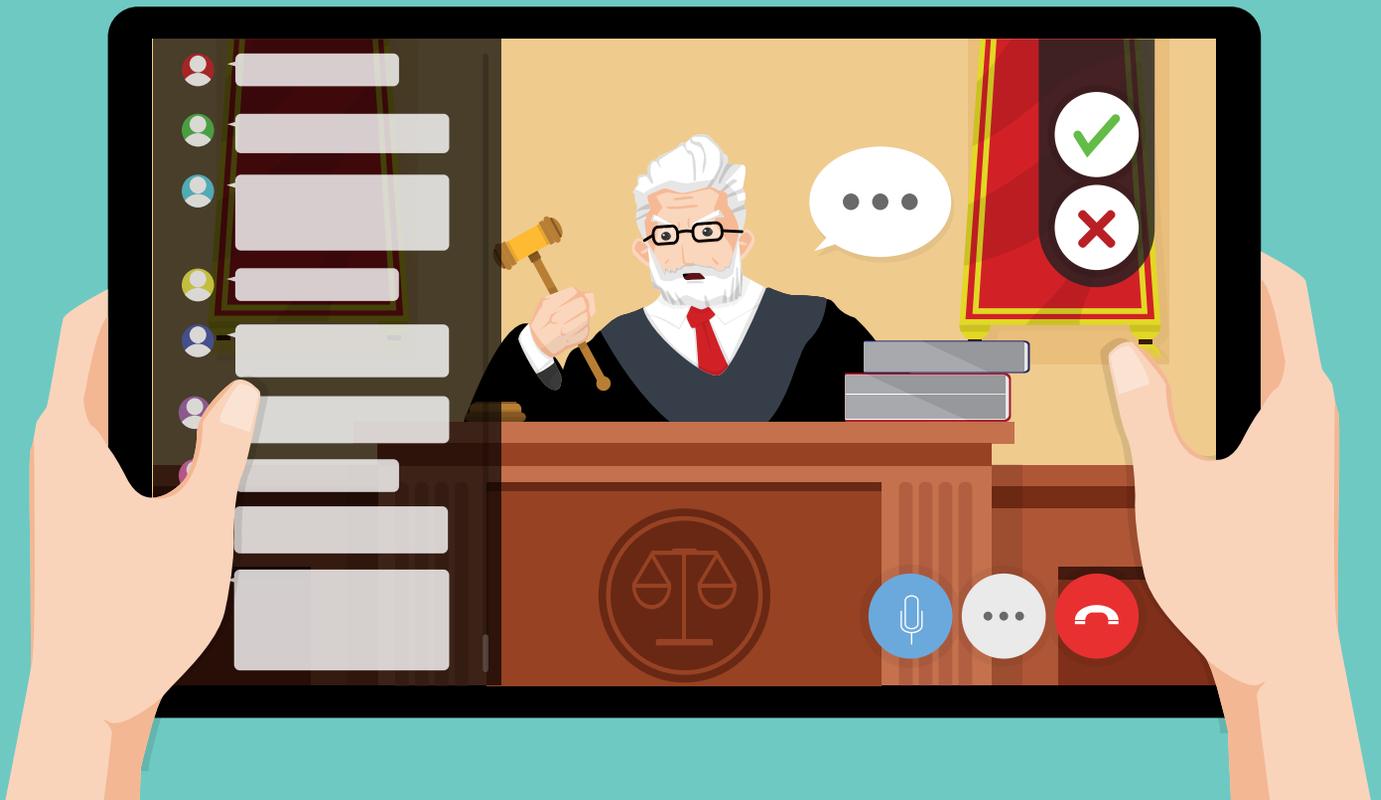


# LAW PRACTICE DURING AND AFTER COVID-19

By Michael Ablan, Maria N. Berger, Ryan Blay, William G. Cisar, Jessica A. Liebau, Colin Nicholson, and Scott L. Schroeder



**T**he COVID-19 pandemic has changed virtually every aspect of law practice in the United States. We asked six attorneys working in a variety of practice areas and at different stages of their careers how these changes have impacted them and what they believe will be the future of their practices as we emerge from the pandemic into the new normal.

**JESSICA A. LIEBAU**  
Wessels & Liebau LLC  
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“Let’s make a radical change and consider the consequences later” is not generally how attorneys like to operate. We like to weigh the pros and cons, confer with others, sleep on it, and then maybe rework the entire plan. COVID-19 threw that process out the window in favor of new ones, literally overnight.

Before COVID-19, did my

office have the tools to videoconference and work remotely? Yes. Did we know how to use them? Somewhat. We never “needed” to use them, so we pushed off learning just how useful they could be. COVID-19 made it a priority. Now, COVID-19 considerations aside, we are much better prepared when inclement weather makes travel to the office impractical in Wisconsin winters. In the long run, we may view our need for physical office space in

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a more flexible way. The receptionist's phone can be answered from her own living room. We are using a secure portal for estate-planning documents and transmission of client information. We can videoconference many of our client meetings, allowing us to meet clients without compromising safety.

As an elder law and special-needs practice, we spend a fair amount of time "in court" for guardianships, probates, trust matters, and the like. In Wisconsin, our courts converted to electronic filing several years ago. This has proven invaluable, as e-filing has allowed "court" to operate as a concept even when the physical "courthouse" has been unavailable. What was, of course, totally new and untested was the concept of completing an entire case from beginning to end without ever stepping foot into a courtroom.

Not all change is bad. Holding all court hearings in person during standard workday hours is not designed for clients who have jobs or serve as caregivers (or both). The traditional system is also not set up for attorneys who have caregiver responsibilities for children or other family members. Driving back and forth, finding parking, paying for parking, and waiting in the hallway, all for a five-minute in-person status conference, has never been an efficient use of attorney time or client money. Conducting this type of hearing via telephone or videoconference makes sense.

More important still, allowing video appearances instead of in-person meetings sometimes allows for greater participation by proposed wards and others with disabilities. Often, individuals with autism or dementia

cannot handle the stress of visiting a new building or meeting in person with strangers. They choose to skip their hearings entirely to avoid the anxiety. Now, from the comfort of their own home, these individuals can participate in their guardianship hearings as much or as little as they choose. Of course, other individuals operate best with the traditional in-person hearings. Therefore, a push to return "back to normal" should consider the benefits of providing some flexibility in hearing structure so as to maximize due process for each individual.

be sitting right next to the client off-screen, influencing what the clients says or doesn't say. Attempting to coordinate out-of-office signings for estate-planning documents raises similar issues. If we aren't there physically to assess the surroundings and confirm everything was signed willingly, how safe is that estate plan from challenge later on?

Even in the absence of a will contest, elder law attorneys are trained to assess capacity and identify potential signs of abuse. If we talk to a 90-year-old client, does she seem confused due to early stages of dementia or

**Is someone sitting next to the client but just off-screen, influencing what the client says or doesn't say?**



A serious drawback to a technologically based elder law practice has been the inability to talk to clients in person. It has forced us to make judgment calls about whether we are able to complete our work "well enough" through virtual means, or whether it's worth the potential risk to hold off on certain work until we can complete it at the higher standard we believe is appropriate. (Risks include our estate-planning client losing capacity or dying before the work is completed.)

Real concerns of autonomy and self-determination arise when we conduct meetings virtually and cannot tell who might

because she is videoconferencing for the very first time or using a computer for the first time? It's hard to know.

If we have a client who wants to compensate her daughter-in-law to care for her at home, can we tell from a phone call whether our client has been showered yet this week? Whether she has strange bruises? Whether she flinches when we reach out to shake hands? Obviously not. These limitations do not automatically mean we put work on hold indefinitely; elder law is full of emergency legal issues that simply cannot wait. But they are limitations we would rather not have.

We have learned through the

COVID-19 pandemic that technology provides great solutions in some cases but not so much in others. As we incorporate more technology into our elder law practice and see the court system adopt more “remote” practices, it will likely create more efficiency than ever. However, efficiency cannot replace basic tenets of due process and other client rights. We will need to make sure that “It’s a pandemic!” does not become shorthand for curbing the rights and protections of our clients.

comes in or goes out and only maintain paper files for active cases. On March 12, I saw the writing on the wall and brought my desktop computer home. I knew that I would have to work from home immediately. Over the next few days, I sent the rest of my staff home as well and closed the physical office. The shelter-in-place order went into effect in Illinois on March 21.

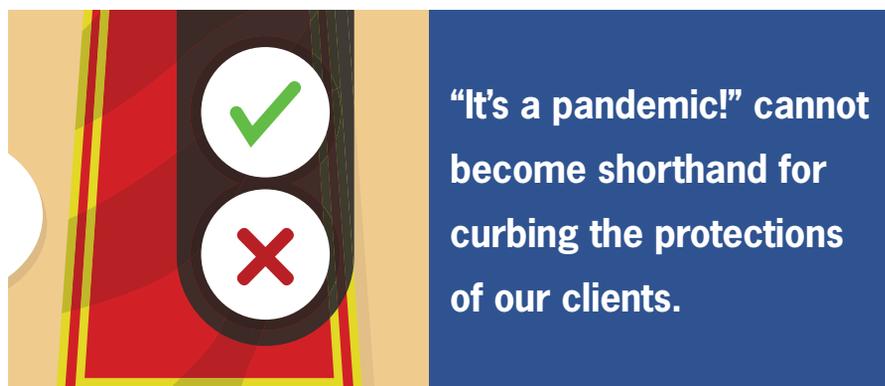
In those initial weeks, we had a few small challenges and one big one: money.

the client’s house and witness the signing through a window.

But the big challenge—the money challenge—was much more nerve-wracking. I hired an associate in May 2019, and we have been working hard to make the firm profitable with the extra salary. We were just beginning to consistently reach our financial goals when the pandemic hit. Before there was any talk of government assistance, I took out a small business loan, but that would not have covered us for very long. We did still have money coming in at normal amounts for a few weeks, but as the courthouse shut down, business slowed down as well. Within about a month, we were not grossing anywhere near normal. I had applied for the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL), but it took some time to get that money. There were moments when I really thought I might have to close up shop. Thankfully, we made it through and have received some of the government assistance. Cases are picking up as well.

With all of this now in place, I feel much more confident in our ability to last a while. Unlike other firms, however, we will not be returning to business as usual for quite some time. Managing my health and work is already a daily challenge. Because there is so little research on ME, no one really knows whether I would survive a bout with the coronavirus. My best course of action is to remain mostly homebound until there is a vaccine and manage my cases and staff from home.

Of course, this presents huge challenges for me as the



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I have a small law firm in rural Illinois. There are four of us in the firm: me, an associate attorney, and two staff members. It has been relatively easy to manage the technical aspects of switching to work from home. However, I also have a chronic illness, myalgic encephalomyelitis (ME), that affects my immune system. Managing my practice without endangering my health as we come out of shelter-in-place is going to be a tricky thing to do.

Initially, COVID-19 had very little impact on my practice. About eight years ago, I transitioned to an almost paperless, cloud-based system. We scan every piece of paper that

The smaller challenges were all technological. I had to switch around computers so that my secretary could use my laptop at her house. I use a VoIP (voice over Internet protocol) phone system, and forwarding calls was harder than it should have been. My Internet connection is very good, but two members of my staff, including my associate, have spottier service, and I have been unable to remedy that. And while we have been offering Zoom consultations, closings, and will executions, the population in our area has not always been tech-savvy enough, or had good enough service, to make these options feasible. Our first will execution after the shelter-in-place order was accomplished by having staff members stand outside

state begins to open up. Just this week (June 1), our local courthouses have gone back to a full docket. In my primary county, the chief judge has put in place good social distancing rules. However, these rules are

to withdraw. Our local judges and attorneys are kind and will likely be accommodating. My staff has been absolutely fantastic. The future of my practice is a little uncertain, but I am hopeful.

response to the pandemic. I can have back-to-back appointments or meetings at two separate locations, depending on my own scheduling needs and the clients'. I can travel with my remote office.

Lawyers need motivation. I have always found it in music like the blues, rock 'n' roll, Mozart, and folk music. My music is streamed into my office on nine built-in speakers using a Sonos receiver that I control at my desk; so, I play whatever music I personally "need" to produce the fitting state of mind. I do recommend, however, avoiding Mozart when you are warring with another attorney. I prefer "Eye of the Tiger."

I have the \$39 Google Assistant next to me to double-check my math and help me find clever words, famous quotes, legal definitions, and old and new weather reports.

I'm somewhat sad to say this, but the advent of the COVID-19 pandemic has proven to be the most stimulating experience ever to impact my 46-year practice. Don't get me wrong—my heart is heavy as I watch our health care warriors confront death and illness, and as families, including mine, weep and live in fear. But that's not what I mean. What I am referring to is not the pandemic itself but the practice procedures that I put in place in *response* to the pandemic.

I have self-isolated since March 14, 2020, yet I "see" clients on a daily basis. I do this on my iPhone, my home office laptop, or here on my desktop. I use Zoom, FaceTime, Marco Polo, as well as other formats. There are very few limitations, and the convenience is



**If we need to have an in-person hearing, will everyone wear a mask? And how many people will be in the courtroom?**

not always being followed. We are having some hearings via Zoom, but that is primarily by agreement of the other party and counsel. In another county where I practice, the individual judges are setting the rules for their courtrooms.

As I am making decisions about taking on a case, I have to factor in all of these little nuances. Will I be able to settle this case? If not, who are the other parties involved, and are they likely to agree to Zoom hearings? If we need to have an in-person hearing, will everyone wear a mask? How many people will be in the courtroom, and how big is the space? Is taking this case really worth it?

I have no doubt that, eventually, work will return to some sort of normal for me. That normal is still some time away, but I have great support to get me through. I am incredibly grateful to have my associate at this time. If I hadn't been able to hand her some of my cases, I simply would have had

### **MICHAEL ABLAN**

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La Crosse, Wisconsin**

At 71 years of age, I can say that I still totally enjoy the practice of law, albeit on a more time-limited basis. I actually enjoy it even more than in the past. Five years ago, I downsized my law firm to just me. No staff. I had to adjust—and not just by using voice activation, either. I've been paperless ever since. Instead of 20 steel file cabinets, I now have one made of mahogany. Out of necessity, I stepped up my game in technology. As it turned out, this was the forerunner to my response to the pandemic. None of this was terribly expensive.

As much as I love the practice of law, I love technology. Thanks to my IT people—everyone should have IT people on retainer—I operate with two computer screens and state-of-the-art computers, software, and accessories. It's no different here in my downtown office than it is at my newly created, remote office. It was designed in

nothing short of astonishing. We exchange documents. We attend depositions virtually. I virtually introduced a client of mine to a lawyer whom I had brought into the case for special expertise. I can meet a client's entire family at the same time. I can work from home, my cabin, or, quite frankly, anywhere else without any reduction in quality.

I have secure voice messaging and e-mail. I don't know how long I'm going to be able

fax them, but I prefer the former because of the clarity. By the way, I show them how to install the Scannable app on their phones, if they don't have a scanner. They are having fun with this technology, too.

I'm still old-school in some respects. Even if I don't physically see clients, I wear a shirt and tie every day because I figure that they will "see" me. This, however, is probably the last vestige of traditionalism I have in my practice.



**Surprisingly, not every impact of COVID-19 has been bad for debtors.**

to enjoy the practice of law, but one thing is for sure: I will never outlive my very expensive stationery.

Yes, and I still get paid, the only difference is it goes directly to my bank account. If I receive a paper check, I scan it directly to my bank account using my iPhone.

As this dark cloud passes, I will continue to do what I'm doing now. My clients love the convenience. They don't like finding parking places or going out in the rain. They don't like getting dressed up to see a lawyer. They don't need to orchestrate a family meeting because I can do that. They don't have to mail or drop off documents for me to interpret or handle or exchange. We can scan them back and forth or

## **RYAN BLAY**

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Our firm concentrates on bankruptcies (consumer, small business, and farm filings) and estate planning. Like most practices, we've seen major changes as a result of COVID-19.

First, bankruptcy filings have temporarily decreased. Debtors who may have intended to file for Chapter 7 bankruptcy relief, the most common form of bankruptcy, have more pressing issues to address—like basic survival. Those who were planning to set money aside for attorney's fees have had to delay the process because they need the money to cover emergency shortfalls in their budgets.

People who elect to file bankruptcies are often pressured into

filings by actions such as foreclosures and lawsuits to collect on debt. With moratoriums in place in many states, consumers are holding off on filing bankruptcy until these actions resume. Chapter 13 bankruptcy filings have also dipped. Chapter 13 reorganizations rely on debtors to have regular income. If that regular income is suspended due to temporary (or permanent) layoffs, \$1,200 stimulus payments are inadequate to support household budgets and plan payments.

Surprisingly, not every impact of COVID-19 has been bad for debtors. The U.S. Trustee Program announced that bankruptcy trustees would not pursue the CARES Act stimulus payments. Debtors who may have faced challenges to proceeding in Chapter 7 because of their income can now rebut presumptions of abuse by showing changes in circumstances as a result of COVID-19. And Chapter 13 debtors who normally face motions to dismiss are not seeing as many of these motions at the moment because the administrators understand that this could overwhelm the system. The CARES Act allows Chapter 13 debtors whose plans were confirmed (approved) prior to enactment of the Act to extend their plans to give them a chance to complete instead of failing and forcing re-files.

The largest change to our practice has been shifting in-person meetings to phone or online sessions. This has been true for our initial consultation and follow-up client meetings as well as meetings of creditors and court hearings. Dockets have moved to phone hearings, which was a struggle initially.

However, it does save travel time for clients and for our attorneys. As practitioners, we value face-to-face meetings because they build trust between our attorneys and staff and our clients. Court dockets are also a good way to strengthen the attorney community by having us meet each other, work out issues before court, and discuss our practices. So, this period of change has been a mixed bag overall. We are gaining some efficiencies while losing some of our connectivity.

Chapter 7 to eliminate personal liability on business and farm debts they may have guaranteed. This, in turn, will have an impact on the bankruptcy courts. Federal courts have been largely underfunded, and judgeships have been consolidated as filings fell. This could change, at least temporarily, to handle the anticipated wave of new filings.

At some point, hearings will return to courthouses. We will get to see our colleagues and the court staff again and will resume trying issues of fact in front of

*co-authored this section of the article.*

I began practicing law in 1988, working for law firms that utilized cutting-edge technology such as typewriters, carbon paper, law libraries with pocket parts, and landline telephones. I can tell you that I have not experienced the practice of law change so abruptly as it has in just a mere few months as a result of the COVID-19 pandemic. My firm has been forced to change the fundamental way that we meet with our clients. My Baby Boomer clients expect in-person, hands-on meetings in my office building. They like handing me documents and meeting face-to-face.

We, as lawyers, had just dipped our toes into the deep end of the technology pool before the pandemic. In Wisconsin, we reluctantly went kicking and screaming into e-filing in the last couple of years. We suffered learning pains associated with implementing the e-filing system, but most agree it was a great improvement. The COVID-19 pandemic is the bully that kicked our ass into the deep end of the pool and screamed “sink or swim.” The advent of the pandemic has forced my practice to move from the older “hands-on” approach to the “hands-off” millennial approach.

In response to COVID-19, my will signing process has been revamped. We still have the client fill out the paperwork and either e-mail it or drop it off in the new lockbox. We have replaced the roundtable meeting with a phone conference, which is not as effective; something is inevitably lost over the phone.



What will bankruptcy look like in the future? I’ve seen numerous articles anticipating an explosion of “pent-up” bankruptcy demand in consumer cases and business cases. Bankruptcy filings have steadily declined over the past decade, but this year could see a significant reverse in that trend. Debtors who are eligible for discharges in bankruptcy will need Chapter 7 relief from COVID-related medical debts and the stresses associated with the lockdown. Chapter 13 filings will be available to stop foreclosure proceedings when they resume. Businesses and farmers who were already struggling prior to early 2020 will need Chapter 11 and Chapter 12 reorganizations to remain open. Those who close will use

the court. But the technological advances we’ve seen with Zoom and other services may be incorporated into future sessions. We will still have the ability to offer meetings by Zoom, Skype, FaceTime, and by phone to those who may lack the means to get to our offices. Ultimately, these changes will be hardest for attorneys who lack technical expertise and for solos without the ability to adapt. Firms with multiple attorneys who can help each other weather the storm and embrace innovation will be okay.

### **SCOTT L. SCHROEDER**

**Scott L. Schroeder SC**

**Janesville, Wisconsin**

*Colin Nicholson, a 2L at Marquette University Law School, Milwaukee, Wisconsin,*

We then send the rough draft to the client for their approval. Next, we perform a drive-up will signing. Law firm staff suit up in personal protective equipment (PPE). I go out to their car with a clipboard containing the will. When the client is ready to sign the will, the staff come out to witness the signing from a social distance. Next, we take the papers into the building to sign and conform. Staff wipe down the clipboard and provide the original will to the client. The client keeps the pen for safety reasons.

My practice has adapted in many ways. We now use a locked front door with a video doorbell. A lockbox was set up for dropping off documents. We obtained PPE for employees and guests of the building to use. We maintain social distance in the office. All employees hunker down in their own corner of the building. Clients are directed to use phone conferences or Zoom meetings. Regardless of government directives, our firm will not knowingly be involved in the spread of this disease. We are reluctant to reopen the office building; I will err on the side of caution.

I am optimistic about the future changes the pandemic is forcing on my practice and the legal profession. Online meetings increase not only the efficiency of the client-to-lawyer communication, but perhaps more importantly, the lawyer-to-court communication. I no longer need to collect my client, drive to the courthouse, and wait for my turn in front of the judge. I can now coordinate everything from my desk. I can call the client to prepare for the hearing.

Courts are also in better control of their time. Judges can mute people and move things along efficiently. The hosts of people waiting outside the courtroom doors are no longer a constant stressor. The reduced waiting time at court results in less time billed to that client, while simultaneously allowing me to get other work done at my desk.

Looking further down the road, I envision a future law practice utilizing a digital presence that minimizes in-person interactions. The lawyer can

**My face-to-face networking with other attorneys ended when the courts closed.**

market as an “avatar lawyer” who makes digital online court appearances. The avatar lawyer meets with the client online to prepare digital court filings. The client can also interact as an avatar to eliminate any biases that the lawyer or court system may possess based on the individual’s appearance. The advantages of using avatars for both the lawyer and client would further the goal of equal justice for all. As a practical matter, it would allow the avatar lawyer to go to the grocery store anonymously in person. The lawyer could have distinct professional and personal lives. The lawyer’s marketing efforts would be to develop a unique avatar in the legal digital world.

Just as e-filing was a difficult but much-improved transition,

I foresee the changes wrought by COVID-19 on the legal practice to be a catalyst for the development of our profession into avatar lawyers. Like it or not, we are all swimming in the deep end.

**WILLIAM G. CISAR**  
**William G. Cisar, Ltd.**  
**Chicago, Illinois**

I opened the doors to my solo practice in September 2019 when my wife was six months pregnant with our first child. I specialize primarily in small business matters, estate planning, and civil litigation. By early March 2020, our son was born, and I had a small but respectable pool of clients. Then came the global pandemic.

Like other solo practitioners, my early COVID-19 sentiment was dominated by thoughts of quarantine-induced revenue decline. Although many of my existing clients promised they would not stray, they were no longer requesting work product. Revenue anxiety is a permanent complex of the solo practitioner; COVID-19 taught me that the single most exacerbating factor of that anxiety is loss of access.

For example, much of my networking was done daily at various courthouses during appearances. Many lawyers underestimate the value of happenstance. A friendly exchange with another lawyer in the check-in line or by the docket sheet can mean an increase to a solo practitioner’s bottom line. With the courts closed, not only was my courtroom-dependent revenue stream interrupted, but also my access to face-to-face networking with other attorneys.

This loss of access coupled with useless overhead expenses had me searching for some sort of advantage offered by COVID-19. Then it dawned on me. Time. If there is one thing COVID-19 has afforded the solo practitioner, it is time. Time to reevaluate those losing briefs. Time to meet those continuing legal education (CLE) requirements. Time to painstakingly review every aspect of your business model. Ironically, when you accept the gift that is excess time, you find alternative means to recoup what you have lost.

I found myself reviewing my firm's past six months' financials. There were tremendous bills supported by competent work product. But there were not enough, and payment was often late. These realizations led me to a CLE seminar on solo practice issues offered by the Illinois State Bar Association. While I normally would have selected titles such as "the nuts and bolts of LLC taxation" or "the ins and outs of trust administration," I found that I now had a practical need to explore other methods of practice administration, marketing, and billing.

The CLE I selected advocated a volume-based practice revolving around affordable flat monthly fees. The methodology was sound, and after a quick discussion with one of the program's speakers, I decided that the future of my post-COVID-19 practice should embrace the seminar's message.

To the average American, COVID-19 has been the catalyst to a deluge of legal issues. The glaringly obvious impact that COVID-19 has on

small-business revenue alone will most certainly see an influx in contract disputes, insurance claims, debtor/creditor actions, and tax issues. The fear of the global virus also produces substantial motivation to complete an unfinished estate plan. I intend to pursue the clients facing these very issues.

**Solo practitioners  
must use the time  
afforded them by  
COVID-19 to evolve  
their practices.**

The most significant hurdle I face in my pursuit is COVID-19's impact on a potential clients' ability to pay legal fees. Even before COVID-19, many average Americans opted for a do-it-yourself methodology for

their legal needs. And who can blame them? According to the U.S. Census Bureau data from 2018, the median household income in the United States was \$63,179. Quite frankly, most attorney services are overpriced. Conversely, many attorneys shy away from the less financially secure clients over fears of uncollected fees.

Going forward, I will market my firm to the median household and small businesses. I will promote fee transparency by agreeing on an up-front charge with monthly minimum payments. I will most certainly need to invest saved capital into new marketing, website design, and billing software. There is no doubt that the future of my firm will depend greatly on the amount of time I am willing to invest in its evolution. However, COVID-19 has demonstrated that solo practitioners must use the time afforded them to evolve their practices even when daunted by so many unknowns. ■

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