



Out of the Office

Will law offices be different after COVID? Attorneys say yes, but offices won't disappear

AVERY MARTINEZ
LAW WEEK COLORADO

As the work-from-home world stretches into its' tenth month, the country has seen hundreds of thousands of workers migrating to home. Lawyers are certainly no exception, but questions have been raised on how the pandemic will affect the profession in the future — and how their offices will change.

An October article in the National Real Estate Investor reported that in 2019, law firms accounted for 5.9% of all office leases in the country, however, by October of this year, many firms still had staff working from home. The shift isn't just from COVID-19. Instead, it began over a decade ago when law libraries migrated online and downsizing office space became possible. In that time, the amount of space per attorney was reduced from approximately 1,200 square feet to 700, and now, the prediction is down to 400 square feet per attorney.

In the Denver Metro, the office market vacancy rate increased to 11.5% for the third quarter, up 1.1% from the second quarter, according to the Metro Denver Economic Development Corporation website. This translated to roughly 1.8 million square feet of negative net absorption.

But some attorneys don't believe the office will completely disappear. Attorneys agree that COVID-19 will change how the law office will operate, however, its function is destined to change due to the remote working

brought on by the pandemic.

"I don't think the office environment will ever go away — but I think it will be fundamentally different," Barbara Mica, chief operations officer of Brownstein Hyatt Farber Schreck, said.

Mica doesn't believe that "purely remote" legal work would ever be on the table because there's no substitute for hands-on training for associates and in-office connection. She also expects a smaller footprint as a firm and remote work agreements being used more liberally than ever before — thanks to the proven ability of remote working during the pandemic.

Rich Benenson, managing partner at Brownstein, agreed, adding that firms have been discussing remote work policies and flexibility in work for some time. The pandemic has been a "proof of concept moment" for remote legal work operating effectively.

Benenson said he expects to see time in the office used as a resource — leading a team meeting, printing documents, conducting a hearing or trial, closing a big acquisition — the office will still have a real role. "But I think, short of that, you're going to see a lot more work done remotely, and a lot more tolerance and acceptance around the fact people will be doing that on an ongoing basis."

"Over time, there will definitely be adjustments," Chris Hazlitt, Boulder's managing partner for Bryan Cave Leighton Paisner, said. He said there won't be any "big shift" and believes about a third of the workforce

will say they are happy working remotely, but the remainder will want to work in an office.

Heather Boelens, BCLP partner and real estate attorney, said she agreed with the 1/3 figure for the workers wanting to stay remote, based on what she has seen and heard.

"I don't ever see a scenario where our firm decides we're not going to have office space anymore," Boelens said.

She said she'd heard from tenants in connection with some short-term lease negotiations she's had on behalf of landlord clients that tenants are willing to do short-term renewals. However, these same tenants were evaluating whether or not a long-term, or any renewal, makes sense after.

"I think some people have been just as efficient at home," Boelens said. "I think companies will be taking a much harder look at the overhead cost associated with having an office and how much it has affected their employees."

Hazlitt added that a lease really can't be just abandoned, or a contract broken easily. Much in the same way, Hazlitt said completely restructuring an office is just as difficult.

Despite temptations about possible savings from office changes, Brownstein's Benenson said he concluded that many savings opportunities are unlikely for the enterprise as a whole — while savings might be made in real estate, those funds will likely be redirected toward security or tech concerns and necessities.

In addition, recruiting, training, collaboration, record-keeping and teamwork all happens in an office environment, Hazlitt said. While this is being handled remotely, he said he feels this is being looked at in the short-term. "I think a lot of offices will rebound, and real estate in my view ... it's inflexible — and it's very long-term gain."

Boelens said her group has been hiring and a common theme she's heard from candidates is wanting the flexibility of working from home. A candidate told Boelens they wouldn't even consider a position if they couldn't work from home at least 50% of the time, Boelens said. Candidates cited child care, as well as the ability to stay on top of necessary household activities such as laundry and cooking, as reasons for remote work being desirable.

"I think that will continue to be attractive, from a hiring standpoint," Boelens said, adding that she feels this attitude is generational in nature. Many younger workers seem to do really well from home, due to their comfortability and familiarity with technology and flexibility in workspaces.

Mica said Brownstein has also recruited throughout the pandemic. In the past, that has often involved relocation, which that doesn't really rise to the degree it did before. Remote working has opened a "huge" talent pool not always available before since it is not geographically challenged as

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DA DISPUTE

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ney had represented the defendant in a related matter and was privy to confidential communications about the pending case.

“[D]isqualification of a district attorney is ‘a drastic remedy’ that should be granted only in ‘narrow circumstances,’” wrote the majority. “Allowing disqualification under a less demanding standard risks both putting a strain on the system and causing significant problems.”

“We are gratified that the Court upheld the important principle that the elected prosecutor should represent their District whenever justice can be served by maintaining this responsibility in local hands,” Brown said in an e-mail.

“Local prosecutors know the com-

munity and understand the local crime enforcement needs. Additionally, the locally tied prosecutor is familiar with witnesses and parties to cases, allowing Coloradans the best equipped representative in criminal cases.”

However, a dissent penned by Justice William Hood and joined by Justices Richard Gabriel and Melissa Hart said the trial court should be shown deference and raised concerns that the majority was creating too high of a threshold for disqualification.

“Although the trial court seemed to perceive a significant risk that Brown has a personal vendetta against Kent that risks corrupting his trial, the majority second-guesses that conclusion and finds this situation to be insufficiently extreme,” Hood wrote.

The majority’s reasoning “may lead future courts to erroneously reject” disqualification motions that fall short

of the “especially egregious facts of Chavez,” said the dissent.

“We must carefully guard against allowing the first case that cleared the bar to ossify into the standard against which we judge all future claims, especially when that first successful claim cleared the bar by such a wide margin,” Hood wrote.

OUT OF BUSINESS, STILL IN OFFICE

The court’s ruling came less than a week after DORA permanently banned Kent from operating funeral home and cremation businesses in Colorado. In addition to his coroner duties, Kent owned funeral-related businesses in Leadville, Gypsum, Silverthorne, Buena Vista and Idaho Springs.

According to media reports, Kent lost licenses for two of the businesses

in October after law enforcement paid a visit to his Leadville funeral home and found used body bags, unrefrigerated bodies and body fluids.

In February, two of Kent’s clients filed a complaint with the Lake County Sheriff’s Office because they suspected his funeral home had mishandled the ashes of their stillborn infant.

Chemical analysis of the baby’s ashes later revealed they contained the remains of at least one other person as well as bits of surgical material, jewelry and metal. In July, the couple sued Kent Funeral Homes for negligence and other claims, and the civil lawsuit is pending in Eagle County district court.

While Kent has been banned from the private funeral home industry, he remains the Lake County coroner, a post he has held since 2012. •

—Jessica Folker, JFolker@CircuitMedia.com

TRUMP OPEN LETTER

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one individual or the entire body politic,” the letter states.

“Indeed, American Bar Association Model Rules of Professional Conduct 4.1(a) and 8.4(c) put lawyers at risk of sanctions for engaging in dishonesty, deceit and misrepresentation — in or out of court. Under Rule 3.1, lawyers filing frivolous claims are also subject to sanctions.”

In addition to Giuliani, LDAD’s statement calls out Joseph DiGenova, Victoria Toensing, Sidney Powell and Colorado attorney Jenna Ellis for their

statements to media and their role in the election-related litigation.

Ellis has been the subject of national news coverage in recent weeks for her meteoric rise from a little-known defense attorney in Northern Colorado to legal advisor for the Trump campaign. According to The New York Times, Ellis’s work for the Trump campaign “appears to largely be in a public relations capacity” and her name does not appear on any of the election-related lawsuits. Earlier this month, The Wall Street Journal reported that Ellis had received nearly \$140,000 from the campaign for “legal consulting.”

Signers of the letter include legal

scholars, former judges and leaders of think tanks and policy centers. A least 70 Colorado attorneys have signed on in support of the statement.

“When attempts are made to subvert a democracy and electoral system by ostensibly legal means, it is important to understand the role that lawyers play in the subversion. I’m grateful to the election and other state officials and judges who were not shaken or swayed from doing their jobs well,” Elizabeth Vonne, a Colorado attorney, said in an e-mail when asked about her decision to sign the letter.

KK DuVivier, professor at the University of Denver Sturm College of Law,

said she signed on to the statement in part because she’s sick of the legal profession getting a bad reputation. She said she asks her students every year why they came to law school, and almost all of them have altruistic reasons. “And yet the profession has got this terrible reputation,” DuVivier said. “And I think it’s because of things like this.”

“The court system should not be used as a toy that gives an unfair advantage to one side or the other,” DuVivier said. “The idea is that we do have rule of law in the United States. We’ve been respected worldwide for that. And I would hate for that to stop being the case.” •

—Jessica Folker, JFolker@CircuitMedia.com

OFFICE TRENDS

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much anymore.

“Looking back, I can see that as a real watershed moment,” Mica said. “The access to talent isn’t just in our markets.”

“Ultimately, the desire of people to be collaborative in an in-person way will get us back to the office,” Benenson said. In conversations with

a consultant, he said he was told the remote environment is fine for spreading internal goodwill and capital — but it is very hard to generate those two remotely.

Mica said when the pandemic has passed, a pent-up demand for reconnection with peers, clients and others will exist. From a space-planning perspective, the boundaries of office and home have been blurred, and thus, make the workplace a place where

people want to be and catch-up, connect and work.

At some point, Hazlitt expects for firms to offer either in-person or remote working packages, where after choosing to work mostly from home or in the office, a furnished space is provided at the office or one is created in the home.

Mica said that current visions for changes to jobs allow for paralegals and support staff to have flexibility.

“Those jobs will change ... just based on the new technology and new way of working going forward.”

She added that receptionists could be tasked with connecting attorneys with resources and security concerns. She didn’t know if the impact would be a reduction in headcount.

“I think [the office] going to look really, really different — but also a place people want to be,” Mica said. •

—Avery Martinez, AMartinez@CircuitMedia.com

ANTI-TRUST

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is tied to the market dominance of the companies. As Makan Delrahim, DOJ’s assistant attorney general for antitrust, explained at a conference in 2019, monopoly power makes it more likely that a firm can neglect consumer privacy demands at no cost to its business. “Without competition, a dominant firm can more easily reduce quality — such as by decreasing privacy protections — without losing a significant number of users,” Delrahim said in comments reported by The Washington Post.

Action on this issue at the federal level may become more likely in the new year, especially since it was a focus of the antitrust subcommittee investigation. Even before the Investigation of Competition in Digital

Markets report was issued, Congress considered at least five bills on the subject during the past two years. All, generally speaking, would grant consumers a set of protections against data misuse and to protect themselves, including rights of access, correction, deletion, information, and portability, along with notice and consent and minimization of use by platforms provisions.

Champoux highlighted the rising importance of this issue to tech companies. He said states are likely to continue developing ways to provide greater protection for platform users. “There are states that are very active in developing legislation,” he said. “California has had a new data privacy law in place and it’s kind of retooling it. Lots of other states are following suit.”

State legislative efforts to address consumer control of personal data

may mirror efforts already made here in Colorado. The General Assembly enacted, and then-Gov. John Hickenlooper signed, a data privacy bill in 2018 that is one of the strictest consumer protection laws in the country. The law requires every business in the state to design and implement data security and data disposal programs and to quickly notify consumers of a security breach.

Chris Chavez, a staff member at the Colorado office of the U.S. Small Business Administration, told The Colorado Sun in Aug. 2018 that he was concerned that many businesses are unaware of the requirements of the law.

A LONG PERIOD OF LITIGATION TURBULENCE

The federal and state antitrust

cases are unlikely to be resolved quickly. The U.S. v. Google case is “the most significant monopolization case” filed by the DOJ since the 1990s, according to Robert Litan, a former deputy assistant attorney general in DOJ’s antitrust division and current partner at Korein Tillery in Chicago, which represents plaintiffs in private antitrust lawsuits against Google. Like that long-running dispute, resolution of the monopoly defense allegations against Google could take several years to resolve.

The Facebook cases, too, will likely be complex and long-lasting. They are “among the most significant [Clayton Act] Section 7 cases [ever] filed,” according to Litan. George Hay, an antitrust law scholar at Cornell University, told Reuters Dec. 9 the litigation could take “years” to reach finality. •

—Hank Lacey, HLacey.circuitmedia@gmail.com