

Tech Proves Its Case

With a push from the pandemic, law firms jump to full-scale distance work

BY MARK GREEN

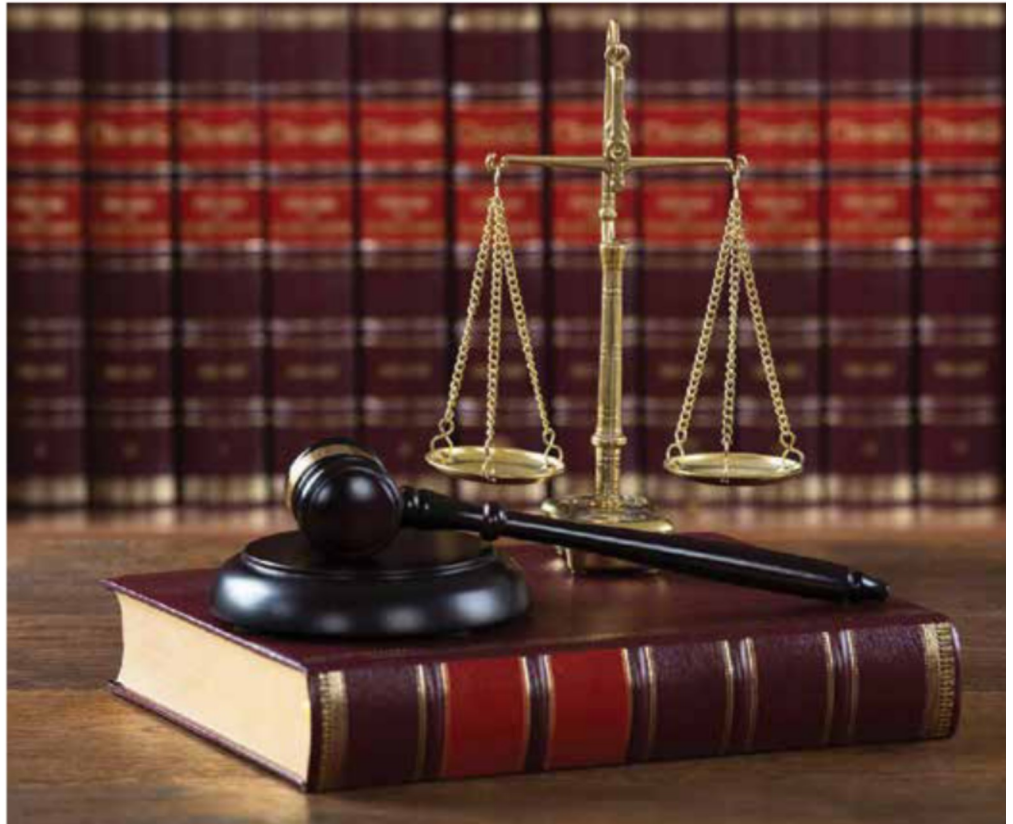
It was jarring for Kentucky law firm operations in March, when the coronavirus abruptly imposed social distancing on “a relationship profession.” The jolt was somewhat softened, though, because the adjustments were more an acceleration of already existing trends than a jump to new processes.

Meetings, consultations, sworn testimony and hearings are conducted less face-to-face now than pre-pandemic. And Kentucky firm chiefs say these and many other changes in daily operations are likely permanent.

Many of those working at home to reduce social contact with coworkers, clients, legal professionals and court officials likely are going to continue operating at a distance as firms are seeing proof that they can be just as efficient at less cost.

“What we’ve learned is that we can testify remotely, we can take depositions remotely, we can meet with clients without them having to come in, and more,” said James H. Frazier III, managing member of the Lexington-based McBrayer firm. “Now that we’ve worked through the infrastructure issues with bringing these things online, that’s where much of it will stay.”

Firms did step up management and staff meetings to make decisions on how to adjust and then keep everyone informed of changes, and these often took place via various video platforms such as Skype, Zoom, Webex and Teams. Courts that have conducted video arraignments for years had



already been expanding the practice to other proceedings and hearings. Deal closings have taken place remotely for years. Kentucky adopted online notarization last December.

“We had very robust management and internal systems in place already before COVID-19, so the real impact of COVID-19 was to demonstrate to us that we have been on the right track in how we’ve been evolving our firm and building out our infrastructure,” Frazier said.

“Even as recently as five years ago, we probably wouldn’t have been able to transition to such a footing as deftly, and that’s due in large part to how we’ve been putting a focus on our internal processes and systems. We can change our focus swiftly to help our clients when they’re vulnerable, and we can turn our entire institution to bear on novel issues as they arise.”

Stoll Keenon Ogden’s board quickly

increased its meeting schedule, said Managing Director Doug Barr, and the firm transitioned in very short order to let the technology already in place work for them remotely. He began weekly calls to the entire staff—rounds of three calls actually, to reach about 140 lawyers in five offices in Kentucky and Indiana.

SKO made it a firm-wide policy that its attorneys all have reliable high-speed internet service.

Initially it was “massively challenging to get to that new normal,” according to Barr, even though SKO has a tradition of leaning into new technology. Now, five months later, “there are things we like and will continue to do.”

“COVID-19 has certainly accelerated the preexisting tendencies and trends, but in some ways our view is that this is an inflection point,” Barr said. “We

expect that there will be an economic fallout that is not completed yet that will change the landscape. We are managing as if this is not over, as if the uncertainty will continue.”

The legal profession has been moving toward paperless for years, he said, and now it is learning it can function near paperless and do it well.

The pandemic’s financial impact on law firms and offices varies according to which areas their practice might focus on and how clients are affected.

“Some firms are hit in areas we haven’t been,” Barr said. “We have clients who were not as badly affected. Labor and employment questions ticked up immediately. All the big firms were hit immediately with a decrease in litigation because courts were closed; you couldn’t process lawsuits via depositions. Mediations couldn’t take place ... but now they can.”

Bob Hoffer, managing partner of DBL Law, which has about 42 lawyers in Cincinnati, Louisville and Northern Kentucky, said technology plays a more key role now in firm operations. DBL quickly adopted new, more stringent safety policies and protocols on screening employees and guests, use of conference spaces, use of technology security and more.

“We are fortunate to have a diverse law practice,” Hoffer said. “Business has remained steady in banking, real estate, collections, estate planning, employment and tax practice areas. Our billing receivables cycle is lagging a bit; however, considering how quickly this pandemic affected all of us, I am amazed at the resilience of so many of our clients and our own team of dedicated attorneys and employees.”

The firm had entered 2020 with a forecast of continued growth but at a slower pace than in 2019.

Robert M. Connolly, chair of Stites & Harbison, a Louisville-based firm with more than 170 attorneys in four Kentucky offices, three in Tennessee and locations in Indiana, Virginia and Georgia, said firm personnel had worked on the road or from home at times for years. In March,



the firm quickly transitioned to nearly everyone else working from home, too.

“We were incredibly pleased with how easily, quickly and effectively it happened,” Connolly said, indicating this will be a more common practice permanently. “The flexibility of working from home is now something people realize they can do with ease and can transition back and forth between home and office effortlessly.”

More common, but not totally the norm.

“In the future, we anticipate less real estate, and smaller and fewer offices,” he said. “However, remote work, while equally efficient and less expensive, is not a panacea. The benefits of in-person collaboration include the creativity that comes from brainstorming with others, and the collegiality and shared culture that define an organization.

“When life returns to ‘normal,’ ” Connolly said, “more attorneys and staff will work remotely, at least on occasion. For example, I suspect that everyone will be more sensitive to illness and avoid working through an illness in the office.”

Flaherty Sensabaugh Bonasso, a Charleston, W.Va.-based firm

that recently located its fifth office and first out-of-state location in Lexington, kept a small group with staggered schedules in the office while everyone else shifted to remote work in mid-March.

“Necessity often drives innovation,” said Tyler Dinsmore, managing member of Flaherty’s. “Nothing can replace face-to-face interaction, but we can see remote work and video conferencing used more frequently after the primary danger has passed.”

The emphasis is to maintain communication frequency and quality both within the firm and with clients, he said.

“Court closures and travel restrictions have significantly impacted how we interact, but not to the degree we feared,” Dinsmore said. “Fortunately, we had remote systems set up before the pandemic, although their use was accelerated. We have numerous systems in place to safeguard information and security. Security threats and needs change rapidly, but we have a robust IT team working diligently to keep up.”

Moving forward, Flaherty plans to review all its procedures to see how it can continue to improve efficiencies and ability to serve clients while

maintaining the flexibility of working options for its attorneys and staff, he said.

At Dentons Bingham Greenebaum, the Louisville-based branch of a global firm with more than 10,000 attorneys in 76 countries, there already was a view that the value of physical presence was declining.

It “has now become almost a non-factor,” according to James R. Irving, the firm’s Louisville office managing partner.

“Attorneys are being judged much more so on their work product, responsiveness and connectivity. Similarly, access to technology, specialization and depth of talent is increasingly important,” Irving said.

He anticipates that the pandemic “infection danger” factor will affect how everyone operates “well into 2021 and perhaps longer.” However, its arrival didn’t bring dramatic change to Irving’s personal practice.

“Closings in my matters have been digital as long as I’ve practiced,” Irving said, “but I would imagine that the rare large corporate transaction that was in-person a year ago would almost certainly be digital now. I have been a part of many Zoom, Teams, Webex, etc., video conferences for a few years now and those have absolutely increased during the pandemic. I think these will continue well after the pandemic, as there are many meetings that would have involved a drive or even a flight that can just as easily be done via videoconferencing.”

Barr said Kentucky courts allowed Zoom hearings quickly after the legal community came up with an appropriate process to safely take depositions. Firms carefully studied video technologies to ensure they could be made

“Regarding permanent change, there is a lot of talk, but not much in the way of decisions,” Barr said. “The Kentucky Supreme Court has been very careful and very thoughtful ... because we are not all the way through this yet.”

Clearly there will be some lasting permissions granted, but that won’t

mean a complete shift to distanced, digital proceedings because many people will continue to prefer to do things in person, he said.

“I think you will see more use of technology to reduce cost to clients,” Barr said. “And that is wise at this moment.”

Irving said the bankruptcy courts he appears before had regularly conducted telephonic hearings, but almost all of them shifted to conducting almost all hearings by video or teleconference.

“In certain instances, even multiday evidentiary hearings were conducted via video conference,” he said. “We have generally been conducting almost all of our meetings,

“ Now that we’ve worked through the infrastructure issues with bringing these things online, that’s where much of it will stay. ”

**James H. Frazier III,
managing member, McBrayer**

depositions and conferences via teleconferences and video conferences since mid-March. I have not observed any new confidentiality issues, as conferencing systems now have encryption technology.”

With the pandemic shutdowns having created historic economic distress, firms are seeing mostly predictable effects on legal practice areas.

“Bankruptcy and workouts are starting to trend up, but I don’t think we’ve seen the crest of the wave yet,” said Frazier, of the McBrayer firm. “We cover a wide range of ground in our practice, but probably the hardest-hit area of our practice is hospitality law, which governs bars, restaurants, hotels and even general tourism. That industry is hurting, and

we’re going to do all we can to blunt the impact of the pandemic for those businesses.”

Flaherty has “seen an acceleration in specific practice areas that were trending pre-pandemic,” Dinsmore said. “Clients face new regulations in data privacy and cybersecurity, health care, and the workforce. Data privacy and cybersecurity needs are increasing daily due to the onslaught of remote workers. Telemedicine is experiencing a rapid increase as the pandemic requires distanced medical care. We expect workforce-related suits and class actions to grow. And insurance coverage litigation will continue to see an increase as well.”

For SKO, bankruptcy and workouts have increased as expected, Barr said.

“I had to figure out immediately what was going to happen to us moving forward. Everyone has been impacted, some have been hit hard,” he said. “Labor and employment questions ticked up immediately.”

DBL came into 2020 anticipating that real estate and banking would continue to be a key sector for the firm, Hoffer said, while corporate businesses would face obstacles to growth due to global restrictions and lack of available workforce.

“Many of these factors remain the case, despite this pandemic,” he said.

Flaherty, like many others, saw an increase in demand for services related to Paycheck Protection Program loans, the CARES (Coronavirus Aid, Relief and Economic Security) Act, labor and employment issues, regulatory matters and other pandemic-related issues, Dinsmore said.

“I am a co-leader of the firm’s national Restructuring, Insolvency and Bankruptcy Practice Group, which has been exceptionally busy since 2019. It was my experience that this area was incredibly active and that certain industries were in recession before the pandemic, and that the pandemic has exacerbated issues and made a downturn that was already occurring much worse.” ■

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