

# Focus | Law



## COVID-19: Challenges, opportunities for law firms

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By Zach Hillstrom

**T**he U.S. legal system is typically driven by a sense of urgency; legal conflicts need resolution so those involved can move forward.

But the urgency behind proceedings has been forced to take a backseat to public health concerns due to the ongoing COVID-19 pandemic. And those who practice law have been presented with unique challenges.

Many courts — including the 4th Judicial District court, which encompasses El Paso and Teller counties — have had to put heavy restrictions on the types of cases that can be heard in-person, causing a significant reduction in the number of cases that pass through the court.

That means many hearings, deadlines and depositions have had to be canceled, postponed or rescheduled.

And while courts have been using remote technology to conduct some proceedings, there's likely to be a major backlog of cases when the dust settles and courts begin to reopen on a pre-pandemic scale.

The *Business Journal* talked to local attorneys and legal experts about the challenges the industry is facing, as well as what the field of law might look like in the future.

### CURRENT CHALLENGES

Kristi Dorr, executive director of the El Paso County Bar Association, said as essential businesses, law firms and attorneys have been working through the crisis, working remotely from their homes and conferring with clients online or by phone.

Dorr said some fields of law — like insurance, employment and bankruptcy law — are likely seeing an uptick in demand because the virus is pummeling the U.S. economy.

Another uptick: estate planning and probate. "Making sure wills are in place and that they have

medical powers of attorney — those are all things that are on people's minds right now," she said.

John Buckley, of Buckley Law in Colorado Springs, specializes in estate and business planning.

He said while he hasn't yet seen an increase in new clients seeking estate-planning services during the pandemic, he expects that to change in the near future.

"A lot of my clients are seasoned citizens and they don't want to leave the house," Buckley said. "But when they finally get around to leaving the house ... half of Americans don't have estate plans at all. So I think there is going to be a pent-up desire and I'm excited — in the context of business — about what the future holds."

Dorr said several other areas of the law are seeing dropoffs in demand for services.

But attorneys having fewer obligations, she said, has come with a silver lining.

"One of the ways lawyers are addressing these issues is by increasing the number of pro bono hours," Dorr said. "So while they may not have as much work right now, we are seeing attorneys stepping up and taking pro bono cases and really helping those that can't afford legal representation, or need reduced fees to afford it."

Dorr said civil litigation has been significantly impacted by the pandemic.

Mike McDivitt, founder of McDivitt Law Firm, which specializes in personal injury claims, said that because fewer people have been out traveling thanks to stay-at-home orders and social distancing efforts, there have been fewer car accidents and therefore fewer new personal injury cases.

For those cases already in progress, McDivitt said going to trial has been off the table because of court restrictions.

"So in that regard, it stalls some things," he said. "But we're able to still get some results — sometimes the insurance companies are more willing to settle now because they don't want to deal with a backlog of trials later on."

Nancy Leong, a law professor at University of Denver's Sturm College of Law, said when it comes to criminal cases, a backlog could be especially harmful to indigent populations.

"If a criminal defendant is poor, then they're probably not going to be able to post bail," Leong said.

"And normally the Sixth Amendment requires that a person be given a speedy trial. And what a speedy trial is, as a matter of constitutional law, has likely changed as a result of the health circumstances we find ourselves in."

Leong said that those who cannot pay bail, awaiting their day

in court behind bars, may end up confined for longer periods of time — possibly months or even as long as a year.

"And given that prisons have become sites for outbreaks of coronavirus, I think that's particularly concerning," Leong said.

In financial matters, the backlog could also cause people who are entitled to a jury trial to settle for less money than they otherwise would.

"If you can have, let's say, \$500 today, or \$5,000 18 months from now, I think for some people who need a cash influx right now that might be a pretty difficult decision," Leong said.

### WORKFORCE IMPACTS

When the Great Recession enveloped the U.S. in 2008, Leong said countless law firms felt the sting of

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— Nancy Leong

the country's flailing economy. As a result, many laid off large numbers of employees.

Leong said those layoffs likely damaged some firms' reputations — and that appears to have impacted responses to the current economic downturn.

So far during COVID-19, Leong said she's seen far fewer layoffs, as firms have seemingly tried to spread out the impact throughout their business' hierarchy.

*The American Lawyer*, a monthly legal magazine, has been tracking how firms are protecting their bottom lines during the crisis.

Its reporting shows that layoffs have taken place across the country, but many firms are having partners forego salaries, cutting associate and staff pay, and furloughing workers rather than choosing widespread layoffs.

"I think that people are trying, by and large, to be really humane about it," Leong said. "I've heard a lot more about law firms imposing fairly small pay cuts across the board, as opposed to ... letting people go."

"And I think that this is going to be really hard for at least a year or two. Whether that means layoffs, or pay cuts across the board as I was describing, I think will depend on how long it goes on."

The pandemic is also posing challenges for future attorneys. Leong said many of her DU students who'd lined up summer jobs with law firms and governmental entities prior to the pandemic have since had their hours reduced, their pay cut or their positions converted into unpaid internships.

She also said there's no telling when students might be able to take the Colorado Uniform Bar Examination. The Colorado Supreme Court, she said, has essentially

given authorization to practice for 2020 graduates who are unable to sit for the exam due to the pandemic — but it's unclear when and how the exam will be administered in the near future.

"I think that the legal market is kind of set up for a certain number of lawyers entering the workforce every year," Leong said. "We try to graduate a pretty consistent class size every year in Colorado and there's a certain number of people that come back from out of state ... and if people don't sit for the bar exam, that's going to be somewhat disrupted."

"So we may have a much smaller influx in June, and then a really big influx in February, or after the bar exam next summer. And just by the laws of supply and demand, I think that 2020 and 2021 graduates may have a lot of difficulty finding jobs, for at least the first little while."

### CASE SURGE

The pandemic has caused countless disruptions throughout the legal sector, but different areas of growth could emerge from the chaos.

Dorr said she expects to see an influx of family law cases and, unfortunately, domestic violence cases.

"When you have a couple experiencing trouble in their marriage, and then you stick them in a house without the ability to get outside, or you've got financial concerns ... that contributes to marital stress," Dorr said. "That can also contribute to problems in marriage, so I think we're going to see some follow ups there."

Firms that deal with the technology sector, Leong said, could see an uptick in business as cases involving patent and copyright claims, as well as privacy intru-

sions, are likely to surge.

There'll probably be many new cases involving insurance as well.

"And I mean any kind of insurance," Leong said. "Whether it's health insurance or life insurance — I think that there's a lot of potential for various kinds of legal services needed there, and we'll see a lot more litigation in those areas."

For firms willing to explore new types of cases, some opportunities are already beginning to emerge.

McDivitt Law Firm, for instance, recently began investigating business-interruption insurance claims, as the firm says that businesses have received "blanket denials" from insurance companies when they file claims for business lost as a result of the pandemic.

"The mandated closure of many business types is unprecedented, and it has put business owners and entrepreneurs in an extremely difficult position," the firm said in a press release. "McDivitt Law Firm hopes to recover economic relief for these businesses who have been forced to close."

Buckley said he believes the pandemic will bring new opportunities in business law.

"Some of the greatest businesses in American history came out of the '87 [stock market] crash," Buckley said. "And I think that's a little bit of what's going to happen now. We've got 15 percent of America unemployed ... some of those people are going to have an entrepreneurial bent."

"The bad news is that nine out of every 10 small businesses fails in three years. But [for] the one out of 10 that succeeds, to get to be the lawyer for that — man, that's fun." • *CSBJ*

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