

**SIMPLE ADVICE FOR COMPLEX TIMES: THE TOP 5
PIECES OF ADVICE INSURERS CAN GIVE TO THEIR
LAW FIRM INSUREDS**

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ADVICE NO. 1: BUSINESS CONTINUITY

- What does business continuity look like exactly?
- Answer: Have a written plan.
 - Solo/Small Firm: Do you have a written succession plan if you get sick or die?
 - Medium and Large Firms: Is your management team prepared to delegate duties and responsibilities for sick or dead attorneys?

ADVICE NO. 1: BUSINESS CONTINUITY

- Business continuity also means managing deadlines.
 - The circumstances change day by day, but each day that passes is another day closer to your deadline.
 - Ensure your calendar and tasks are up to date and complete.
 - If you are relying on others for calendaring, have a plan to overcome the situation if that person gets sick or incapacitated.
 - Know your judge. Many courts are still up and running and may not have as much empathy as litigators may think for extending deadlines.

ADVICE NO. 2: BEWARE OF SCAMS AND FRAUDS

- There are 3 types of information most at risk:
 - **1. Protected Health Information**
 - We have become somewhat desensitized to reporting on the health of our fellow citizens. However, HIPAA and other regulations require your firm protect your employees protected health information.
 - The US Department of Health and Human Services and the FBI have warned that scammers are posing as representatives from the CDC and Office of Civil Rights and attempting to gain access to protected health information.
 - Have protocols for employees with access to protected health information.

ADVICE NO. 2: BEWARE OF SCAMS AND FRAUDS

- Employees handling calls should:
 - Ask the caller for their full credentials, including an email that should end in @hhs.gov.
 - Before providing information, return the call after confirming the number is legitimate, which can include calling the main number for the CDC or other agency.
 - Ask for a complaint transaction number or other verifiable information related to an investigation.
 - Have a firm policy to report attempted scams.

ADVICE NO. 2: BEWARE OF SCAMS AND FRAUDS

- **2. Financial information.**
 - We have unprecedented financial programs. The Payroll Protection Program may be applicable to small or medium sized law firms.
 - With money, comes those trying to scam you out of it.
 - Do not give financial information over the phone.
 - Do not open emails from an unfamiliar source.
 - Confirm requests for financial information with the person who sent the emails. This same advice applies to real estate closings.
 - Have a cyber-security insurance policy.

ADVICE NO. 2: BEWARE OF SCAMS AND FRAUDS

- **3. Attorney-Client Privilege Information**
 - Realize that the popular conferencing programs are not the most secure. For example, Zoom has had numerous issues with hackers and with being a portal for ransomware being installed on computers.
 - Realize that the conferences can be recorded on certain platforms, which makes for an unprecedented risk for later transmission or unintentional waiver.
 - Ensure your network is secure and properly managed.

ADVICE NO. 3: OVER-COMMUNICATE WITH EVERYONE BUT CAREFULLY AND CONFIDENTIALLY

- **Legal advice in writing**
 - Avoid texting. Favor phone call followed by email. Treat texting as formal correspondence.
 - Email from firm's server email.
 - Phone calls away from smart speakers and other people.
 - Save documents/correspondence on firm's server.

ADVICE NO. 3: OVER-COMMUNICATE WITH EVERYONE BUT CAREFULLY AND CONFIDENTIALLY

- **Team contact**
 - Maintain regular contact with all case attorneys and staff.
 - Don't assume someone is calendaring and calculating deadlines.
 - Don't assume someone is doing the work that is due.

ADVICE NO. 3: OVER-COMMUNICATE WITH EVERYONE BUT CAREFULLY AND CONFIDENTIALLY

- **Cross-consult with other attorneys.**
 - COVID may provide reasons for contract termination.
 - Transactional and litigation attorneys should discuss and confirm/advise what will hold up and what won't later on.
 - Changes to laws may impact attorney's representation (lengthen time periods, loosen statutory requirements for notarization, evictions, etc.).

ADVICE NO. 3: OVER-COMMUNICATE WITH EVERYONE BUT CAREFULLY AND CONFIDENTIALLY

- **Keep clients in the loop**
 - Reach out to them about how they are, report adjustments, and discuss opportunities.
 - Discuss opportunities to move cases along or to slow them down
 - Discuss opportunities to resolve
 - Establish reasonable expectations on what can/will be done or will have to wait.

ADVICE NO. 3: OVER-COMMUNICATE WITH EVERYONE BUT CAREFULLY AND CONFIDENTIALLY

- **Opposing counsel**
 - **Establish mutual expectations**
 - **Contact to make sure all on same page re response times**
 - **Ensure all agree on diligence deadlines and closing dates**
 - **Request and file stipulations for response times.**
 - **Be kind and professional.**

ADVICE NO. 3: OVER-COMMUNICATE WITH EVERYONE BUT CAREFULLY AND CONFIDENTIALLY

- **Contact court**
 - Check court and judge websites for updates
 - Contact staff attorneys for guidance on deadlines.
 - Don't assume deadlines are automatically stayed in face of ambiguity.
 - Be extra nice and professional to court staff.

ADVICE NO. 3: OVER-COMMUNICATE WITH EVERYONE BUT CAREFULLY AND CONFIDENTIALLY

- **Contact Firm's GC**
 - If attorney is concerned over mistake, consult with Firm's GC or insurer's helpline.
 - Contracts drafted by firm may present a prior work conflict when the terms are criticized.
 - Handle how to "fix" the problem carefully with advice of GC.

ADVICE NO. 4: MAINTAIN CALENDAR AND DON'T FORGET ABOUT MAIL

- **Get ahead of deadlines**
 - Many deadlines are extended, but some may not be able to be extended by order.
 - Last minute filings ask for technical issues to happen.
 - Be cognizant of executive orders from governors and courts where you practice.
 - Ambiguous deadlines require beating the earliest deadlines.
 - Arrange for mail pickup/scanning
 - Watch online filings vigilantly and supervise resulting activity.

ADVICE NO. 4: MAINTAIN CALENDAR AND DON'T FORGET ABOUT MAIL

- **Don't assume someone else is calendaring or calculating deadlines that are set.**
- **Check on docket deadlines**
- **Communicate deadlines to your team to ensure deadlines are met.**

ADVICE NO. 5: PLAN FOR THE “OTHER SIDE,” BUT ACT NOW

Extend all reasonable courtesies.

- **It is the right thing to do.**
- **Lawyers, judges and witnesses have long memories.**
- **Is a judge really going to “back you up?”**
- **Sanctions for unreasonable conduct?**

ADVICE NO. 5: PLAN FOR THE “OTHER SIDE,” BUT ACT NOW

- Envision your post virus work world.
- Might you be busier day to day, week to week than before?
- Most litigators, claims professionals and risk manager’s case loads will not go away.
- Might new work be super imposed on the backlog of depositions, hearings, briefings, pleadings and reports?
- Will disputes – and thus work – go up or down on the other side?
 - Employment disputes, virus related injury claims, landlord tenant, banking, personal injury.

ADVICE NO. 5: PLAN FOR THE “OTHER SIDE,” BUT ACT NOW

What can I/my firm/my company do to be ready when work rebounds?

- **Schedule depositions, hearings, mediations and other events now.**
- **Most depositions scheduled to be done remotely can be converted to in-person.**
- **Great time to get caught up on reports, research and motions – maybe even get ahead.**
- **What can be done now to ensure smooth return of attorney and staff to the way we were?**
- **Can we “market” now for “new and “old” work?**
- **Have we been forced to learn practices and skills (remote depositions and hearings, working remotely) that might want to continue?**

5 KEY TAKE AWAYS

- Advice No. 1: Business Continuity
- Advice No. 2: Beware of Scams and Frauds
- Advice No. 3: Over-Communicate with Everyone But Carefully and Confidentially
- Advice No. 4: Maintain Calendar and Don't Forget Your Mail
- Advice No. 5: Plan For the “Other Side,” But Act Now