



Building your firm's culture in a remote environment

Practical advice for firms that want to transition permanently to a remote environment

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One of the most common objections I hear from law-firm owners opposed to moving their firm to a fully virtual office setup is that it would be impossible to create the same culture in a remote environment as it would be in a traditional brick-and-mortar office environment. In a July 26, 2021, New York Times guest essay entitled “We’re Kidding Ourselves That Workers Perform Well From Home,” author John Zavitsanos, the co-founder of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, a Houston-area boutique law firm, adopted this perspective. He wrote:

“[I]n a remote-work setting, we never matched the team creativity and production we had taken for granted at our office. On Zoom, some people were distracted and anxious to leave meetings, while in person, they were engaged and animated. . . . While lawyers at other Houston law firms claimed to be happy with remote work, I believe it prevented us from performing at our sharpest. There is a cost to working at home that goes beyond depression, disconnectedness and failing to bathe regularly: It can drain morale and diminish collegiality.”¹

Is Mr. Zavitsanos right? My experience has led me to the opposite conclusion. Not only do I believe it is absolutely possible for virtual firms to build and maintain a thriving culture. I also believe virtual firms are, in some ways, *better* equipped than traditional firms to do

certain things to build culture that might not be as effective in a brick-and-mortar environment.

A successful transition from a brick-and-mortar environment to a virtual one requires detailed planning, implementation of at least three foundational systems, and a commitment to schedule recurring social events to allow the team to get to know each other without always interacting face to face.

Are there any ethical or legal barriers to working remotely?

As a preliminary matter for any law firm considering a transition to a virtual environment, it is imperative to understand and address any ethical or legal barriers. One of the greatest ethical challenges virtual law firms face is protecting client confidentiality. Legally, few jurisdictions have explicitly addressed the interplay between remote attorney work and state prohibitions on the unauthorized practice of law. For example, is a California attorney who practices law in California from a location in Nevada, engaged in the unauthorized practice of law in Nevada?

Protecting client confidences

As noted, protecting client confidentiality is an ethical duty virtual law firms must address in manners different from traditional brick-and-mortar firms.

California Rule of Professional Conduct 1.6 prohibits a lawyer from revealing protected client information from disclosure unless the client consents or unless the lawyer reasonably believes disclosure will prevent a criminal act likely to result in death or substantial bodily

harm. (See Rules Prof. Conduct, rule 1.6.) Rule 1.6 references Business and Professions Code section 6068, subdivision (e) (1), which requires lawyers “[t]o maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” (Bus. & Prof. Code, § 6068, subd. (e)(1).) While all law firms that save digital client files in a cloud-based system such as Box, Dropbox, or OneDrive (most firms nowadays) should implement strong security measures, firms operating in a remote environment face a few additional challenges.

One risk to client confidentiality in any computing environment is the inadvertent transmission *by the users themselves* of viruses, spyware, ransomware, and other unwanted software to a law firm workstation. Law firms operating in a virtual environment should provide all domestic remote personnel with firm-issued workstations. These should be set up with security measures prohibiting users from downloading any apps without the firm’s IT department’s authorization. For international workers for whom it is not practical to provide firm-issued equipment, firms should set up virtual desktops, which would separate work-related files from personal files on the user’s workstation. After the user logs in, the user cannot move files from the virtual desktop to the user’s personal workstation and vice versa.

Another best practice is to require all remote users to work in a private location at their home office to ensure others in the household cannot hear sensitive conversations.



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Not engaging in the unauthorized practice of law while working out of state

The necessity of working remotely during the COVID-19 pandemic has prompted some jurisdictions to address whether lawyers licensed in one jurisdiction and who practice in that jurisdiction remotely from another jurisdiction in which they are not licensed are engaged in the unauthorized practice of law (UPL). For example, can a California-licensed attorney who moves to Texas for personal reasons work remotely for California clients in a California law firm? The American Bar Association and the jurisdictions that have addressed this issue have answered this question with a resounding “Yes!”

On December 16, 2020, the ABA issued Formal Opinion 495. While not binding on individual jurisdictions, it can be used as a guideline for jurisdictions deciding whether out-of-state attorneys are in violation of jurisdictions’ UPL statutes. The Opinion states that if the jurisdiction the attorney is physically in has not prohibited such practice, the practice is allowed if the attorney does not establish an office or other systematic presence in that local jurisdiction, does not “hold out” a presence and/or availability to perform legal services in that local jurisdiction, and does not provide legal services or representation for matters in that local jurisdiction, unless otherwise authorized. (See Am. Bar Ass’n Standing Comm. on Ethics and Prof’l Resp., Op. 495 (2020).) By following these guidelines, the attorney will not be in violation of ABA’s UPL statute. However, because the Formal Opinion 495 is not binding on jurisdictions, they are thus free to choose to adopt the opinion or not.

Thus far, the jurisdictions that have expressly addressed this issue have agreed with the ABA’s approach. This includes Arizona², Colorado³, Florida⁴, Maine⁵, Minnesota⁶, New Hampshire⁷, North Carolina⁸, and Utah⁹.

Several states that have not specifically addressed this issue have nonetheless suggested it would be permissible. Texas, for example, has remained silent on out-of-state attorneys working remotely in their jurisdiction. However, a comment to Disciplinary Rule of Professional Conduct No. 5.05 regarding the UPL states, “the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice.” (Tex. Disciplinary R. Prof’l. Conduct, R. 5.05.)

While California-based virtual firms must always check the laws of the local jurisdictions to confirm that California-licensed lawyers who reside there do not violate any jurisdiction-specific UPL statutes, current trends suggest more and more jurisdictions will align with the American Bar Association and permit lawyers working remotely to be physically present in a state in which they are not licensed.

Why is a plan to go virtual necessary?

Law firms planning to transition to a fully or mostly remote setup should do so over time and while building in culture-promoting strategies and systems. Transitioning from an environment in which team members see each other daily to one in which they see each other mostly or exclusively online will inevitably affect intraoffice dynamics.

Law firms should engage their teams every step of the way, being fully transparent about the reasons for a transition to a remote environment: eliminating time-consuming and costly commutes, allowing the firm to hire talent from all over the world, and permitting travel outside of vacations. Law firms should

simultaneously announce culture-focused initiatives, a timeline, and the date by which the transition will be completed. Fortunately, because of the shelter-in-place orders in place during the pandemic, most law firms now have at least some experience with operating remotely and have team members accustomed to working remotely.

The three foundational systems for a remote environment

As part of the plan to transition to a remote work environment, law firms must implement robust hardware, software, and accountability systems.

A hardware system includes both computing equipment and the home office’s Internet connection. Firm-issued equipment should include at least a laptop workstation with specific minimum processor and RAM requirements. Other equipment might include a router, docking station, webcam, wireless keyboard and mouse, standalone microphone, microphone stand, and one or more monitors. Firms should investigate and set baseline equipment standards. California employers should provide their employees with all necessary work equipment both to comply with Labor Code section 2802¹⁰ and to control everything downloaded onto the firm-issued workstation. The personal workstations of international workers who do not work using firm-issued equipment (e.g., administrative personnel in Mexico) will need to be powerful enough to run a remote desktop.

A software system should include all apps needed for communication, productivity, and security. All firms should use either Microsoft Teams or Slack, which do a lot more to facilitate communications among remote teams than pass along messages. Users have the option of creating channels, and can communicate by messages, voice, or video.

Besides Teams and Slack, other communications software includes Microsoft Outlook for email management,



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RingCentral or Vonage for Internet telephony, and RingCentral or Zoom for videoconferencing. The two principal options for Windows-based productivity software users are Microsoft Office 365 and the Google docs. Law firms should invest in an IT expert who can select, implement, and maintain systems to log in remotely to user desktops (to troubleshoot tech issues); to prevent users from inadvertently downloading viruses, spyware, ransomware, and other unwanted software; and to store and protect user passwords, using password management software such as Keeper Security or Dashlane.

An accountability system is a combination of both technology and policies. On the tech side, Microsoft Teams allows for greater supervision of remote teams. A green-colored status identifies a user who is both online and available. The firm can set a policy that all users must be visible online in Teams at the time the firm opens. (All remote workers should operate in the time zone of the firm's principal office.)

Apart from technical accountability, firms should also set key performance indicators (KPIs) for each position in the firm. KPIs are objective, measurable standards each team member must realize to meet the firm's expectations. For attorneys, KPIs can be a certain number of billable hours. For receptionists, KPIs could be a certain number of calls routed or minutes each day spent on the phone. For any marketing personnel, KPIs could be the number of prospective new clients who contact a firm in a specific period (e.g., week or month).

Once a plan is in place to implement strong hardware, software, and security systems, a remote firm will have all the tools necessary for building culture in a remote environment.

Practical strategies for building culture

A positive, winning culture attracts exceptional talent, keeps morale up, and facilitates the realization of ambitious goals. The law firm's culture is driven by

its foundational ideas, beliefs, and values as set forth in its founding documents: the mission statement and statement of core values. Accordingly, before establishing any culture, a law firm must fully understand its *raison d'être* as fleshed out in its mission statement and statement of core values. The law firm's management team should lead by example, embodying the core values and acting in a manner consistent with the mission statement.

One practical strategy for building culture is hiring only personnel who demonstrate during the interview process they will fit in well with the firm's culture. Select three to five terms from the firm's core values and ask prospective candidates during interviews how they have demonstrated those values in their lives and careers. A candidate's ability to perform the duties the position requires should be necessary but not sufficient. The candidate must also be a culture fit. Hiring someone who is not a culture fit can lower morale, reduce productivity, and present the firm poorly to clients.

Another practical strategy for building culture is eliminating classes or groups within a law firm, by applying policies, systems, and procedures equally to all firm personnel, whether domestic employees or overseas personnel. Consider referring to all active bar licensees as "attorneys" rather than "partners" or "associates."

Establishing recurring team-building events can also help create strategy in remote environments. Ideas include a weekly team meeting with mandatory videoconferencing participation; weekly Lunch & Learn sessions where the team can gather and learn about an interesting topic; monthly virtual half hours with the newest team member in the "hot seat," answering lighthearted questions posed by other members of the firm; monthly coaching meetings with every team member inquiring what the law firm can do to help them achieve their KPIs; quarterly personal interviews (rather than performance reviews).

For law firms with some personnel working in the vicinity of the home office, consider quarterly in-person events, which could include meals (e.g., Friday lunches or dinners), sporting events (e.g., professional baseball, hockey, or soccer games), and cultural events (theater or musical performances).

Another key to making connections in a remote environment is as much virtual face-to-face time among law firm personnel as possible. Never host conference calls; all meetings should be via videoconference. Connect by video whenever possible. If feasible, consider providing all team members with two monitors: one as the principal workstation desktop and the other exclusively for videoconferencing.

Finally, cultivate an environment that allows people to express themselves. Create a "Just for Fun" channel in Microsoft Teams where individuals can recognize others for a job well done by giving points to other team members for prizes (Bonusly is a great app for this), posting photos and videos from a major life event or vacation, or sharing amusing anecdotes. During weekly team meetings, ask one bonus get-to-know you question (e.g., "If you could be a superhero, what would your name and superpower be?").

Conclusion

If the pandemic has taught us anything, it is that people crave interaction and engagement with other people. In a law firm environment, this does not necessarily require occupying the same physical space as other coworkers. Law firms operating in a remote environment can build and maintain a strong culture in which team members can still learn to know, like, and trust one another.

Mr. Zavitsanos, the advocate for office-based law firms, is correct in that working remotely can "drain morale and diminish collegiality." But it does not have to. Law firms transitioning from a brick-and-mortar environment to a virtual environment responsibly – by creating a plan; implementing robust hardware, software, and security systems;



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and employing practical culture- focused strategies – can do so without sacrificing – and perhaps even strengthening – that firm’s culture.

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Endnotes:

- ¹ John Zavitsanos, Op-Ed, *We’re Kidding Ourselves That Workers Perform Well From Home*, N.Y. Times, July 26, 2021, at A19 (available at <https://www.nytimes.com/2021/07/26/opinion/covid-return-to-office-work-houston.html>).
- ² Ariz. Rules of Prof’l Conduct, R. 5.5(d) (2016).
- ³ <https://coloradosupremecourt.com/Newsletters/November2020/Index.htm>.
- ⁴ S. C. of Fl., No. SC20-1220.
- ⁵ Me. Bd. of Overseers of the Bar, Op. 189 (2005).
- ⁶ Minn. Rules of Prof’l Conduct, R. 5.5(d).
- ⁷ N.H. Rules of Prof’l Conduct, R. 5.5(d)(2016).
- ⁸ N.C. Rules of Prof’l Conduct, R. 5.5(d)(2).
- ⁹ Utah Rules of Prof’l Conduct, Op. 19-03 (2019).
- ¹⁰ “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties” Cal. Lab. Code § 2802(a).