



LAW FIRMS

Good Business

How do firms benefit from hiring a financial consigliere?

BY DANIELLE BRAFF

It's a well-worn cliché that lawyers are lousy businesspeople. As a result, many of the larger firms have already turned to financial specialists to help. More than 70% of Am Law 200 firms and over 85% of Am Law 100 firms employ a chief financial officer, according to a study by Colliers International, a real

estate brokerage. The larger the firm's revenue, the more likely it is to hire a CFO. But what about small firms or solo practices?

"I know of no solos who employ their own CFOs. A scattering of smaller firms with 20 or fewer lawyers use them, but in my experience, they generally delegate that authority to one of the partners," says Stephen J. Curley, a solo practitioner from Stamford, Connecticut, and the chair-elect of the ABA Solo, Small Firm & General Practice Division.

Is it time for some of these smaller or solo firms to consider employing a CFO?

"Lawyers tend not to be good at business and even worse when it comes to financial issues," says Michael McCready, the managing partner of

McCready Law, a seven-lawyer firm with offices in Illinois and Indiana that employs a CFO. "A CFO should be considered a necessity, not a luxury."

Kevin Hirzel, managing member of Hirzel Law, a 10-attorney firm with offices in Farmington and Traverse City, Michigan, hired a CFO for the first time in fall 2020. He says the firm experienced rapid growth over the last few years, resulting in more administrative work. He realized his sweet spot was practicing law and marketing, while managing the financial aspect of the firm wasn't the best use of his time.

The firm hired a recruiting agency and vetted more than 60 candidates for the position. "We specifically looked for somebody who had a background in business as opposed to somebody who was a lawyer or had previous experi-

ence in a law firm, so we were bringing a skill set to the table that the owners of the firm did not have,” Hirzel says.

CFOs typically provide financial reporting (profit and loss statements, balance sheets, cash flow, managerial reports). They also handle banking activities and cash management, are in charge of capital allocation and evaluate financial opportunities, says Bryan Reilly, the CFO of Pond Lehocky Giordano, a workers’ compensation and Social Security disability firm based in Philadelphia.

Reilly, who started as the firm’s staff accountant in 2010, was promoted to CFO in 2014. He also helps the firm with investment analysis, negotiations, employee benefits, and compensation analysis and design.

Having a CFO allowed Hirzel Law to make more data-driven decisions because it now has a better handle on how to allocate resources and project revenue, Hirzel says. “In short, if a law firm is looking to grow, it needs to have a CFO.”

If not now, when?

The struggle, however, is determining when to hire a CFO.

A CFO can be a relatively expensive addition to a firm, with the base salary being about \$180,000 annually for a startup company or up to \$360,000 for a well-established firm looking for a high-level CFO, says Ethan Taub, the CEO of Loanry, a loan company in California. There are also part-time and fractional CFOs, which may be better options for smaller firms. Fees for outsourced CFO services range from \$200 to more than \$1,000

Stephen J. Curley: Small firms often assign CFO tasks to one partner.



David Sanders says he can’t afford a CFO and spends up to 25 hours each month managing his financial affairs.

weekly, depending on the type and volume of reporting and the desired frequency of communication as determined by the firm, says Kelley Brubaker, a CPA who offers outsourced CFO services to law firms.

Brubaker says the time to hire a CFO will be different for every firm, but there are a few signs: when partners have questions on a regular basis that the bookkeeper is unable to answer; when the firm doesn’t understand the tax preparer’s advice; when the firm is bleeding cash; or when the firm is planning on growing in the near future.

For a smaller firm, a CFO tends to manage the bookkeeper and tax preparer and will ensure the day-to-day work is completed accurately and timely.

However, Roger Royse, who started a solo firm that grew to 27 lawyers, cautions that it’s important for a small firm to control costs and not just add overhead for the sake of having overhead. Royse, who left his firm in March with seven colleagues to join Haynes & Boone, is a CPA and also

took on the CFO role at his firm. “But if I had to do it over, I would have hired an outside CFO at about 15 lawyers,” Royse says.

Other law firms are relieved they hired a CFO even when they were small. Matthew Dolan, the founder of Connecticut-based Dolan Divorce Lawyers, which has four attorneys, has been using a CFO for a year now. While Dolan says he has a very good handle on his firm’s financials, he also knows he doesn’t have the same level of knowledge as someone whose sole focus is the financials of the firm.

“As we continue to grow, I want every department of our firm managed by an expert in that field,” Dolan says. “This will free up my own time and will allow us to get to the next level of profitability and client happiness.”

Dolan’s CFO provides bookkeeping services, financial reports and financial forecasting reports. The real benefit of the CFO, however, is the freedom he provides. Dolan says he doesn’t have to get bogged down in the financial details anymore and can instead focus his attention on higher-level management and decision-making.

Plus, Dolan says, the beauty of modern technology is that small firms have



Bryan Reilly recommends that law firms hire a CFO who understands how the legal industry works.

access now to a CFO they may not have been able to afford in the past. Several agencies provide virtual CFOs who can work for several firms simultaneously. Through a virtual CFO agency, Dolan's firm was able to afford a financial strategist, whom he says the firm would have never otherwise been able to afford to hire full time.

Before hiring anyone, law firms should consider their cash flow rather than the number of attorneys they have, suggests Keoki Wallace, the CEO of business consultancy It's More Than Just Numbers. If most of the law firm's business comes from flat fees or from standard monthly billings that are paid within a specified amount of time, then all they need is a good controller, Wallace says. Where a CFO could make a difference is when there are large discrepancies between months or when cases go over an extended period, such as when there is an upfront payment and then no next payment until many months or even years later.

"I have had many talented controllers work for me over the years who could easily do everything even a large law firm with stable cash flow needs," Wallace says.

Before selecting a finance professional, Reilly advises looking for someone who can go beyond debits and credits. Reilly says the CFO chosen needs to be an entrepreneur: He or she should understand the business, comprehend how clients are acquired, how clients are serviced and how revenue is generated (which requires some understanding of the law). Other soft skills are important, such as the ability to communicate with peers and partners and fit in with the overall dynamic of the firm, Reilly says.

If you don't have a CFO, expect to dedicate a significant amount of time to dealing with your firm's finances, says David Sanders, who owns his Houston-based solo firm but says he doesn't have the luxury of hiring a CFO. Sanders blocks off the majority of the day once a week to manage his financial affairs. He estimates this accounts for about 25 hours per month. Time well spent? ■



TECHNOLOGY

23 and You

The new frontier of health care is here, but will DNA privacy be lost?

BY RICHARD ACELLO

In February, 23andMe, a company best known for its genealogy testing kits, announced plans to go public through a novel merger funding mechanism called a SPAC, or special purpose acquisition corp.

The merger is with VG Acquisition Corp., a Richard Branson-backed company, and Branson is pouring \$25 million into the merger, as is 23andMe co-founder Anne Wojcicki. Once the merger is complete, the merged 23andMe is expected to have an estimated valuation of around \$3.5 billion.

At that point, 23andMe will be well-equipped to venture beyond genealogy kits and into the new frontier of personalized health care, using a patient's DNA as the basis for therapeutics or preventive medicine. It won't be alone. In December, rival Ancestry.com was acquired in a \$4.7 billion deal by private equity firm Blackstone Group Inc. Ancestry CEO Margo Georgiadis said in a press release that the deal would

allow the company to bring to life "our long-term vision of personalized preventive health."

Advocates are concerned about the privacy of data collected by genetic testing companies; what control consumers have over their DNA data once it's been submitted to 23andMe and other genetic testing firms; and what recourse consumers have if companies' assurances of privacy prove unreliable.

"Data is the new oil," says Catherine Arcabascio, a professor at Nova Southeastern University's Shepard Broad College of Law in Fort Lauderdale, Florida. "I don't know of any other information that one would hold so dear as their genetic code."

Big Pharma wants to get its hands on some of this data. GlaxoSmithKline took a \$300 million equity stake in 23andMe in 2018 to "focus on research and development of innovative new medicines and potential cures, using human genetics as the basis for discovery."

"The question is one of consent, and the problem is consumers are not likely reading every detail of the terms of service," Arcabascio says. "They're treating DNA the same as a toaster oven. You have the terms of service, and you're just clicking through." She says it is difficult to ascertain what the privacy

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SPONSORED COLUMN

Insights with Jack Newton

Transforming the Legal Experience for All

By Jack Newton

It's easy to say that the world has changed—and that the legal industry has changed—as a result of COVID-19. What is harder to say, at the moment, is which changes are temporary, which are here to stay, and which haven't yet arrived.

Now, the industry stands at a crossroads—and whatever path we take could have repercussions for decades to come. All of us working in legal share a collective responsibility to improve the future of legal service delivery; we must push for the changes that will move this industry forward.

For over a decade, I have spoken about how technology would disrupt the legal industry. What I couldn't have predicted was how much of that change would be compressed into one year. We are seeing profound changes in terms of both how law firms operate and, even more importantly, how consumers approach technology. For example, we learned in the *2020 Legal Trends Report* that more than half of legal consumers say that cloud technology is a necessity for them, and even clients who are 90 years old are comfortable signing documents on iPads.

Even more amazing to me is that last year, over 4,500 legal professionals from 46 countries joined us, *virtually*, for the

Clio Cloud Conference—a four-day event about technology and innovation in legal. Attendance of this scale at a virtual legal conference is something I wouldn't have thought possible just a few years ago.

But, this is where we've been: a world of Zoom meetings and court appearances made from our living rooms.

While it's tempting to ask, "Which changes brought on by COVID will return to the way they were before?" the more important question is, "Which changes represent positive shifts that we should embrace permanently?"

We have an unprecedented opportunity to reshape how law firms, courts, and legal institutions operate—and it's in the best interests of our clients and our organizations not to squander this chance.

What's at stake? For starters, the ability to increase access to legal services for our fellow citizens. Fairer protections and advocacy for underrepresented groups in our society. The freedom for legal professionals to make a good living without sacrificing work-life balance. A legal system that truly serves the public good.

There is so much work to do, and such an incredible chance to make a difference by doing it.

Among the many possibilities, some of the systemic changes we're focused on are centralizing and simplifying business operations for law firms, making it easier

for legal clients to collaborate with their lawyers and understand the legal system, and breaking down barriers to legal services for consumers in need of assistance.

At Clio, we believe—on a foundational level—that part of our duty as the market leader is to work to create a world in which our legal and judicial systems promote justice, in the truest sense of the term. This means a world in which every stakeholder in the legal process benefits from better, more equitable models for shaping and administering the law.

In pursuit of these goals, we recently expanded our company's mission to reflect how we want to show up for our customers and their clients—as well as how we want to help shape the way our society engages with, delivers, and experiences legal services.

Clio's new mission is to *transform the legal experience for all*.

This mission is at the heart of everything we do. It invites everyone within our legal and judicial systems—from legal professionals to legal organizations, clients, and consumers—to explore the larger impact we can all have on the legal experience, on a global scale.

As we emerge from COVID-19, let's not return to normal. Let's instead focus on creating a *better normal*. I invite you to help us reimagine the future of legal service delivery, and I leave you with this question:

What does a better future for legal look like to you?

Jack Newton is the CEO and Co-founder of Clio and a pioneer of cloud-based legal technology. Jack has spearheaded efforts to educate the legal community on the security, ethics, and privacy issues surrounding cloud computing, and is a nationally recognized writer and speaker on the state of the legal industry. Jack is the author of *The Client-Centered Law Firm*, the essential book for law firms looking to succeed in the experience-driven age, now available at clientcenteredlawfirm.com. The essential book for law firms looking to succeed in the experience-driven age, available at clientcenteredlawfirm.com.



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“We’re just not tackling the privacy issue,” Jen King says.

sumers to choose with whom they share their data, exempts certain HIPAA-covered information. But she points out that there’s a lot of health-related data that isn’t covered by HIPAA, including direct-to-consumer genetic testing and data collected from health and fitness apps, for instance.

Whether the CCPA and a similar Virginia law would affect companies such as 23andMe and their efforts to expand their individualized health care offerings would depend on what data is covered by HIPAA.

“What we’re seeing is that many companies are simply using IP-filtering or otherwise asking you to verify that you are a California resident before processing any CCPA requests. What I’ve observed so far is that companies do not seem eager to extend California rights to non-California customers,” King says. She also says she is unaware of any state that has passed a genetic privacy law such as the Genetic Information Privacy Act, which was vetoed by California Gov. Gavin Newsom in September.

When contacted by the *ABA Journal*, 23andMe did not make anyone available for an interview, but it issued a statement on privacy: “All of our research is still very much opt-in and choice-based and still overseen by our independent institutional review board, which ensures we are conducting research in accordance with all legal and ethical guidelines. As stated in our privacy statement, in the event that 23andMe goes through a business transition such as a merger or acquisition by another company, customer information would remain subject to the promises made in any preexisting privacy statement.” The statement also points out that consumers are free to withdraw their consent at any time, and it states that sensitive information is encrypted, with access limited to authorized personnel only. ■

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risks truly are when the industry is only in its infancy.

Arcabascio speculates on whether a law that would protect consumers’ DNA privacy is possible. “Eleven million people have already given up their DNA, and that gives you pause,” she says. “I don’t know how much you could do to protect people who have already consented.”

Informed consent?

Favoring some sort of regulation is Katie Hasson, the program director on genetic justice at the Center for Genetics and Society in Berkeley, California.

Hasson says terms-of-service agreements are inadequate for consumers trying to protect their genetic privacy. “How many people are being asked to agree to terms of service every day?” she asks. “And once you make the privacy decision for yourself, you’re also making it for family members, and you may not even know you have these family members.”

Hasson wonders how informed the consent is that comes about as a result

of clicking “agree” on a terms-of-service website button. “23andMe says 80% of their customers consent to have their data used for research purposes, but it’s not clear how informed that consent is or whether it can be withdrawn if the data has already been used,” she adds.

Congress previously has regulated big data involving medical records by passing the Health Insurance Portability and Accountability Act of 1996. However, genetic testing is said to be beyond HIPAA’s scope since it is not applicable to direct-to-consumer testing, Hasson points out.

It would not be surprising to find that regulation of genetic testing services will lag behind their development, as happened with Big Tech. “We’re just not tackling the privacy issue,” says Jen King, privacy and data policy fellow for the Stanford University Institute for Human-Centered Artificial Intelligence. “There’s a big public appetite for acting on a range of privacy issues, and a lack of action on the part of legislatures in getting them passed.”

King notes that the California Consumer Privacy Act, which uses an informed consent model to allow con-



TECHNOLOGY

Remote Learning

The first all-virtual ABA Techshow emphasized that web conferencing tools are here to stay

BY LYLE MORAN AND
STEPHANIE FRANCIS WARD

Thanks to the ongoing coronavirus pandemic, the first-ever all-virtual ABA Techshow was held in March. Instead of crowded expo halls, packed conference rooms and in-person networking events, conferencegoers logged on to the Techshow virtual platform and watched live remote talks and panel discussions addressing various issues relating to law and technology. In addition to sessions about cybersecurity, artificial intelli-

gence, analytics and ethics, there were the usual introductory tracks showing attendees the basics of Adobe Acrobat, practice management software, Microsoft 365 and marketing. Some more forward-looking sessions examined topics such as how updating technology can allow lawyers to comply with ethical obligations, the continued growth of legal incubator programs and how automated legal reasoning could change the way laws are written.

But the proliferation of remote conferencing tools was at the forefront of Techshow, and many sessions dealt with the new reality for lawyers—one in which tools like Zoom, Microsoft Teams, Skype and others are integral, even vital parts of their practice.

In one of several sessions relating to remote practice, Pennsylvania lawyer Daniel J. Siegel cautioned lawyers working from home that family members as well as virtual assistants such as Amazon Alexa might hear confidential client conversations they shouldn't. "Working remotely, there's the potential

for eavesdropping from nosy family members," he said.

Siegel, a small-firm attorney who handles workers' compensation, personal injury and Social Security disability claims, lives with his son, who spent most of the pandemic working from home, and his wife, who would go to an upstairs room during his client calls.

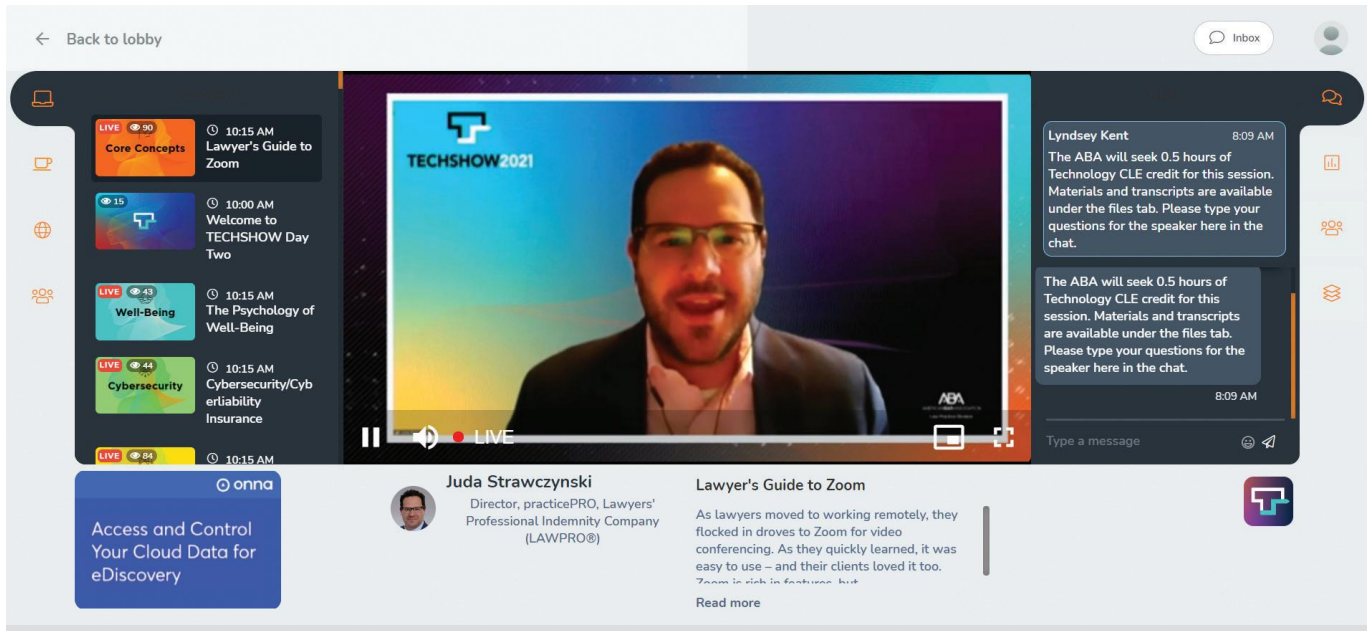
"She couldn't hear me, so that was fine," said Siegel, who serves on the council of the ABA Law Practice Division and chairs the Pennsylvania Bar Association's committee on legal ethics and professional responsibility.

In addition to avoiding client conversations in home spaces where family members can hear them and limiting or prohibiting the use of virtual assistants, Siegel suggested lawyers working remotely encrypt information sent by email; keep computer operating systems updated to avoid cyberattacks; and do their work on a virtual private network with two-factor authentication. He also recommended having a firmwide policy on what is required for working from home and making sure all employees understand it.

Another session dealt with "Zoom etiquette" and how to or how not to behave while using the popular video-conferencing tool. For instance, even if you are on mute, talking during a Zoom meeting is rude because it shows you are not listening. It's also a bad idea to drive your car while using the platform. And if everyone else has his or her camera turned on during a Zoom meeting, you should too, so work flow is not interrupted.

Juda Strawczynski, a director for the Lawyers' Professional Indemnity Company in Canada, shared these tips, which he described as "netiquette," at an event titled "Lawyer's Guide to Zoom."

"We will be using these sorts of technology well into the future because clients want it—it's cost-effective. It won't replace every face-to-face meeting, but we will use this technology going forward," said Strawczynski, who manages a claims and risk initiative for LAWPRO.



“We will be using these sorts of technology well into the future because clients want it—it’s cost-effective,” Juda Strawczynski said of Zoom.

Lawyers were also encouraged to embrace and further develop the technological and business innovations they have adopted in recent months even after the COVID-19 pandemic subsides. “We have the opportunity today to build towards that third horizon or slouch back towards that first horizon,”

said Ed Walters, CEO and co-founder of legal research company Fastcase. He urged attendees to “build the legal services and law firms of 2022, not rebuild what was broken in 2019.”

For example, Clio CEO Jack Newton pointed out that 69% of consumers prefer working with a lawyer who can share documents electronically, and more than 50% of consumers believe most legal matters can be dealt with remotely. Newton said law firms and lawyers have to a much greater degree adopted such tools during the pandem-

ic, and those who have not would be wise to do so. “This is how you will thrive in this new environment,” said Newton, author of *The Client-Centered Law Firm: How to Succeed in an Experience-Driven World*.

As technology becomes more prevalent, lawyers could play an important role in helping policymakers and industry leaders think through the various trade-offs of strictly regulating innovative technologies. Keynote speaker Renée DiResta, technical research manager at Stanford Internet Observatory, who investigates the spread of malign narratives across social networks, urged lawyers and policymakers to help counteract that problem by thinking in advance about how new technologies could be misused once they enter the marketplace.

She said this approach would help ensure “that rather than reacting, there is some thoughtful policy creation, and we are a little bit ahead of the game.” ■

Keynote speaker Renée DiResta encouraged attendees to think in advance about how new technologies could be used for nefarious purposes once they become publicly available.

