

SPECIAL REPORT

HOW A PORTLAND LAW FIRM MANAGES TO LITIGATE IN 2020

Litigators have found new, and in some ways, more efficient, ways to work on cases during Covid-19



Litigation, as much as any legal speciality, relies heavily on personal contact. During meetings, attorneys try to read each other, as well as those they're representing, in order to gain edges or forge agreements. As such, Covid-19 has put a bit of a crimp in the litigation process. To ascertain the effects, we checked in with one Portland firm, Barran Liebman LLP, which employs 24 litigators, to see how the office navigates both the pandemic and the way the legal industry addresses diversity and equity issues.

What are the key ways that COVID-19 has changed the litigation landscape?

Ed Harnden: The litigation landscape and all of its requirements have moved from a reasonably orderly, but oppressively detailed one, to one that each day seems to change due to at-home work schedules and court scheduling requirements. Depositions have moved almost entirely to Zoom or a similar base, document production has become more burdensome due to the number of key employees who need to search for material being online and not physically present to search for hard copy documents, and detailed conferences about strategy are also held via Zoom.

Early resolution channels, either directly between attorneys or clients or by the use of a professional mediator, have become more in demand, but less accessible. The court dockets have been extended, although the judges have worked exhaustively to make sure that motions can be heard and that trials can now be set (whether in person or by Zoom). In the end, it is becoming more costly and takes longer to bring a case to a close.

It seems like this form of practicing relies as much on in-person presence as any other legal service duties. How has moving it to virtual affected the dynamic of litigation?

Sean Ray: We haven't yet moved to Zoom trials here in Oregon, but trials via remote conferencing software remove the "feel for the courtroom" from the litigators. It's much harder to see what resonates with the jury as you're presenting evidence when all you have is a screen of the jurors arranged like the opening to the Brady Bunch. It can also sometimes be harder to gauge truthfulness when you just have a headshot on screen instead of a full-body live look across the courtroom.

Are there any new practices that you've adopted that you'll retain once the pandemic ends?

Shayda Zaerpoor Le: While many

of us have adjusted (perhaps grudgingly) to conducting business by video conference, there are some situations in which video meetings have improved the practice of law. Take workplace investigations, where a lawyer conducts sometimes invasive interviews with individual employees. Factors such as witness comfort, neutrality of location, privacy of conversation, separation from prying eyes of other employees and duration of travel to physical interview sites have always been important factors. Sometimes the employee is on leave or is duty-stationed from home. Sometimes employees ask me if I can meet them in a coffee shop (no, for privacy reasons) or at their house (no, that's uncomfortable).

Once the pandemic ends, I will continue offering interviews by video conference, where a witness can meet privately, discreetly, from the comfort of their own home, and without need for either party to travel long distances. I am also likely to hearken back to this period: "Remember when everyone adapted to having video meetings at home? We can still do that, if it makes you feel more comfortable to participate candidly."

How has, on the law firm side itself, working remotely affected how Barran Liebman does business?

Andrew Schpak: Fortunately, we were well-equipped to make the shift to work from home from an IT perspective, and acted quickly enough to ensure that everyone had the software and hardware they needed to operate remotely. With a few exceptions, our depositions, mediations, and court proceedings are now done via videoconference or telephone. We have a few team members come in each day to support essential operations such as mail, bookkeeping, and docketing.

What are the biggest differences in the way the firm operates now?

Schpak: We have to be more deliberate with our communications. Whereas we used to stay connected



SHAYDA
ZAERPOOR LE

Partner, employment & workplace investigations lawyer



ED
HARNDEN

Co-managing partner, employment litigation lawyer



SEAN
RAY

Partner, employment litigation lawyer



ANDREW
SCHPAK

Co-managing partner, employment litigation lawyer



PAULA
BARRAN

Co-founding partner, employment litigation lawyer

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by walking around the hallways and catching up with one another, we now need to shift to emails, videoconferences, and phone calls to develop case strategy, discuss projects, and catch up. It's an intentional act, and one we think is very important and worthwhile, to keep our culture and communication operating at a high level.

In the Portland law world, how has the recently intensified drive for racial justice affected practices?

Schpak: Many of us have taken time to stop, listen, and better educate ourselves. We have encouraged members of our firm to do the same. We are heartened to see an increase in the desire to host dialogs about racial and social justice issues within companies, while also engaging in self-reflection about how each organization can be part of the solution.

What will legal historians, in 50 years or so, say about 2020?

Paula Barran: 2020 will have been a time of radical change, much of it painful, but with some silver linings. Government, courts, law firms and practitioners realized that they did not need to be quite so tethered to real estate or physical locations, that remote work was a legitimate possibility, and that they were able to economize in ways that helped to reduce the cost of providing legal services and delivering justice.

At the same time, the 2020 pandemic highlighted vulnerabilities that we hope will have been addressed by 2070. The near-collapse of K-12 in-person education forced parenting-practitioners to make stark choices about how much, what times of day, and where they could work, which led initially to the development of a legal gig-economy which was celebrated for the freedom it delivered, but also reminded practicing lawyers why they originally joined together for training, mentoring, support, collaboration and for a socially distant hug when things are just not going the right way.