

# Lawyering in Uncertain Times

BY JAMES D. TAYLOR, JR.

IT'S A TIRED TRUISM that lawyers are creatures of habit and by nature abhor uncertainty. We're trained to identify issues, spot trouble around the corner, evaluate risks, and guide clients to their objectives within the bounds of the law. The law may change and evolve, but it rarely does so unexpectedly. Court decisions provide precedent, legislative and regulatory acts typically occur after months or more of robust debate, and the rules that guide our profession are both well-known and evenly applied. Change happens, albeit slowly, in the legal profession.

Not so during this strange time. As of this writing, three significant pieces of federal legislation have all been enacted within a two-week span and without the normal flow of legislative committee hearings, markup, and an opportunity for review and consideration before their effective dates. Combined, the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, and the CARES Act expand, create, and impose rights, opportunities, and restrictions on businesses large and small that are still being reviewed and applied. Agencies reacted with implementing regulations that could not await the ordinary notice and comment period. Businesses and institutions understandably needed to know immediately how these acts affected them and their employees and customers, and lawyers had only hours or days to absorb and begin advising on these new developments.

At the same time, states of emergency ordinarily invoked for limited duration in response to blizzards and hurricanes have taken a whole new meaning as an ever-growing list of executive and emergency orders at the state and local level (along with a federal national emergency) closed and curtailed businesses, affecting the way that all of us live and work. There is little certain or normal during this strange time.

Like most businesses, the practice of law shifted overnight. Governor Carney's emergency orders recognized law firms as essential businesses and permitted them to operate as necessary to serve their clients during this time of need. Most law firms, though, nevertheless migrated to a work-from-home platform that kept most lawyers and staff safe at home.

Courts also reacted quickly. To varying degrees, courthouses were closed, trials and hearings were postponed, deadlines extended, schedules that had been in place for years were no longer operative, and the period for bringing certain claims were extended during these emergency times.

More personally, a significant portion of my practice is devoted to representing universities, charter schools, and other entities that receive public support. As co-chair of our Firm's Higher Education Practice Group, we saw clients close their campuses, move overnight to remote learning, and move employees to a work-from-home environment. Those changes didn't come easily, and there is inevitably more change – both temporary and permanent – to come from this.



But the business of law has continued. The transition to a work-from-home environment was of course easier for some than others, though in a few short weeks lawyers who would never have worked remotely are now doing so with relative ease while providing the same caliber of service to their clients – many of whom are also working remotely. Courts not accustomed to telephone hearings are now convening by phone, others connected via video, and electronic filings (already the norm in Delaware) continued unabated.

If, as the proverb tells us, necessity really is the mother of invention, then the “new normal” may promote positive – even profound – changes in how the legal community serves its clients. Will public meetings now be more broadly streamed online? Will more court proceedings be conducted via video? Will more stockholder meetings be conducted similarly? Will more business be conducted electronically, with a permanent shift to video meetings and electronic signatures and notarization? Will more law firms adjust to a work-from-home model and reduce their needs for large offices?

I don't know. I do know, though, that whatever the challenges, Delaware is particularly well-poised to meet them. We are blessed with elected officials who understand the critical contributions Delaware's legal system makes to the state's economy, a notoriously collegial bar always ready to lend a hand, an accessible and nimble judiciary, and leaders of the

Delaware Bar focused on maintaining the principles that have enabled Delaware to keep its rightful place as a leader in legal innovation. ■



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