



# 2021 Report on the State of the Legal Market

*The Center on Ethics and the Legal Profession at the Georgetown University Law Center and Thomson Reuters Institute are pleased to present this 2021 Report setting out our views of the dominant trends that impacted the legal market in 2020 and key issues likely to influence the market in 2021 and beyond. Supporting data for this report have been provided by Peer Monitor<sup>®1</sup> and Acritas, both parts of Thomson Reuters.*

## An Extraordinary Year – Perhaps a Tipping Point

To say that the past year has been an extraordinary one for the legal market would be a gross understatement. The combined effects of a global pandemic, a serious economic downturn, social activism, and political uncertainty in the United States and elsewhere clearly make 2020 a year for the record books. It was a year in which law firms experienced unprecedented disruptions in their operations and were forced to adapt rapidly to dramatic market changes. That most firms were able to adjust to these challenges with notable success is a tribute to the innovation and resiliency of law firms and their leaders.

As 2020 ended, however, despite recent positive reports on progress in the development of vaccines and therapeutics, uncertainty persists as to the length of the pandemic-related disruptions and how many months it is likely to be before firms can return to “normal” operations. There is also considerable uncertainty and speculation as to what “normal” operations will be, even in a post-pandemic world. The latter point raises the important issue of whether 2020 may in retrospect be seen as an important inflection point for the redesign of the delivery of legal services on a broader scale.



In his best-selling book *The Tipping Point*,<sup>2</sup> Malcolm Gladwell argues for a reframing of how we think about social change. Contrary to the popular assumption that social change happens slowly and steadily over a period of time, Gladwell argues – with a metaphor that is eerily appropriate for our present circumstances – that, in many cases, change happens more like an epidemic. As he puts it, “Ideas and products and messages and behaviors spread just like viruses do.”<sup>3</sup> That means that, while the forces of change may build up slowly, it is often a single triggering event that causes the change to take hold, and that event can be of surprising origin.

Explaining in more detail, Gladwell notes that the process of change begins with “clear examples of contagious behavior” – *i.e.*, with a build-up of ideas and activities that appear to be moving in a particular direction. Once the build-up reaches a certain level, the acceleration of these behaviors can be influenced by little changes that have big effects. And, at that point, change can happen very fast. “The name given to that one dramatic moment in an epidemic when everything can change all at once is the Tipping Point.”<sup>4</sup>

<sup>1</sup> Thomson Reuters Peer Monitor<sup>®</sup> data are based on reported results from 162 U.S.-based law firms, including 45 Am Law 100 firms, 56 Am Law Second 100 Firms, and 61 additional Midsize firms.

<sup>2</sup> Malcolm Gladwell, *The Tipping Point – How Little Things Can Make a Big Difference* (2000).

<sup>3</sup> *Id.* at 7.

<sup>4</sup> *Id.* at 9.

Applying these insights to the legal market in 2020 can be instructive. For the past decade (since the Great Recession), the market for legal services has been evolving toward a different delivery model. The evidence of that evolution has been visible in the changing role and expectations of clients, changes in the pricing of law firm services, growth of competition (including from non-traditional law firms), and changes in technology. Combined, these trends — or as Gladwell might describe them, these “clear examples of contagious behavior” — have been pushing the market toward making the delivery of legal services more efficient, more predictable, and more cost effective. And they have been driving a new market reality in which law firms are no longer solely in control of their own destinies.

While many firms have implemented significant changes in response to these market forces, unfortunately many others have not. Although frequently embraced by law firm senior management, the stumbling block to real change has most often been law firm partners themselves, who have resisted trying new approaches for a variety of reasons. Arguably, the COVID-19 pandemic has exacerbated and accelerated all of these trends — and even added some new ones. The question is whether the combined effects of the pandemic may have softened partner resistance to fundamental change enough to create a tipping point in the pressures building for a significant redesign of our legal delivery systems — including law firms. As we describe in the sections that follow, evidence suggests that it well might have done so.

*“...the stumbling block to real change has most often been law firm partners themselves, who have resisted trying new approaches for a variety of reasons.”*

## Review of Law Firm Performance in 2020

Following the jolt of the Great Recession and the initial recovery from it (2007-2010), the market for law firm services performed reasonably well for a decade. During this period, law firms were able to maintain profitability at “acceptable levels” (*i.e.*, at levels that enabled them to remain competitive in the changed market) primarily by

- (i) fairly aggressively increasing rates;<sup>5</sup>
- (ii) increasing leverage by shrinking the ranks of equity partners while growing other categories of fee earners; and
- (iii) aggressively controlling costs.<sup>6</sup>

The above-described tactics led to particularly good financial performance across the market in 2018 and 2019,<sup>7</sup> and that performance continued into the first two months of 2020. Beginning in March, however, as the COVID-19 crisis began to spread, the picture changed dramatically. This can be seen quite clearly in Figure 1 on page 4 that shows the average daily demand for law firm services<sup>8</sup> per lawyer on a month-by-month basis in 2020 as compared to the averages for 2018 and 2019. As shown, while the average daily demand figures tracked the prior two-year averages fairly closely in January and February, they began to diverge significantly during March. Further, as shown in Figure 2, the drop off in demand that began in March has affected virtually all law firm practices, with the notable exception of bankruptcy and reorganization work. To provide a sense of the extent of the demand decline during the pandemic, Figure 3 shows the average daily demand per lawyer on a YTD basis for 2020 as compared to 2018 and 2019, broken out by market segment.

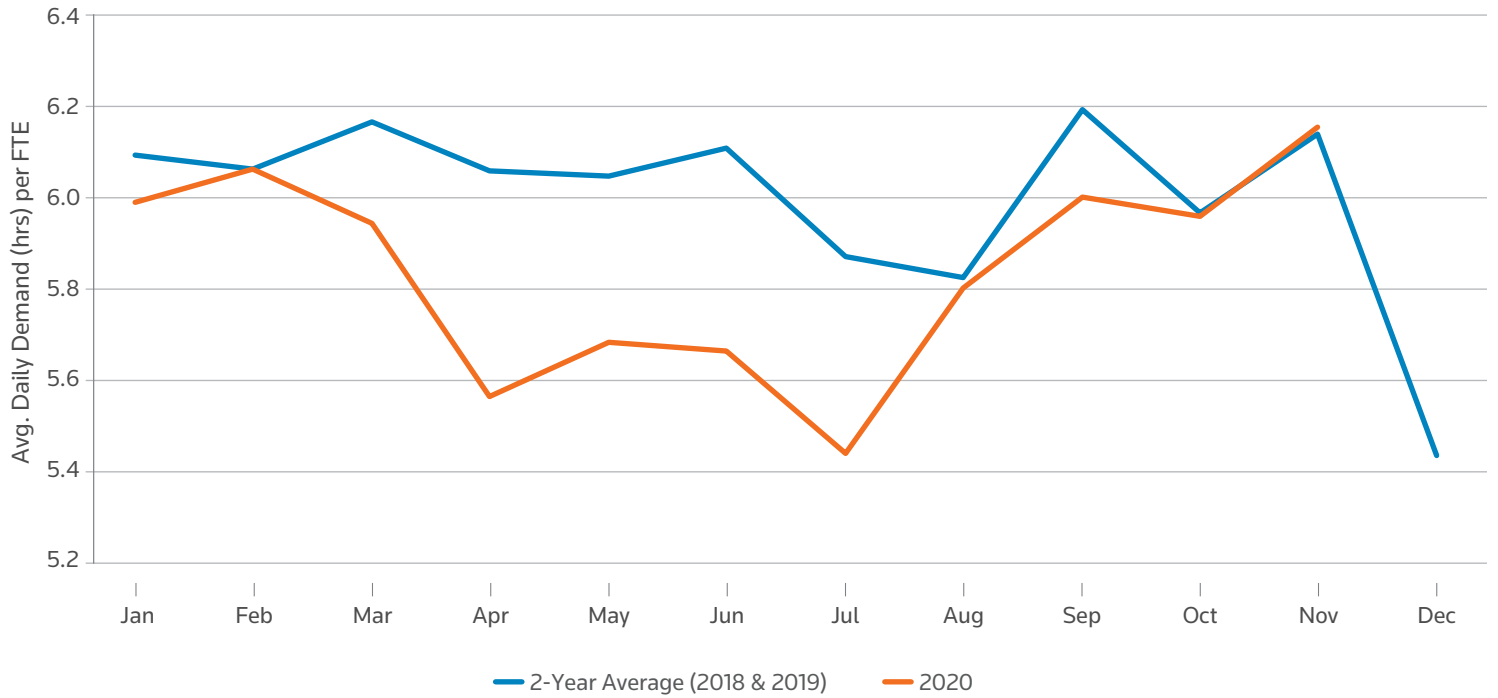
<sup>5</sup> From 2007 to 2020, average worked (or agreed) rates for law firm services rose by some 40 percent from \$374 to \$523 per hour, or just short of 3 percent per year. Source: Thomson Reuters Peer Monitor®.

<sup>6</sup> Average law firm direct expenses grew at a rate of some 18 percent in 2008, while overhead expenses grew at around 10 percent. By the end of 2019 (before the beginning of the pandemic), direct expense growth had fallen to 3.8 percent and overhead growth had dropped to 4.8 percent. Source: Thomson Reuters Peer Monitor®. For these purposes, direct expenses refer to those expenses related to fee earners, primarily the compensation and benefits costs of lawyers and other timekeepers. Overhead (or indirect) expenses refer to all other expenses of the firm, including occupancy costs, administrative and staff compensation and benefits, technology costs, recruiting costs, business development costs, and the like.

<sup>7</sup> During 2018 and 2019, law firms experienced average revenue growth of 5.5 and 5.4 percent, respectively. Source: Thomson Reuters Peer Monitor®.

<sup>8</sup> For our purposes, “demand for law firm services” is viewed as the equivalent of total billable hours recorded by law firms during a specified period.

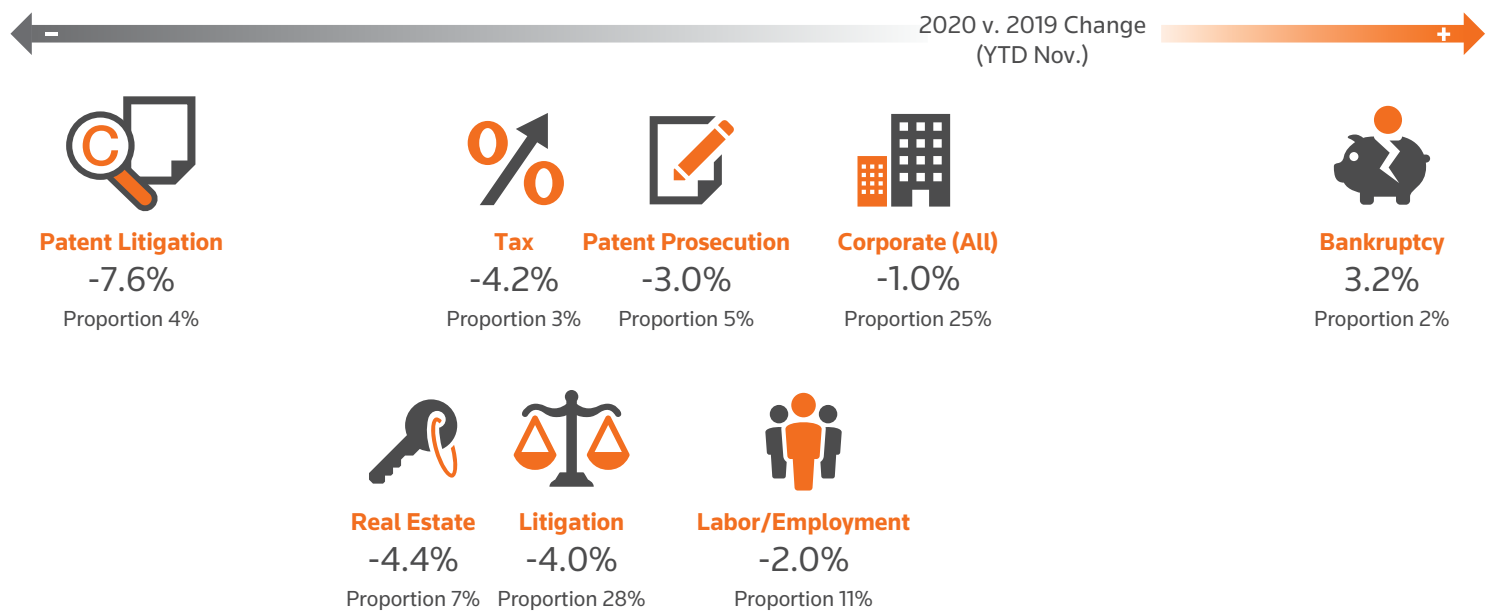
Figure 1 – Average Daily Demand per Lawyer by Month



Lawyers (contractors excluded)  
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

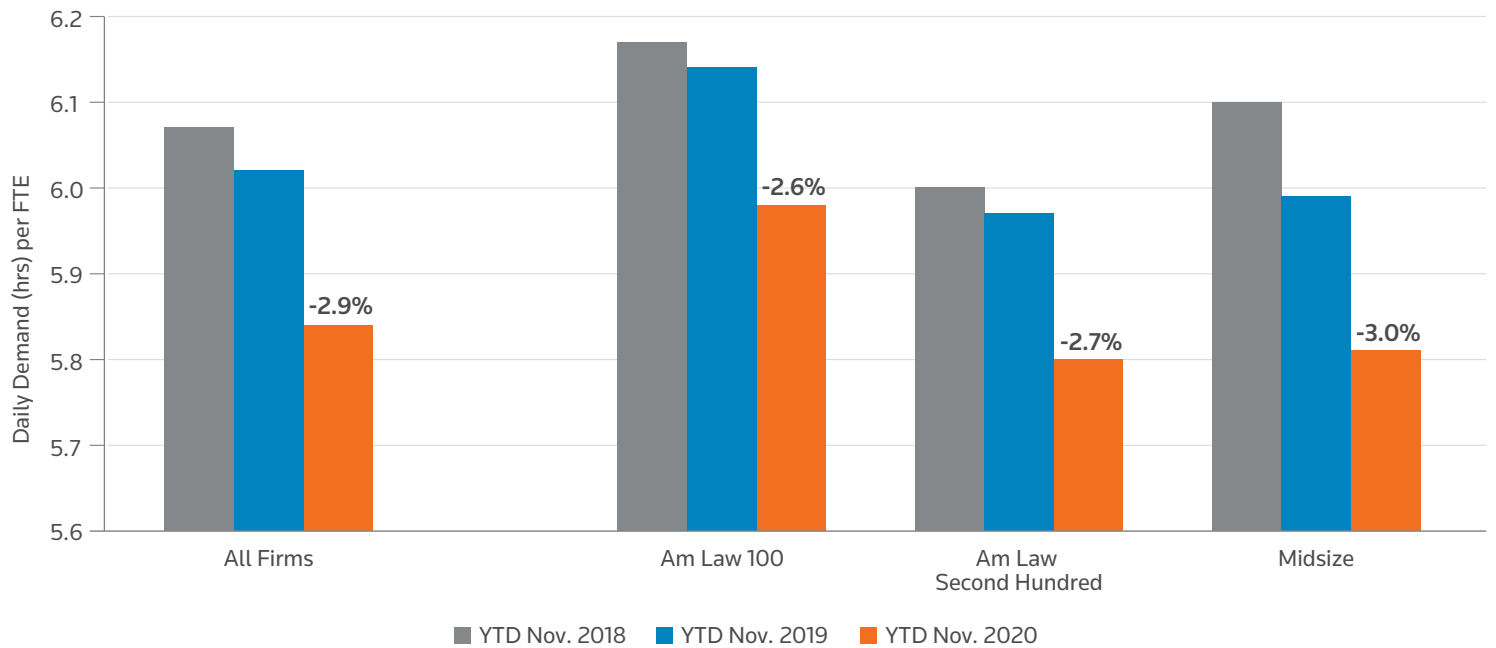
Figure 2 – Demand Growth by Practice



All timekeepers  
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

Figure 3 – Average Daily Demand per Lawyer by Market Segment



Lawyers (contractors excluded)  
 Billable time type; non-contingent matters  
 Percentages represent percent change from YTD Nov. 2019 to YTD Nov. 2020

Source: Thomson Reuters Peer Monitor®

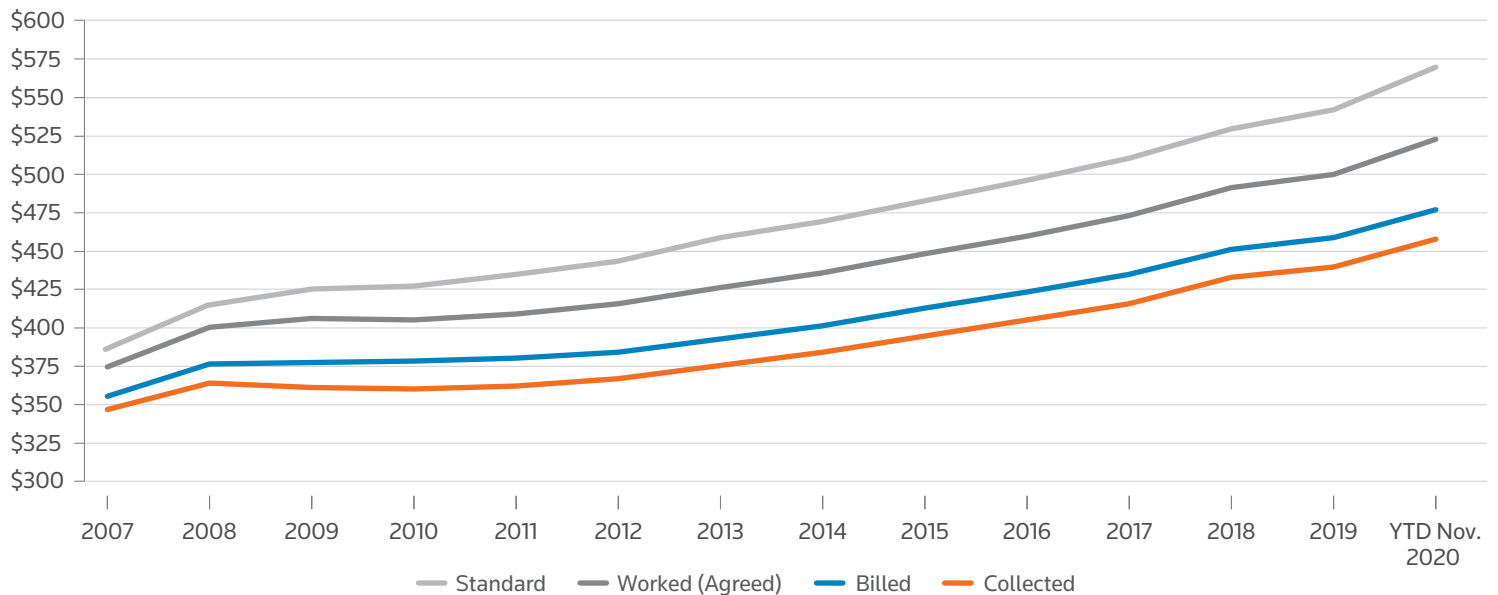
Interestingly, the drop in demand experienced by law firms was not shared by clients. In an Acritas survey of U.S. senior in-house counsel, a substantial majority reported a surge in workload resulting from the pandemic. Much of this work involved novel issues that had to be handled by in-house counsel themselves as it required an in-depth knowledge of their businesses and a very quick turnaround. As a result, some of the “business as usual” legal work of their departments – including many transactions and litigation matters – had to be put on hold. This contributed to the drop in demand for law firms.<sup>9</sup>



9 Thomson Reuters Legal Tracker, Legal Department Operations (LDO) Index (Fifth Edition, 2020) (the “LDO Index”), at 22.

As indicated in Figures 4 and 5, despite the downturn in demand, most firms were still able to increase their rates during 2020, though realization dropped somewhat. These increases were made possible in part by the fact that most of them were implemented prior to the end of 2019, before the spread of the pandemic in the United States began. Since March, many firms have also focused special attention on billing and collection efforts, with the result that (at least in larger firms) there have been significant improvements in practices such as daily time recording, weekly time reviews, timely billings, follow-ups on client payment delays, and closer scrutiny of expected collections and potential problems.<sup>10</sup>

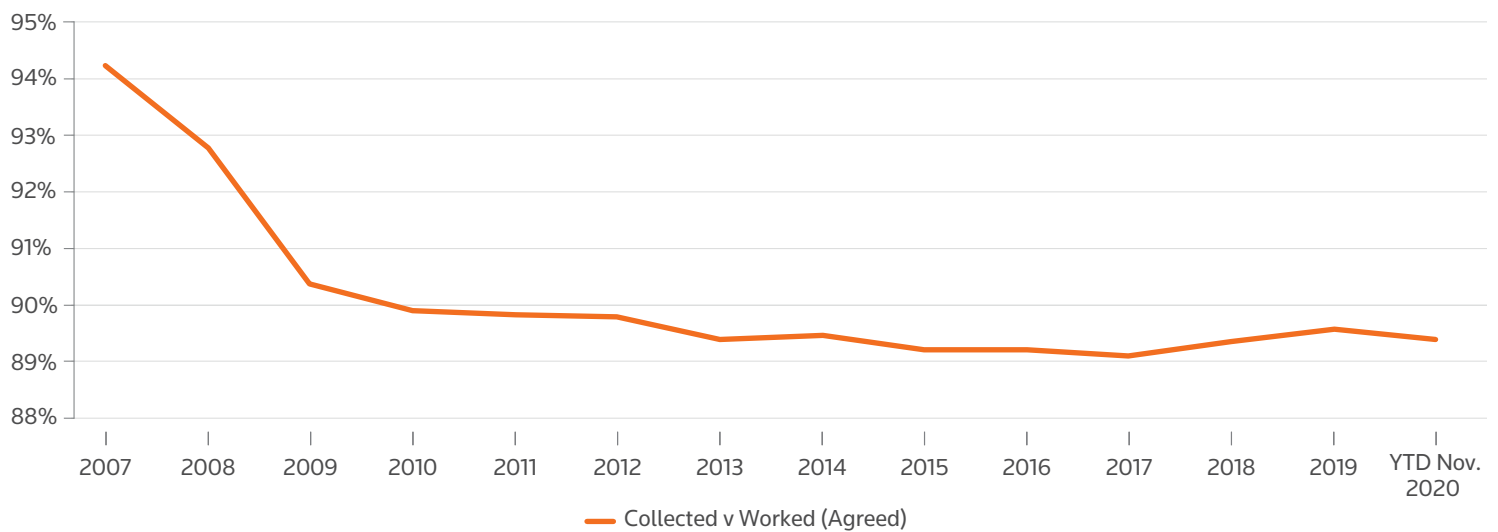
Figure 4 – Lawyer Rate Progression<sup>11</sup>



Lawyers (contractors excluded)  
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

Figure 5 – Collection Realization against Worked (Agreed) Rates



Lawyers (contractors excluded)  
Billable time type; non-contingent matters

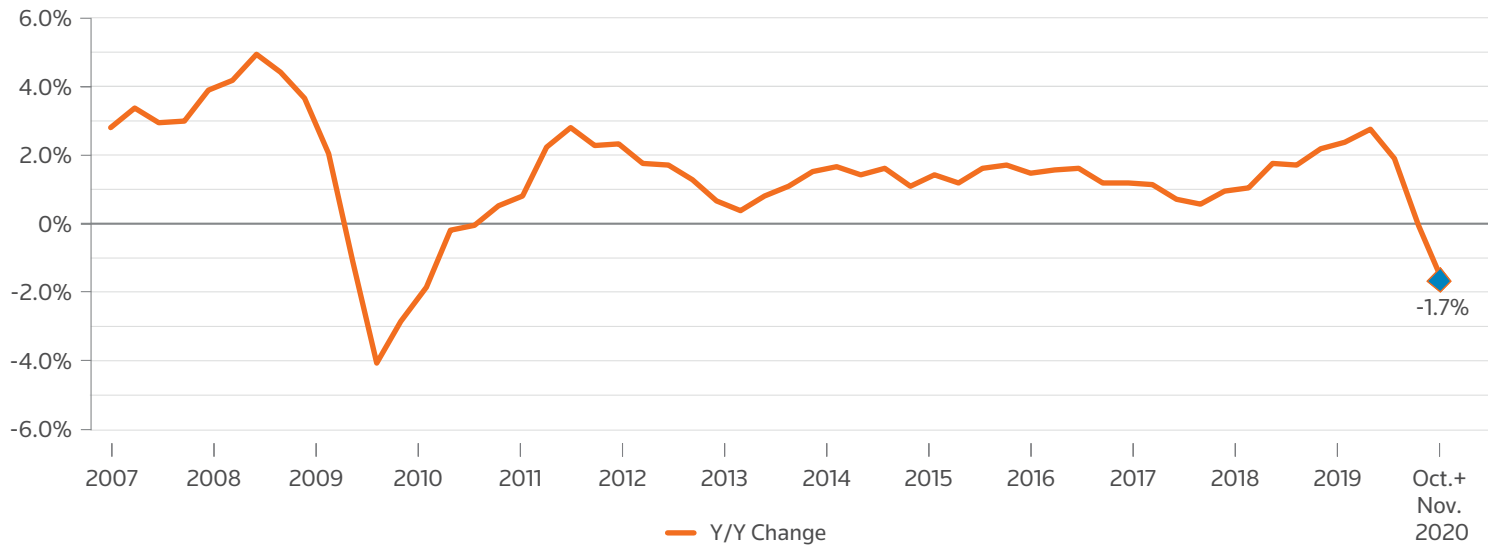
Source: Thomson Reuters Peer Monitor®

<sup>10</sup> Greta Rusanow, Head of Advisory Services, Law Firm Group, Citi Private Bank, Remarks at The 19th Annual Law Firm COO & CFO Forum (Oct. 29, 2020).

<sup>11</sup> *Standard* rates are a firm's published rates, without taking into account any discounts or adjustments. *Worked* rates, also referred to as negotiated rates, are the rates that a firm agrees to with particular clients for work on given matters. *Billed* rates are those rates that a firm actually invoices to clients, reflecting any discounts or adjustments from *Worked* rates that the firm considers appropriate. And *Collected* rates are those rates reflected in actual payments received by a firm from its clients.

As shown in Figure 6, during 2019 and the first quarter of 2020, average lawyer growth in law firms spiked up to 2.7 percent as firms enjoyed good financial performance. As the pandemic began to spread, however, firms took immediate steps to reduce lawyer headcount growth, dramatically cutting positions as they did in 2008-2009. Those actions are reflected particularly well in Figure 7 that sets out changes in the replenishment ratio by lawyer category over the past dozen years or so. The replenishment ratio compares the rate of incoming lawyers to departing lawyers in any particular category; so, any number higher than 1.0 indicates that a firm is growing headcount in that category while a number lower than 1.0 indicates the opposite. As can be seen, by the second half of 2020, law firms were actively reducing the size of their legal staffs in all categories of lawyers. Indeed, in all categories except associates the replenishment ratio had fallen to less than 1.0, and the associate ratio was close.

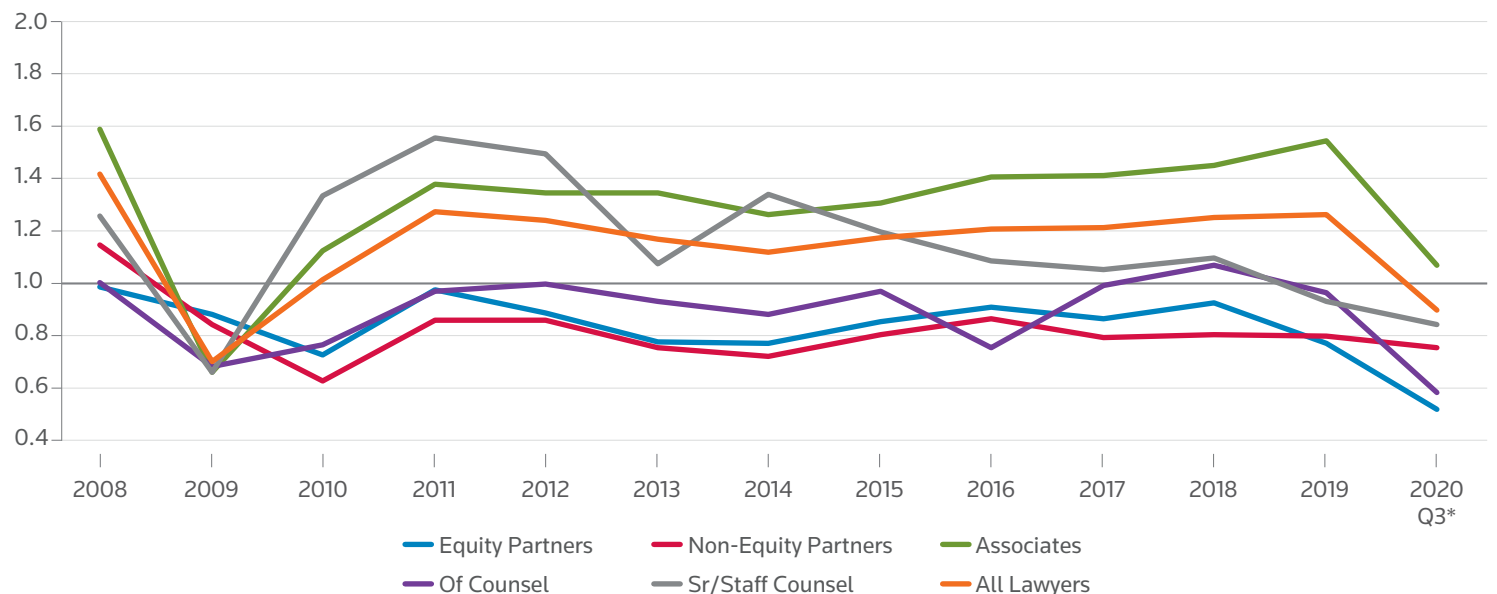
Figure 6 – Lawyer FTE Growth



Lawyers (contractors excluded)

Source: Thomson Reuters Peer Monitor®

Figure 7 – Replenishment Ratio by Lawyer Category



Rolling 12 months, through Q3 (Q4 2019-Q3 2020)

Source: Thomson Reuters Peer Monitor®

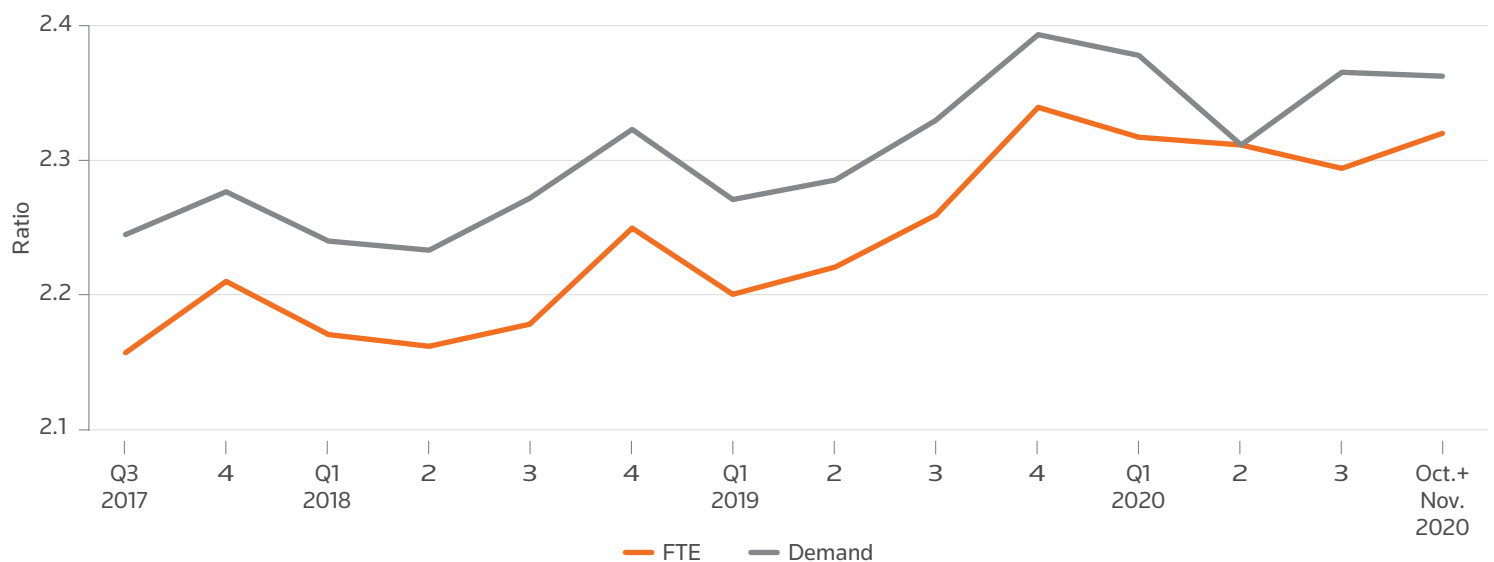
Given the aggressive steps that firms took in Q2 2020 to slow their growth, it is not surprising that merger activity among firms also slowed dramatically. After record-breaking years in 2017, 2018, and 2019 (during which there were 102, 106, and 115 law firm mergers, respectively), only 44 mergers were reported through the third quarter of 2020.<sup>12</sup>

The steps that firms took to manage lawyer and non-lawyer headcount and reduce compensation and related costs were reflected in the Thomson Reuters Law Firm Business Leader Survey completed in October 2020.<sup>13</sup> That survey showed that, in response to the pandemic:

- 46 percent of firms reduced partner draws,
- 40 percent reduced the salaries of fee earners,
- 34 percent furloughed support staff,
- 32 percent reduced the salaries of support staff,
- 36 percent discharged support staff, and
- 11 percent discharged fee earners.<sup>14</sup>

With the reductions in headcount described above – and because the cut backs in associates were steeper than the reductions among equity partners – firms reversed the upward trend in leverage (ratio of lawyers to equity partners) they had experienced during 2019. This is shown in Figure 8 below that depicts leverage in two ways – one measured by FTEs (*i.e.*, simply the ratio of the number of lawyers to the number of equity partners) and the other measured by demand (*i.e.*, by the ratio of total billable hours of lawyers to the total billable hours of equity partners). By either measure, leverage began to decline in the first quarter of 2020 but, interestingly, leverage as measured by demand ticked down to a greater degree at mid-year 2020, perhaps indicating that work previously performed by associates was being picked up by partners at that time.<sup>15</sup>

Figure 8 – Leverage (Lawyer to Equity Partner)



Lawyers (contractors excluded)  
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

<sup>12</sup> Source: Altman Weil Merger Line.

<sup>13</sup> Thomson Reuters Law Firm Business Leaders Report (Oct. 2020) (for future cross-reference purposes: ('Law Firm Business Leaders Report'). This report, which was issued in conjunction with The 19th Annual Law Firm COO & CFO Forum, set out the results of a survey conducted among non-lawyer law firm executives and business leaders (primarily COOs and CFOs) of 91 U.S. law firms. Of the respondents, 33 represented firms of fewer than 50 lawyers (called "small firms" for these purposes), while 58 represented firms of 50 lawyers or more ("large firms").

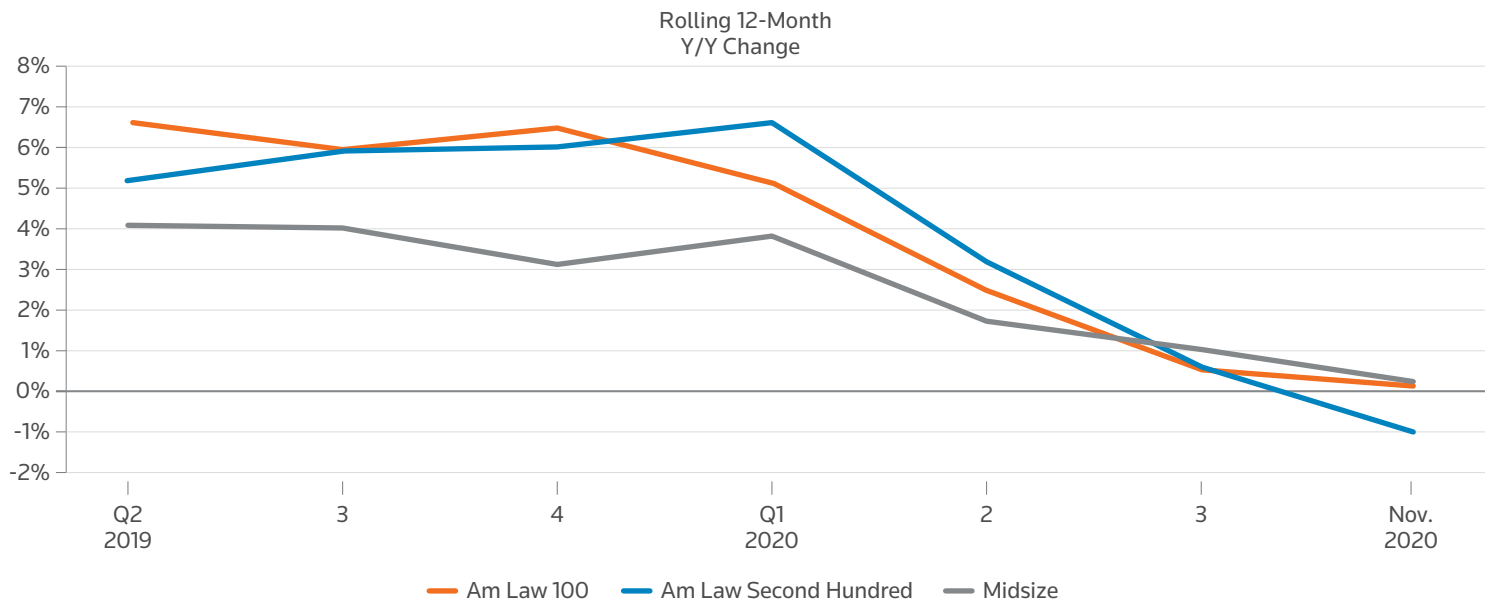
<sup>14</sup> *Id.* at 25-26.

<sup>15</sup> A finding from a recent Acritas survey of in-house counsel suggests another contributing factor to the shift in work from associates to partners during the COVID-19 crisis. Much more than in prior years, clients stressed that their choice of outside counsel turned significantly on the strengths of individual lawyers (primarily partners) in firms they had used before. It appears to be the case that, in periods of uncertainty, clients are more inclined to seek outside lawyers with whom they already have a strong and trusted relationship. Acritas Sharplegal.



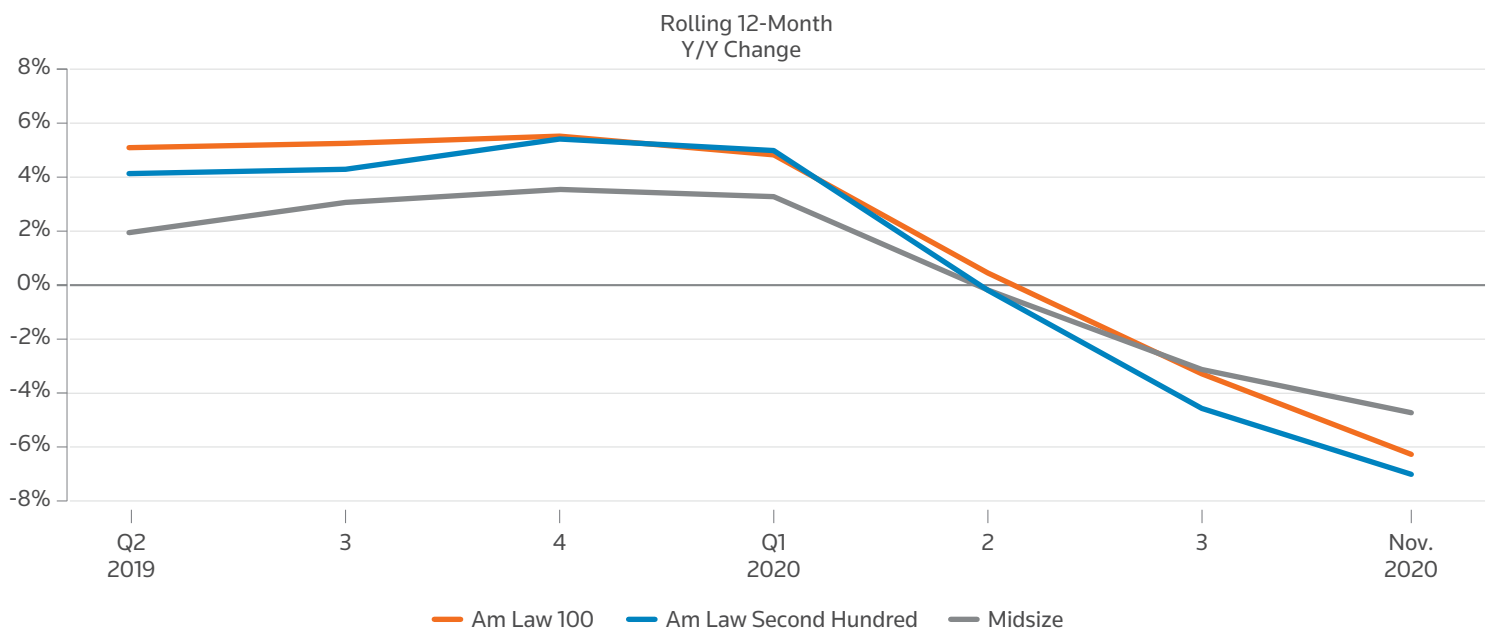
Not surprisingly, almost immediately after the scope of the COVID-19 crisis became clear in March and April, virtually all law firms imposed aggressive cost control measures. Indeed, the Law Firm Business Leaders Report showed that over 81 percent of firms stopped or significantly reduced all discretionary spending.<sup>16</sup> Figures 9 and 10 below show the effects of these actions for direct expenses and overhead expenses, respectively. Figure 11 shows more detail on overhead expense reductions, comparing 2020 to 2019 on a category-by-category basis. Figure 12 sets out the 2020 overhead expenses by category on a per lawyer FTE basis. Collectively, all of these charts indicate the dramatic expense cuts imposed across the market.

Figure 9 – Expense Growth – Direct Expenses



Source: Thomson Reuters Peer Monitor®

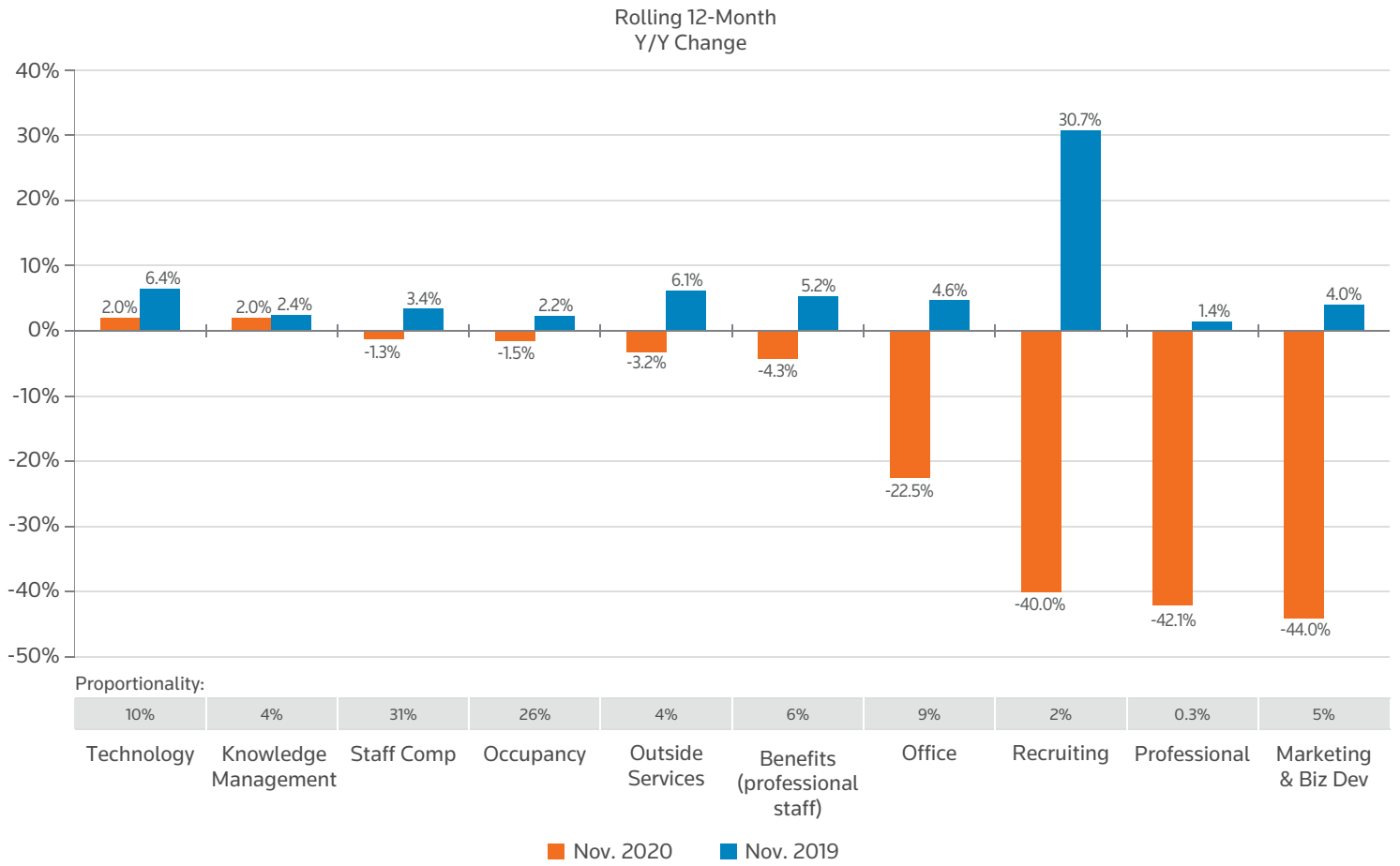
Figure 10 – Expense Growth – Overhead Expenses



Source: Thomson Reuters Peer Monitor®

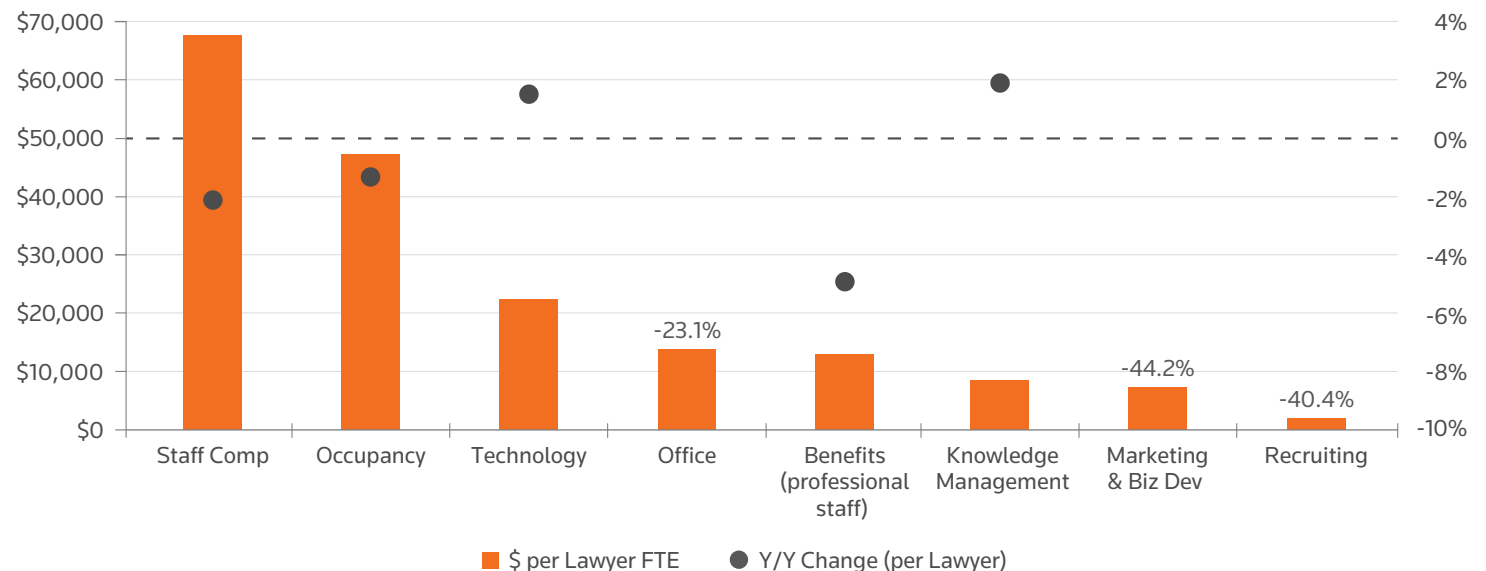
<sup>16</sup> Law Firm Business Leaders Report, at 25-26.

Figure 11 – Overhead Expense Growth by Category



Source: Thomson Reuters Peer Monitor®

Figure 12 – Overhead Expense by Lawyer FTE by Category



\*Rolling 12 months, through Nov. 2020 (Dec. 2019–Nov. 2020)

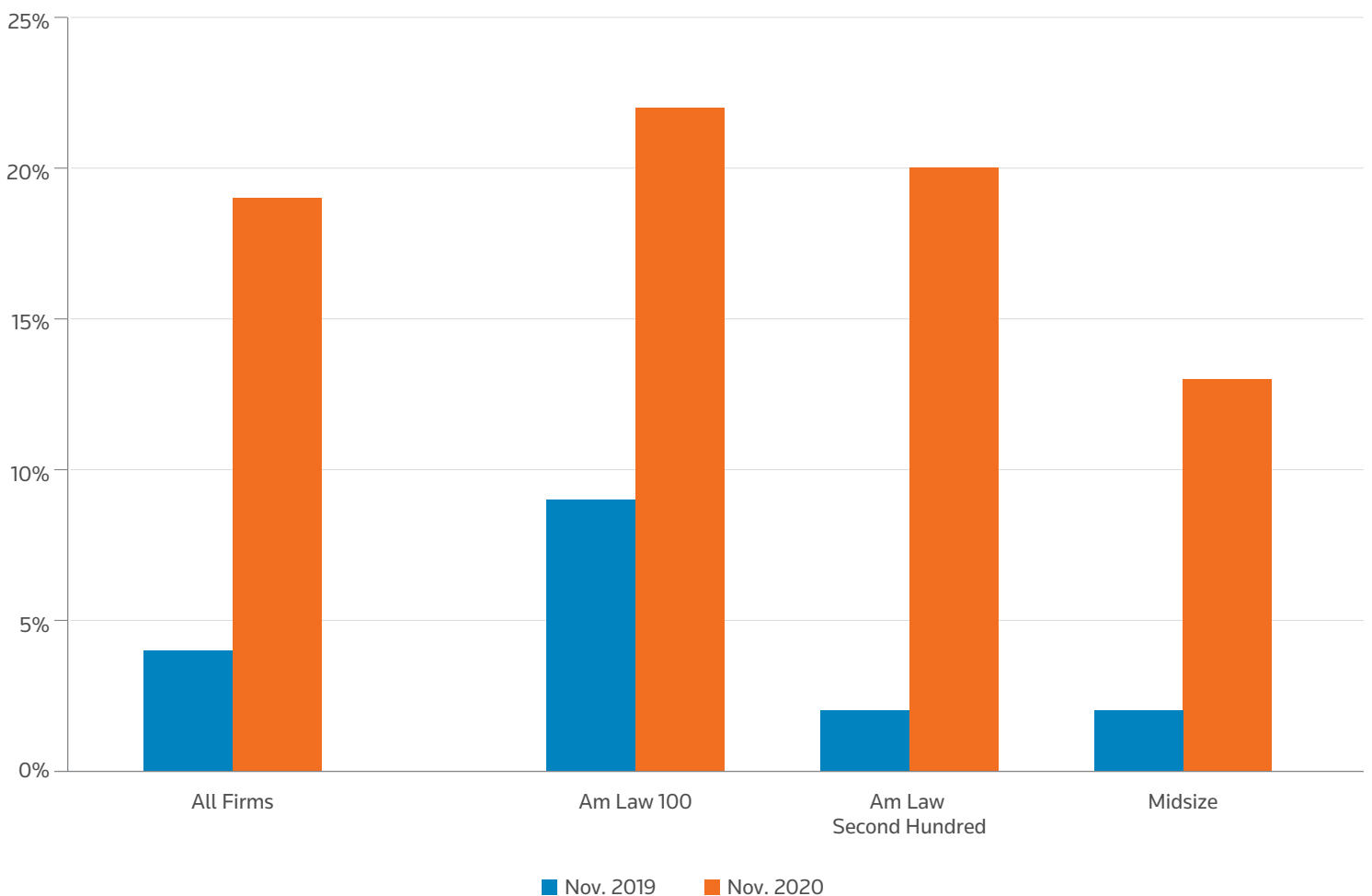
Source: Thomson Reuters Peer Monitor®

In addition to these cost cutting measures, a number of law firms also received government assistance during 2020. According to the Law Firm Business Leaders Report, over 59 percent of firms (79 percent of small firms and 48 percent of large firms) applied for and received government financial support during 2020, mostly in the form of Payroll Protection Program loans from the U.S. Small Business Administration under the CARES Act.<sup>17</sup>

As shown in Figure 13 below, the actions taken by firms during 2020, combined with the significant reductions in expenses resulting from the closing of offices and other restrictions on normal operations, resulted in very strong growth in profits per equity partner even during this turbulent and uncertain year. Indeed, all segments of the market showed significant improvement in PPEP over 2019, and it appears that all segments are likely to finish the year with PPEP growth well above 10 percent.

*“In addition ... a large number of law firms also received government assistance during 2020.”*

Figure 13 – Profit per Equity Partner Growth



Equity Partners  
Percentages represent change on Rolling 12-month basis

Source: Thomson Reuters Peer Monitor®

<sup>17</sup> *Id.*

## Effects of the Pandemic: An Uncertain Future

Unfortunately, the duration of the COVID-19 pandemic cannot be predicted with any accuracy. Although there has been promising news concerning the development of vaccines and new therapeutics, limitations remain with regard to production and distribution. Hence, it remains uncertain when the economy can return to something like normal or, indeed, what a new “normal” might even look like. Given the severe economic impact of the virus, however, it is hard to see anything like a “V” shaped recovery. It appears that most law firms expect to be returning to some version of a pre-pandemic normal during the second or third quarter of 2021.<sup>18</sup>

### LESSONS LEARNED BY LAW FIRMS FROM THE PANDEMIC

Apart from the obviously negative impacts of the COVID-19 pandemic on the legal market, it is possible to identify a number of positive lessons that law firms have learned during the past several months.

- Most firms now acknowledge that remote working – though clearly different from in-person operations – *can* work.<sup>19</sup> Indeed, the disruptions resulting from work-at-home arrangements were less serious than most firms expected. Interestingly, Acritas reports that the proportion of U.S. lawyers who now want to work remotely at least one day a week has doubled from the pre-pandemic period. While 37 percent of lawyers expressed an interest in remote work prior to the pandemic, 76 percent now favor the remote work option.<sup>20</sup>
- Partners in most firms probably now have a broader acceptance of the role of technology in the effective delivery of legal services than before the pandemic began. Indeed, 84 percent of partners surveyed by Acritas expected their firms to increase investments in technology.<sup>21</sup> This is not to say that resistance to future change will disappear, but the experience of adapting to the radically changed market conditions in 2020 may well create more openness to experimentation in other forms of service delivery.<sup>22</sup>
- Almost all firms have significantly reduced costs by making fundamental changes in their operations. These include:
  - Adapting to more efficient use of office and administrative space,<sup>23</sup>
  - Rethinking changes in staffing and work patterns,
  - Altering levels of secretarial support,
  - Reducing expectations for in-person meetings,
  - Increasing the efficiency of digital connections, and
  - Reducing business travel.

And many of these changes are likely to remain even after the pandemic ends.

<sup>18</sup> In a recent survey of senior risk managers from 74 major U.S. law firms, 40 percent predicted a return to normal in Q3 2021 and 35 percent in Q2 2021. An additional 12 percent expected to return to normal operations in Q4 2021 or later. Legal Management Resources LLC, Law Firm General Counsel Roundtables Survey on Impact of COVID-19 (October 2020) (“Law Firm GC Survey”), at 7.

<sup>19</sup> Some 81 percent of senior risk managers participating in the Law Firm GC Survey believe that a significant increase in remote working (as compared to the pre-COVID period) will remain a permanent feature of their firms’ operations. *Id.*

<sup>20</sup> Acritas also reports that more law firm partners perceived working practices to improve from remote working than to deteriorate, and a majority of partners themselves now want to work remotely at least one day a week. Acritas Sharplegal.

<sup>21</sup> Source: Acritas Sharplegal.

<sup>22</sup> Among law firm senior risk managers, 81 percent report that experience during the pandemic will cause a significant change in their firms’ technology investments and strategy over the next few years. Law Firm GC Survey, at 7. Likewise, 72 percent of large firm business leaders report that greater use of technology to cut costs will be a priority for their firms in 2021. Law Firm Business Leaders Report, at 11.

<sup>23</sup> About 72 percent of law firm risk managers believe that experience during the pandemic will cause a significant change in office and administrative space planning in their firms over the next few years. Law Firm GC Survey. Likewise, 59 percent of large law firm business leaders identify reducing real estate costs as an increased priority for 2021. Law Firm Business Leaders Report, at 11. It has been estimated that firms may be able to save as much as 3.5 percent of revenue over time from renegotiated leases. Altman Weil, Inc., 2020 Law Firms in Transition – An Altman Weil Flash Survey (May 2020) (“Altman Weil 2020 Law Firm Survey”), at iv.

- Many firms have used the time of the pandemic to focus more attention on issues of wellness, work-life balance, and the necessity of caring for their legal and administrative staffs in terms of physical safety, mental health, and training.<sup>24</sup> This has been a most welcome development and a useful reminder of the critical importance of supporting the most important asset of any firm – its people.<sup>25</sup>
- In a similar vein, many firms have found that the pandemic has served as a needed reminder of the importance of creating and maintaining a strong firm culture through renewed emphasis on the firm as an intentional and supportive community for its lawyers and staff. Indeed, leaders of a number of firms have commented on how the shared experience of the pandemic has actually strengthened their firm cultures.<sup>26</sup>
- The experiences of 2020 have also underscored the importance of sound financial practices, leading many firms to more rigorous management of timekeeping, billings, and collections. These too are habits that will hopefully outlast the current crisis.<sup>27</sup>
- And, finally, the pandemic has perhaps made firms more open to new models of practice – in terms of partnerships and collaborations with other firms and new law companies,<sup>28</sup> working more closely with their clients, implementing new reporting models, and the like – to better meet their clients’ needs for more efficient and tailored services.

### EFFECTS OF THE PANDEMIC ON CLIENTS

Challenges for corporate legal departments have also been exacerbated by the pandemic. With most corporate budgets being squeezed during a time of heightened economic uncertainty, legal departments remain under intense pressure to do more with less by improving operating efficiencies. It is hardly surprising, therefore, that controlling outside counsel costs is identified as a high priority by 89 percent of legal departments.<sup>29</sup>

Further exacerbating this pressure is the fact that many legal departments have seen their roles expand significantly in recent years with broader mandates to safeguard the business of their companies. This expansion of responsibility has accelerated under the current pandemic. Indeed, 79 percent of legal departments have reported an increase in workload due to the pandemic, and 43 percent said they had seen a change in the typical mix of legal matter types being handled by their departments because of COVID-19.<sup>30</sup>

As previously noted, the crisis management work related to the pandemic placed a huge strain on in-house resources and caused a slow down in “business as usual” work of the sort that is more often outsourced. As a result, spending for outside counsel declined, particularly in Q2 and Q3 of 2020. Moving forward, even as usual business activities return to more normal levels and outside counsel spending inevitably increases, it is likely that pandemic related budget pressures will continue to cause clients to drive efficiencies and seek more value for their outside legal spend.

24 Some 82 percent of law firm senior risk managers report that their firms have implemented new programs to assist legal and administrative staff in dealing with the mental health issues and emotional stress resulting from the COVID-19 pandemic. Law Firm GC Survey. Similarly, 80 percent indicate that their firms have provided training programs specifically designed to assist lawyers in adapting to the delivery of services on a remote basis. *Id.* And three times as many partners reported feeling a positive impact on their well-being from remote working as feeling a negative impact, though moving forward most desired a balance between working at the office and at home. Acritas Sharplegal.

25 Many observers have noted that a move toward more flexibility in working arrangements could well assist firms in achieving many of the diversity goals that they have pursued, often without as much success as they have hoped.

26 At the same time, it should be noted that a number of partners in an Acritas survey highlighted that the traditional elements of law firm culture like “presenteeism” could be obstacles in enabling remote and flexible working practices to stick. Acritas Sharplegal.

27 Among large firm business leaders, 47 percent say that implementing tighter credit controls for clients will be a priority item for their firms during the coming year. Law Firm Business Leaders Report, at 11.

28 According to the Law Firm Business Leaders Report, 59 percent of large firm business leaders report their firms either have implemented or will implement within the next year opportunities for more collaboration. Some 52 percent also say that their firms’ compensation systems either currently or within the next year will provide adequate incentives to encourage such collaboration. Law Firm Business Leaders Report, at 22.

29 LDO Index, at 6. The LDO Index includes survey data collected in June 2020 from 223 corporate legal departments, including 81 companies in the Fortune 1000.

30 *Id.* at 22. Acritas has noted that one of the changes in emphasis in legal departments since the onset of the COVID crisis has been a focus on more preventive measures such as proactively preventing disputes resulting from pandemic related issues. This is part of the expanding role of legal departments in safeguarding their companies, as described above. See Acritas and Thomson Reuters Legal Executive Institute, 2020 State of Corporate Law Departments – Effectiveness, Efficiency & Expanding the Guardian Role (2020), at 18-19.

In the LDO Index survey, legal departments were asked to identify those measures that were most effective in controlling the costs of outside counsel. Among the 223 departments responding to the survey, the following practices were cited as most effective:

- General enforcement of billing guidelines (including reductions of invoice fees and expenses as appropriate) (identified by 81 percent of respondents),
- Standard discounts on proposed timekeeper rates (e.g., 10% off standard rates) (53 percent),
- Regular reviews of budgets, with comparisons to actual spending on high-cost matters (51 percent),
- Reductions of invoice expenses (50 percent),
- Reductions of timekeeper rate increases (49 percent),
- Volume discounts (45 percent), and
- Required law firm matter budgets (42 percent).<sup>31</sup>

One of the most effective strategies for managing the costs of external services may, however, be tied to a significant change in the organization and management of corporate legal departments themselves. In recent years, an increasing number of legal departments (particularly large ones) have created legal operations staffs with the specific mission of managing the overall operations of the department – including the oversight of outside counsel. The directors of legal operations in these companies have taken an increasingly active role in the hands-on management of the relationships with external counsel.

In the 2020 LDO Index survey, 81 percent of legal departments now report having dedicated legal operations functions. That represents a 24 percent increase from 2019, when only 57 percent of companies had such capacities.<sup>32</sup> Moreover, the survey also noted that expanded use of legal operations professionals is no longer just a large company phenomenon, but one common among smaller companies as well.<sup>33</sup> The continuing expansion of this trend is almost certain to result in more detailed oversight of the work of outside counsel, as well as better internal coordination of the work of legal departments themselves and a more sophisticated use of technology.

*“One of the most effective strategies for managing the costs of external services may, however, be tied to a significant change in the organization and management of corporate legal departments themselves.”*

<sup>31</sup> LDO Index at 17.

<sup>32</sup> *Id.* at 8.

<sup>33</sup> In 2020, among small legal departments (typically companies with annual revenues of less than \$500 million), 71 percent had dedicated legal operations compared to only 44 percent in 2019. Among moderate legal departments (companies with revenues between \$500 million and \$2 billion), 81 percent had legal operations in 2020 compared to 50 percent in 2019. For medium legal departments (revenues between \$2 billion and \$10 billion), the percentages were 85 percent in 2020 compared to 70 percent in 2019. And among large departments (revenues of \$10 billion or more), the percentages were 86 percent in 2020 compared to 77 percent in 2019. *Id.*

## NAVIGATING THE WAY FORWARD

Despite the advent of effective vaccines and improved therapeutics, the pandemic is likely to continue to pose economic challenges for law firms during the coming year. First, it is not clear that the same tools used by firms to address the crisis since March will be as readily available in 2021. Some law firms may well not enter the new year with the same cash cushions they had from 2019.<sup>34</sup> It may be harder to implement the same level of rate increases at the end of 2020 that firms enjoyed at the end of 2019. It is unclear whether there will be any further government stimulus payments that could benefit law firms in 2021. And clients are likely to continue their own aggressive cost-cutting measures. All of that said, firms will continue to reap cost savings from curtailed office operations, reduced travel expenses, lower administrative costs, and the like. And those savings will certainly help offset any revenue hits they may experience.

A second reality, however, is that, even with the very successful results that most firms will probably see in 2020, certain long-standing economic challenges remain for many firms. These include issues of productivity and problems with underperforming lawyers,<sup>35</sup> challenges of recruitment and retention of top talent, and issues of billing and collections including (particularly at the present time) the prospects of late payments by clients.

Nonetheless, most law firm leaders are fairly bullish about the post-2021 market for legal services and the ability of the industry to bounce back from the current crisis.<sup>36</sup> The intriguing question, however, is whether the industry that bounces back will be the same industry that entered the pandemic this past March.



*“The intriguing question, however, is whether the industry that bounces back will be the same industry that entered the pandemic this past March.”*

<sup>34</sup> As previously noted, many firms have used the pandemic period to significantly improve their billing and collections efforts. As a result, some firms may not see end-of-year revenues that are as high as in the past.

<sup>35</sup> In the Law Firm Business Leaders Report, the 91 respondents identified “under performing lawyers” as the second highest risk facing their firms (after general economic pressures). Law Firm Business Leaders Report, at 3. In its Law Firms in Transition Survey, Altman Weil reported that, during 2019, 84 percent of all firms reported having chronically under-performing lawyers, with almost a quarter saying that they considered more than 10 percent of all their lawyers to be under-productive. Half of firms also noted that overcapacity was diluting overall profitability. Altman Weil 2020 Law Firm Survey, at 29-31.

<sup>36</sup> Participants in the Law Firm Business Leaders Report were cautious about financial prospects for 2021, with most predicting flat or low growth for RPL, PPL, and PPEP during the coming year. When asked about growth over the next three years, however, the responses were much more optimistic. Among large firms 53 percent predicted moderate growth in RPL, with 5 percent predicting high growth; 48 percent forecast moderate growth in PPL, with 9 percent seeing high growth; and 53 percent foresaw moderate growth in PPEP, with 12 percent predicting high growth. Predictions among small firm business leaders were similar. Law Firm Business Leaders Report, at 4-5.

## Has the Legal Market Reached a Tipping Point?

Since the Great Recession (2008-2009), the legal industry has gradually adjusted to a number of significant market changes. These included:

- Changes in the role and expectations of clients, as corporate legal departments assumed more direct control of all of the critical elements of law firm service delivery (*e.g.*, decisions over scope of work, scheduling, staffing, and pricing); moved to disaggregate or unbundle legal services to create “virtual firms” and partnerships with outside counsel in the management of matters; imposed budgets for major matters with caps for specified services; and introduced more competition into the outside counsel selection process;
- Changes in the pricing of law firm services, as clients increasingly made price competition a more definitive factor in the selection of outside counsel and, as noted above, imposed budgets for major matters with regular reporting and review requirements;
- Growth of competition, as clients willingly embraced non-traditional competitors for legal and related services and showed increasing willingness to move “down market” for certain types of services in order to achieve better pricing; and
- Changes in technology that have driven modifications in staffing patterns and created opportunities for performing many legal and legal related tasks in non-traditional ways.

Combined, these changes have pushed toward making the delivery of legal services more efficient, more predictable, and more cost effective. And they have driven a new reality in which law firms are no longer solely in control of their own destinies.

Over the past decade or so, a number of firms have taken steps to address this changing market for law firm services. As described in detail in our annual report last year, many firms have:

- Increased reliance on allied professionals and specialists,
- Improved their internal operating systems,
- Expanded partnering and the outsourcing of services,
- Created “captive” subsidiaries for legal related services, and
- Expanded their use of technology to improve legal work processes.<sup>37</sup>

Law firms have, up to this point, also enjoyed a safety shield of regulatory protections that have shielded them from new competitors. Over the past few years, however, these regulatory protections have eroded with the result that the legal market is now intensely competitive with a wide range of new competitors – some organized as parts of law firms and some not.<sup>38</sup>

Law firms have also benefited from the fact that their clients, like the firms themselves, are generally risk and change averse. Particularly in times of crisis or uncertainty, clients tend to gravitate to lawyers whom they know and trust or who enjoy strong reputations among their peers. In the face of persistent and mounting cost pressures, however, increasing numbers of clients are concluding that alternative approaches are effective “enough” for a majority of their legal work and are thus willing to trust other, even non-traditional service providers. This too has made the legal market vastly more competitive.

Despite these facts, however, it must be acknowledged that *most* law firms have not made significant progress in adjusting to these new competitive realities. And that is true primarily because, as characterized by Altman Weil, “most law firm partnerships don’t want to change, aren’t good at it, and by and large don’t think it’s necessary.”<sup>39</sup>

<sup>37</sup> See Georgetown Law Center on Ethics and the Legal Profession, Thomson Reuters Legal Executive Institute, and Peer Monitor®, 2020 Report on the State of the Legal Market (January 2020), at 17-20.

<sup>38</sup> *Id.*, at 15-17.

<sup>39</sup> Altman Weil 2020 Law Firm Survey, at ii.



Interestingly, for many years, law firm managing partners and others in senior leadership have mostly agreed on the need to improve work processes to achieve greater efficiency, predictability, and cost effectiveness. They have run into staunch opposition, however, from many of their partners who have stoutly resisted any significant change. This resistance may have been based on fear or a lack of understanding, or perhaps on the false assumption that clients don't care about such improvements, or perhaps on a perception that their firms do not face enough economic risk to justify serious changes.<sup>40</sup> But whatever the reasons, clearly change in law firms has been a slow-moving process.

In its most recent annual survey, Altman Weil asked law firm leaders to rank how serious they thought law firms had been during 2019 in changing their legal service delivery models to provide greater value to clients (as opposed to simply reducing rates). On a scale of 1 to 10, where 1 was "not at all serious" and 10 was "doing everything they can," 56.3 percent of respondents gave firms low marks (in the 1-5 categories), 40.4 percent gave moderate marks (6-8), and only 3 percent gave high marks (9-10).<sup>41</sup>

In the same survey, participants were asked how much law firms have actually changed over the past ten years compared to how much they needed to change. Again, on a scale of 1 to 10, where 1 was "no change, wholly inadequate" and 10 was "full adaptation as needed," 75.7 percent of respondents gave firms low marks (in the 1 to 5 categories), 22.5 percent gave moderate marks (6-8), and only 1.9 percent gave high marks (9-10).<sup>42</sup>

And finally, when asked why firms weren't doing more, 70.3 percent said because "partners resist most change efforts," 65.2 percent said because "clients aren't asking for it," 60.8 percent said because "we are not feeling enough economic pain to motivate more significant change," and 58.9 percent said because "most partners are unaware of what they might do differently."<sup>43</sup>

The interesting question is whether the experiences of law firms during the pandemic might be a sufficient tipping point to accelerate the pace of significant change in the industry and to reduce the levels of historic opposition? As Altman Weil posed the question in its annual report:

In 2020, amid a global pandemic and a stalled economy, firm leaders are presented with an opportunity for another reset – an opportunity to truly rethink what a law firm ought to be doing to meet the needs of a marketplace *that has already changed* in terms of how clients define and measure value and what they're willing to do to make sure they get it....

Will law firms respond by rethinking their methods and structures to align with clients' expectations?

History says that most will not.

Will this time be different?<sup>44</sup>

<sup>40</sup> *Id.* at vii-viii.

<sup>41</sup> *Id.* at 9.

<sup>42</sup> *Id.* at 12.

<sup>43</sup> *Id.* at 13.

<sup>44</sup> *Id.* at i.

Of course, one can identify a tipping point with certainty only *after* it happens. But there are signs that the current moment may be different and that we may in the future look back on 2020 and 2021 as the time when serious change finally accelerated in the evolving market for legal services. The evidence supporting this idea includes the following:

- The transition that firms have undergone in providing services remotely has actually gone relatively smoothly and caused far less disruption than many imagined, demonstrating perhaps that it is possible to change delivery service models in fundamental ways without triggering disastrous results.
- The fear of relying on technology so directly to facilitate the delivery of legal services (perhaps a fear that was partly generationally based) may be subsiding.
- The continuing client pressures (despite the pandemic) to receive greater value from their outside counsel may undercut at least somewhat the idea that clients aren't asking for change.
- The changes from the pandemic that may be permanent (like a shift toward more remote work) will make some degree of change inevitable.
- And many firms have been forced, for the first time, to consider significant other changes to operations during the pandemic, including:
  - Modifications of space planning and physical office scenarios,
  - New training programs for fee earners and support staff,
  - Revisions to technology strategies and investments,
  - Rethinking of marketing and business development strategies, and
  - A new focus on staff safety and well-being.

It remains to be seen whether the cataclysmic events related to the COVID-19 pandemic will indeed prove to be a tipping point for the legal industry, the time when the redesign of the legal service delivery model (both for law firms and others) firmly takes hold. It seems fairly clear, however, that – whether it is a tipping point or not – the experiences of 2020 and 2021 will accelerate important changes in the way law firms operate and relate to their clients, lawyers, and staffs moving forward. Firms that take these changes seriously and respond to them proactively will undoubtedly emerge as the market leaders in the “new” post-pandemic normal.



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