



TECHNOLOGY

Joining the Club

How lawyers are using the Clubhouse app to build their businesses and make new connections

BY LYLE MORAN

Since Francesca Witzburg left Dentons last year to join an intellectual property firm, the New York City-based attorney has used social media to help her build a client base from scratch.

One platform she has found particularly helpful with business development is Clubhouse, the audio-only app that allows users to pop in and out of

“rooms” featuring conversations about a variety of topics.

Though Clubhouse required an invitation from an existing user to enter, the platform had 10 million active weekly users and was reportedly valued at \$4 billion as of April.

Originally released in early 2020 exclusively for iPhone, an Android app was released in May.

Witzburg, through her username, @thetrademarklawyer, uses the app to speak with entrepreneurs in a wide array of industries about how to protect their brands and content. She has facilitated these conversations through hosting her own rooms, and Witzburg also has frequently partnered with online business coaches seeking to provide clients with key IP-related information via Clubhouse discussions. The various entrepreneurs listening to Witzburg’s presentations often have followed up with her afterward seeking legal assistance, she says, and the coaches have

consistently referred their clients to her as well.

“Clubhouse gives you the ability to show people your expertise, how you communicate and what it would be like to work with you, especially for service providers like lawyers,” says Witzburg, a partner at Loza & Loza.

Witzburg is among a growing number of attorneys using Clubhouse to grow their practices by making new connections with potential clients and fellow attorneys across the globe. In addition to networking and generating business, some lawyers have been active on the platform with the aim of expanding their knowledge about legal topics and a wide spectrum of other issues.

Mitch Jackson, a California-based litigator, says he was initially resistant to joining Clubhouse when some friends first told him about it because he was already active on other social media platforms and was busy running

his practice remotely. But once he gave Clubhouse a try, he thoroughly enjoyed participating in rooms with leaders from the entertainment, venture capital and sports industries, among others.

“I was connecting with people I have never had an opportunity to connect with or have never seen on the traditional social media platforms,” says Jackson, a senior partner at Jackson & Wilson in Aliso Viejo, California, who hosts the “Marketing and Social Media for Lawyers” room on the app. “Because Clubhouse happens to be probably the hottest, most popular audio-based app right now on social media, it is the place to be if you want to build out your brand, build out your digital presence and if you want to be top of mind.”

Overall, he says Clubhouse helped him build strong relationships with other users during a time in which professionals across industries were hungry for new ways of interacting due to COVID-19 and the necessity of remote working. “I’ve always felt social media platforms can come and go, but good relationships can last a lifetime,” Jackson says.

Gaythri Raman, the Southeast Asia managing director for LexisNexis Legal & Professional, says she too has found Clubhouse to be a great tool for quickly building meaningful relationships with people from around the world “who share the same values, interests, expertise and passion.” She pointed to a



California litigator Mitch Jackson

Clubhouse discussion focused on access to justice in developing countries as an example of the power of the app to bring like-minded people together from different parts of the globe.

“Just imagine that without [Clubhouse], I would have attended a conference, then would have had to speak and meet numerous people, then go through the traditional modes of introductions before even finding someone who is passionate about a topic,” Raman says. “Even then, these people I meet will be limited by geography—perhaps within my country or my region.” She adds: “The amount of meaningful connections I have made over the last two months via Clubhouse is quadruple the amount of the entire year without it.”

Meanwhile, immigration attorney Carol Williams says she frequently uses Clubhouse to listen to professionals in other industries discuss the challenges and opportunities they face. For example, Williams has joined rooms featuring human resources leaders in the U.S. and abroad discussing hot topics, such as best practices for onboarding employees. These forums also have provided Williams the chance to ask questions that could help her assist clients down the line.

“From my perspective, it is always helpful to know what the pain points are, or conversely, what you love so I can help give you more of what you love and less of what you don’t,” says Williams, founder of Williams Immigration in Coral Springs, Florida. “You have all this market research, if you will, at your fingertips.”

Always be ethical

Despite the benefits they have realized from being on Clubhouse, attorneys acknowledge that they still need to make sure they comply with their ethical obligations while using the app. For instance, Rule 1.6 of the ABA Model Rules of Professional Conduct states that lawyers must maintain client confidentiality and make “reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the



Immigration attorney Carol Williams

representation of a client.” Additionally, ABA Formal Opinion 480, which was released in March 2018, explicitly extends that duty of confidentiality to blogging, posting on social media and other online activity.

Jackson says lawyers, much as when they are using other social media platforms, need to be careful not to disclose attorney-client privileged information or improperly use someone else’s IP on Clubhouse. They also need to be clear when answering legal questions that they are doing so from the “30,000-foot level” and not giving specific legal advice. Jackson recommends attorneys refer those with pressing legal needs to follow up with them individually to set up a time for a consultation.

As for Witzburg, she says she is aware of those in the legal industry who shy away from engaging with consumers and entrepreneurs on apps such as Clubhouse because they fear they will be accused of running afoul of ethics rules. But the IP lawyer says she makes clear she is not giving legal advice and thinks lawyers need to be bolder about putting themselves out there in hopes of generating new business or connections.

“I don’t see any difference in me standing up at a city bar event or a New York State Bar event and talking about the law versus being on these platforms,” Witzburg says. “I think the same level of care applies; it’s just in a different medium.” ■



FAMILY LAW

Plan B

Probate lawyers are taking steps to secure LGBTQ+ families' rights in case Supreme Court limits them

BY DANIELLE BRAFF

It's been a bumpy road for LGBTQ+ families, and that road may become even more gnarled because there is a conservative majority on the U.S. Supreme Court.

Family law could look very different in the near future, especially for non-traditional families, who are concerned that their protections may not be as secure.

This is why many estate planners are advising that these clients create and make changes to their legal documents stat, says Matthew Erskine, managing partner and a trusts and estates attorney with Erskine & Erskine in Worcester, Massachusetts.

"Whether a reversal in the Supreme Court on *Obergefell v. Hodges* could invalidate previously obtained legal same-sex marriages is an unanswered question," says Heather Hazelwood, founder and attorney with Ampersand Law in Durham, North Carolina. "As a queer woman in a same-sex marriage,

this affects me personally as well as in my professional work."

In the past, same-sex and nontraditional couples received few of the legal protections provided to spouses in traditional marriages, says Patrick Hicks, head of legal at Trust & Will, an online estate-planning company. This complicated the ability to designate a same-sex partner for medical or financial decisions; to serve as guardian for an unadopted child; or to receive assets upon death, Hicks says. Because of the limited legal protections, it was essential for same-sex couples to prepare carefully drafted legal documents for family and estate-planning purposes.



Matthew Erskine says estate planners are advising clients with nontraditional families to secure their rights.

This changed when the Supreme Court took steps toward equalizing the legal treatment of couples. But given the uncertainty arising from the changing Supreme Court, it's very important to readdress family and estate-planning needs.

"It may also be necessary to review and update estate-planning documents to ensure the documents comply with any changes," Hicks says. "Otherwise, any unaddressed issues may be left to resolution by family court or probate court—an uncertain result in any time, but particularly so with the uncertainty surrounding the Supreme Court."

Don't let courts choose

There are many presumptions for spouses that don't apply to unmarried partners, so it's important to be explicit and clear in the documents. For example, for married spouses with children, the surviving parent might have an automatic right to care for a child after one parent dies, Hicks says. This may not apply to nonbiological parents. As a result, it may be necessary to expressly state the preference for the other partner to have custody if the biological parent dies.

Hazelwood is advising her clients to make small revisions to the documents referring to their spouse by adding in language making the intent clear: Whether the marriage is considered legally valid at the time of death, the desire of the spouse—at the time of making the document—is to be treated the same at the time of their death.

The key is drafting for flexibility so that the wills, trusts and other documents follow the clients' wishes rather than leave it to the courts to decide, Erskine says.

This includes drafting to avoid gender-specific pronouns. Ideally, Erskine recommends using the individual's name rather than a pronoun. He also suggests broadening the powers of appointment to anyone other than creditors, the estate, themselves or creditors of the estate.

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Insights with Jack Newton

What does it mean to be a “good” lawyer?

By Jack Newton

When we started Clio in 2008, cloud-based legal software was a novel concept—but massive change can take place in a hurry. For years, many law firms and legal professionals shrugged as the industry slowly but surely moved to the cloud. Then the pandemic hit, and these firms were rudely awakened.

In the years ahead, change within the legal industry will only accelerate—and for many, it’s scary. These changes may be particularly difficult for firms where a schism exists between “old school” and “new school” legal professionals; for this discussion, we’ll call them “traditionalists” and “modernists,” respectively.

This distinction between traditionalists and modernists stems from an in-depth analysis our research team conducted of law firms across North America. The study included a survey of 400 lawyers and legal professionals, and it produced a number of important findings.

For starters, traditionalists and modernists share a core similarity: They both want to be the best lawyers or legal professionals for their clients. The key distinction between them is that they differ on what being a “good” lawyer or legal professional means. Whereas traditionalists feel that good legal practice requires a more time-honored way of doing things, modernists prefer more digital methods.

From a client’s perspective, working with a traditionalist would involve in-person meetings, mailing or faxing documents, and paying by check—and working with a modernist would entail Zoom meetings, signing documents via e-signature, and paying bills by credit card online.

While the debate between old school and new school used to be a matter of preference, it’s increasingly clear that being a “good” lawyer or legal professional in the future will require a modernist approach.

As the world moves online, good legal service will entail using the right technologies to provide the best experiences and outcomes for clients. As innovative law firms become more adept at incorporating technology into their practices, they will leave the firms that rely on outdated methods behind.

If you lean toward the traditionalist mindset, you might scoff at this line of thinking—but I’d challenge you to think of things from a client’s point of view: In the future, and even now, do you really think clients would prefer to attend every office meeting in-person, sign every document by hand, and bring a checkbook with them? (Not to mention whether clients would rather get billed by the hour versus a subscription or flat fee model.)

As you might expect, modernists tend to be (but are not always) younger lawyers and support staff, and they don’t usually have the bulk of the decision-making power within law firms. This means that the people who are most excited about modernization—and the ones who are most knowledgeable about how to innovate—are not the people who are able to decide what the firm’s future will be.

Differences between traditionalists and modernists often result in problematic dynamics within firms, where innovation becomes stifled and firm profitability and client satisfaction suffer. These firms stick to the status quo because it’s comfortable, it appears to be less risky, and because their decision-makers have a different idea of what constitutes “good” legal practice.

Though this view may hold up in the short-term, in the long run, the modernist model is the evolutionary path. Just as cloud-based legal software became the norm in today’s legal industry, so too will client-centered lawyering, digital practice, and even alternative billing models become the new status quo.

To move the industry forward, we must acknowledge that these mindset differences exist—and we must have open dialogues about how the future of legal service delivery should look. These are the types of conversations we’ll be having at the Clio Cloud Conference in October, which I encourage all types of legal professionals to attend.

Both traditionalists and modernists have valuable experience to bring to the conversation—and both want to provide “good” legal representation for their clients—but the longstanding traditionalist paradigm needs to change. I believe strongly that the quicker firms can adapt strong practice fundamentals to meet modern expectations for professional services, the quicker we can create a better situation for all.

Unlike many legal situations, this one doesn’t need to be adversarial; in fact, the more constructive it is, the more all parties will benefit.

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.



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“The incorporation of POAs into documents adds flexibility to plans but requires clients to come back for more frequent periodic reviews to go over and fine-tune the implications of powers and other concerns,” he says.

The real estate deeds also need to be reviewed.

Some states, such as North Carolina, have a special real property ownership status for married couples. There, it’s called “tenancy by the entirety,” and it has three benefits: Spouses function as joint tenants with right of survivorship at the death of one owner, meaning the surviving owner automatically becomes the sole owner with no additional court processes; it provides a level of creditor protection (so one spouse’s debts can’t

attach to the value of the home); and it prevents one spouse from selling their ownership in the house without the permission of the other spouse, Hazelwood says.

“However, if a same-sex couple owns their home in tenancy by the entirety, and *Obergefell v. Hodges* is overturned, their marital ownership of the property could come into question,” Hazelwood says. If the ownership language on the deed fails, the default is “tenants in common,” which means that each owner owns a divided and separate share. This would cause any number of problems during a couple’s lifetime—and at the death of the first spouse.

“I have been advising my clients to consider changing the title to ‘joint tenants with right of survivorship’ via quitclaim deed so the surviving spouse

can maintain that automatic full ownership at the death of the first spouse without additional court processes,” Hazelwood says.

Additionally, couples should consider the makeup of their assets and their probable estate value at death. The possibility of overturning the 2015 *Obergefell* decision makes the argument in favor of using revocable living trusts in estate plans very strong, she says. This is more complex, costly and time-consuming to establish, but it has many added benefits that may be appealing to same-sex couples.

Typically, the distributions after death stay out of the court process entirely, so the validity of their marriage under the law wouldn’t be relevant.

In other words, it’s better to be safe than sorry ... always. ■



MIND YOUR BUSINESS

Bringing Home the Bacon

How law firms should approach collections for financial success

BY SCOTT BRENNAN

By many accounts, law firms got through the financial challenges of 2020 by making deep cuts to expenses. And while that strategy seems to have worked, firms have likely reduced spending as much as they can and will have to focus on other aspects of the revenue cycle to propel their recovery. As a result, collections will probably become an obsession for law firm managing partners and CFOs throughout 2021. This will be a challenge, as many law firms already struggle to maintain a healthy collections cycle even in the best of times.

According to the 2018 Clio Legal Trends Report, the utilization rate (i.e., the number of hours billed divided by the number of hours worked) for lawyers is only 30%, which means nearly two-thirds of attorneys’ work-days are spent on nonbillable hours. Furthermore, the realization rate shows that only 81% of billable hours worked are invoiced, and the collection rate averages 85%.

That’s a lot of money that should be flowing into a firm that is not. Firms are also well-known for focusing on collections in the fourth quarter rather than the whole year, which really isn’t the best approach.

But ramping up collections when a firm’s processes—and culture—have not evolved with that in mind may backfire. This is particularly the case if a firm does not already have a solid billing relationship with its clients that begins well before a letter of engagement is even signed.

Viewing collections as a gas pedal that can be pushed to pull more revenue out of clients could end up driving them away, particularly as the economic impact of 2020 continues.

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Know your clients

Even though firms might justifiably want to maximize revenues right now, doing so at the expense of client relationships is not a sustainable approach. What's needed is flexibility and empathy with a client's financial situation. There's no use collecting a large invoice immediately if doing so helps push a client into insolvency. That is not how a client-focused firm is successful, and it also makes terrible long-term financial sense.

Instead, firms would be wise to use the events of 2020 as inspiration to solve the collections puzzle once and for all.

It also pays for firms to ask themselves some questions about each client, such as:

- What is this client relationship worth to the firm over the long term?
- Is this a client we can afford to lose?
- Do we want to be known as a firm that values money over client relationships?
- How can we partner with this client to help him or her ride out these financial difficulties and make us both stronger for the future?
- What alternate arrangements can we make for payment?
- What can we afford to do in this situation?

A healthy approach

The most important thing to realize is that a healthy collections process does not start after the client receives an invoice. Rather, law firms set the stage to maximize what they collect from the very start of a client relationship. There are some specific areas to focus on in order to get this right.

Fee agreements. Having a clear fee agreement that specifically lays out how much a client will be billed, what they are receiving and payment windows goes a long way in setting the stage for healthy collections. It's also important to customize fee agreements for each client.

Clear, unambiguous language that establishes deliverables and costs not only helps the overall client relationship but also minimizes confusion as to why a client owes the amount billed on an invoice.

Invoices. Just as important as fee agreements is providing clients with bills that are easily understood and thoroughly describe the work performed. Sending a bill with just an amount due and a vague one-sentence description of services provided is just asking for a client to query it. Likewise, billing for chunks of hours using nonspecific descriptions is only going to raise eyebrows and delay payment. A clear, concise and detailed invoice should solve that problem.

Timekeeping. As noted above, law firms repeatedly leave money on the table simply because it is not properly tracked and then billed.

In addition, sloppy timekeeping leads to inaccurate invoices, annoyed questions from clients and delayed payments—not to mention the fact that this could also create an ethics headache that no firm wants. For good collections to happen, firms should foster an internal culture that emphasizes accurate daily timekeeping and use solid, user-friendly (and preferably cloud-based) software.

Client communication. For unpaid invoices, firms often leave following up with clients to someone in accounts receivable. While that is fine for the first or second inquiry, it is mostly a reminder. It's not where things should be left if payment is not received quickly. Rather, firms should employ a staged communications approach where the main relationship attorney is looped in for follow-up after one or two attempts by accounting staff. The attorney can also maintain a more personal touch to communications and weigh alternative arrangements for the client. This is also a good way to maintain and even enhance the client relationship.

Software solutions. There are software products that can assist firms in making the collections process more efficient.

A list of “must-haves” includes:

- Built-in timers.
- Automatic prompts that remind users to enter time throughout the day.
- Help for users in accounting for all billed time, including how much of their time remains to be allocated.
- Flexibility that allows users to break time blocks into subcomponents.
- Capacity for multiple timekeepers to work on a matter and use robust, customizable rate tables for clients, practice areas, offices and roles.
- Electronic bill approval.
- Automatic write-down of charges that exceed a fixed fee while still tracking hours worked.

Firms that implement all of these strategies at key moments in their client relationships are far less likely to experience problems with collections, whether in good times or bad.

Above all, it's about focusing on clients and what they need, both in terms of legal work and facilitating payment. It's also not something a firm can just reach for when cash flow is threatened. Instead, collections should be a part of the fabric of a client's experiences with the firm at every touch point.

Scott Brennan is the former CEO of Lexicon, a provider of practice management software and legal support services. This column was written before he left the company.

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