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General Session 5

**Ethics at the Kitchen Table...and in the Coffee Shop:
Navigating Ethical Issues in the New Remote Work World**

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Setting the stage

Post-COVID-19, our work lives will never be the same. We've learned that it is possible to work productively from home (albeit less so with family responsibilities, such as remote learning for our children). We've learned that those systems on which we relied (in-person court hearings and depositions, in-person notaries, wet-signed documents) are adaptable. We've also seen some of the unintended consequences of these discoveries: the shrinking office footprint, the stress on landlords from eviction moratoriums and from renegotiation of office leases, the use of *force majeure* clauses to increase bargaining power, and the stress of adapting whatever work/life balance that we had thought we'd achieved to a world in which work and home occur in the same physical space. On top of all of that, the adaptability of ethics rules to this new world has led to new challenges and new solutions. I discuss some of these issues below.

The "systems" issues

Unauthorized practice of law. In normal times, we worked where we held our bar licenses (most of the time, at least). Once the pandemic hit, many of us retreated to places outside the geographic areas designated by our bar cards. Aware of our state's version of Model Rule 5.5, we knew about subsection (a)'s general rule: "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." In particular, subsection (b) spelled out the prohibition against "establishing an office or other systematic and continuous presence" in a jurisdiction in which we were not admitted. We were also aware of the in-house counsel's safe harbor of Rule 5.5(d):

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be

based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or
(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

Why have the UPL rule? Because states need to be able to have jurisdiction over those who violate their ethics rules, and the best way to have that jurisdiction was to prohibit unlicensed practice of law. The problem, of course, is that the definition of “unauthorized practice of law” is fuzzy. Comment 2 to Rule 5.5 alludes to this fuzziness, noting that

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.

Although the definition of the practice of law is fuzzy, here’s a basic guideline: it is the application of legal principles to a client’s particular circumstances. We can distinguish this working definition from general discussions of “what the law is,” which blogs and journal articles and the like can discuss. Once a lawyer uses legal knowledge to help a client’s particular circumstances, though, that’s likely to be considered the practice of law. And states want to be able to monitor that practice.

But let’s think about that idea for a minute: *why* does a lawyer have to be physically present to give that advice? (After all, pretty much everyone reading this essay will realize that we’ve all read emails and responded to client calls while on what is loosely termed a “vacation,” even when we’re taking that vacation in a place in which we’re unlicensed.) We think about client issues while we’re on planes, flying across jurisdictions in which we’re unlicensed. We were virtual long before the pandemic. The reality of the practice of law is that it is an all-the-time, anywhere practice. But state bars were having none of that argument. That is, until the pandemic.

What happened when we moved to another jurisdiction while we hunkered down to wait out the pandemic? Our clients weren’t going to stop needing our services, and we weren’t about to sit for a bar exam to become licensed in other jurisdictions. Luckily, the American Bar Association came to our rescue (sort of). In [ABA Formal Opinion 495](#), the ABA’s Standing Committee on Ethics and Professional Responsibility made some inroads, all while hedging its bets:

If a particular jurisdiction has made the determination, by statute, rule, case law, or opinion, that a lawyer working remotely while physically located in that jurisdiction constitutes the unauthorized or unlicensed practice of law, then Model Rule 5.5(a) also would prohibit the lawyer from doing so.

Absent such a determination, this Committee’s opinion is that a lawyer may practice law pursuant to the jurisdiction(s) in which the lawyer is licensed (the “licensing jurisdiction”) even from a physical location where the lawyer is not licensed (the “local jurisdiction”) under specific parameters.

The opinion went on to develop some safe harbors:

A local office is not “established” within the meaning of the rule by the lawyer working in the local jurisdiction if the lawyer does not hold out to the public an address in the local jurisdiction as an office and a local jurisdiction address does not appear on letterhead, business cards, websites, or other indicia of a lawyer’s presence. Likewise it does not “establish” a systematic and continuous presence in the jurisdiction for the practice of law since the lawyer is neither practicing the law of the local jurisdiction nor holding out the availability to do so. The lawyer’s physical presence in the local jurisdiction is incidental; it is not for the practice of law. Conversely, a lawyer who includes a local jurisdiction address on websites, letterhead, business cards, or advertising may be said to have established an office or a systematic and continuous presence in the local jurisdiction for the practice of law.¹

¹ (Footnote omitted.) Other states have likewise developed their own advice for working remotely. For example, the [Pennsylvania Bar Association Formal Opinion 2020-300 on Virtual Practice](#) gave this advice:

The opinion goes on to say, unsurprisingly:

Comment [6] [to Rule 5.5(c)(4)] notes that there is no single definition for what is temporary and that it may include services that are provided on a recurring basis or for an extended period of time. For example, in a pandemic that results in safety measures—regardless of whether the safety measures are governmentally mandated—that include physical closure or limited use of law offices, lawyers may temporarily be working remotely.

In a second opinion, [ABA Formal Opinion 498](#), the ABA reminded us that the ethics rules of 1.1 (competence), 1.3 (diligence), and 1.4 (communication) still apply, naturally enough, to both the virtual and real practice of law. Rule 1.6 (confidentiality) created new worries for the virtual practice of law (some of which I'll discuss in more detail below)—when a lawyer shares a home with people who are not part of that lawyer's law practice, what special risks get created when the lawyer is working from home? Moreover, the supervisory rules (Rules 5.1 and 5.3) don't disappear just because the lawyers and non-lawyers who must be supervised aren't working down the hall from those who have the duty to supervise.

Confidentiality is, perhaps, the most challenging aspect of working remotely, unless the lawyer is living alone. Model Rule 1.6(c) provides: "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Imagine the chaos caused by a client whose name is "Siri" or "Alexa" (or, we guess, "Google.") Recall the relatively recent hacking episodes ([pipeline](#), [meat distributor](#), [BigLaw firm](#)) and think about what ransomware might do to your files. Even if your cloud storage is secure, it's still hackable, although companies like [Axel](#) make it more difficult to piece together confidential information. Sharing documents on platforms like Zoom is convenient, but only if the lawyer has cleared from the computer's desktop all confidential information. And speaking of clean desktops, that rule holds true for papers and other client material stored in the lawyer's home as well. Not only must confidential material be secured, but the lawyer's computer itself should be locked (password protected) when the lawyer isn't sitting right in front of it. Conversations should be in "door shut" mode.² To the extent possible, using headphones for additional security in conversations is also useful.

We have all seen the "[I am not a cat](#)" video. But we should remember the ethics issue embedded in that sad tale. Comment 8 to Rule 1.1 says:

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

At a minimum, when working remotely, attorneys and their staff have an obligation under the Rules of Professional Conduct to take reasonable precautions to assure that:

- All communications, including telephone calls, text messages, email, and video conferencing are conducted in a manner that minimizes the risk of inadvertent disclosure of confidential information;
- Information transmitted through the Internet is done in a manner that ensures the confidentiality of client communications and other sensitive data;
- Their remote workspaces are designed to prevent the disclosure of confidential information in both paper and electronic form;
- Proper procedures are used to secure and backup confidential data stored on electronic devices and in the cloud;
- Any remotely working staff are educated about and have the resources to make their work compliant with the Rules of Professional Conduct; and,
- Appropriate forms of data security are used.

² My spouse soundproofed my office door with foam squares. He has probably always wanted to do that, but the pandemic gave him a perfect excuse.

When you combine Rule 1.1 and this Comment with Rules 5.1 and 5.3, you soon realize that you can't just give your colleagues the instruction to "use this equipment at home" and hope that that instruction will satisfy your duties to manage and supervise. Some of us who are [Boomers](#) still struggle with Twitter and Instagram. We need to be trained on how to use the newest technology, and we probably need refresher courses on a regular basis.

Here's an easy example. When the world first started doing Zoom hearings, I had a hearing in Delaware. (I was a testifying expert.) When I testified, my office door was closed.³ There was nothing within the camera's view that involved confidential information. But some of the others on the hearing didn't "clean up" as easily. I saw beds (all made up, though), which struck me as odd, but I also saw documents and notes that I might have been able to enlarge. Maybe some people can intuit that the ethics rules apply even in a work-from-home environment, but the better practice is to give lots and lots of examples to your colleagues.

Technology has become our friend during the pandemic, but there have been accidents along the way. Model Rule 1.1 cmt. 8 reminds us: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject." We likely first struggled with technological competence when we learned about the necessity of scrubbing metadata. Now we need to know how to turn filters off in Zoom (so that no one has to say "I am not a cat" on a Zoom call with a court) and, apparently, we have to be reminded that [pants are not optional in court](#).

It is important for heads of departments or heads of firms to develop written policies to convey how employees can work remotely while still complying with the ethics rules. And, as I'll discuss below, compliance with those written policies must actually be monitored regularly.

The "people" issues

The other major challenge in the post-COVID world is how management develops and maintains a culture when some people will work from home even after the pandemic.

Supervision

Two ethics rules – Model Rule 5.1 (duty to supervise subordinate lawyers); Model Rule 5.3 (duty to supervise non-lawyers) – are more challenging in the virtual environment. Take a look at Rule 5.1:

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

- (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.3 mirrors this approach with respect to the supervision of non-lawyers. Taken together, both rules require "reasonable efforts" to develop systems for compliance with the ethics rules. Managers (the people who develop the organization's policy, such as a managing partner, a department head, or a general counsel) are covered by subsection (a). The lawyers who are working on a given matter as supervisors (and yes, associates can supervise

³ And, of course, I dressed for a court appearance, down to wearing the heels that no one on Zoom would see.

other associates, along with supervising paralegals), are covered by subsection (b). But every single lawyer in the organization can run the risk of ratifying unethical behavior. The safe harbor for both Rules 5.1 and 5.3 is that, if the systems are sound (the policies and procedures) and no one has knowledge of misbehavior, the organization hasn't violated these rules.

When lawyers worked together in an office, it was likely easier to pay attention to how they behaved and whether they were coloring within the ethics "lines." My former law firm had several rules to help all of us comply. We had the "clean credenza" rule, which said that nothing that a non-firm person could see while walking through the offices could show confidential material: no phone message slips (remember those?), no client documents facing up—in other words, only personal things like pictures could be on our assistants' credenzas. We met non-firm members in conference rooms, not in our offices, because conference rooms could be cleared of everything that could be considered confidential. (And because people like me are very good at reading upside down, opposing counsel invited me into their offices at their peril.) We didn't talk in elevators. We didn't valet-park or check bags with any client materials. And we locked our computers when not using them. Those are examples of systems-based rules.

Now that people are working "wherever, whenever," it is exponentially more difficult to monitor their behavior. How would a supervisory lawyer know if a mentee has turned off "Alexa"? How would a supervisory lawyer know if a mentee is working on the kitchen table, surrounded by family, while preparing for a closing? "Spot checks" are unlikely, so without systematized training and reminders, there is no good way to fulfill these two duties. And yet, we must. Some possible ways include:

- Requiring remote workers to initial, regularly, the remote-work policies.
- In drafting and disseminating those policies, have monthly updates, via Zoom or WebEx, discussing the inadvertent ways that people can violate the policies. (E.g., naming a pet "Alexa" or "Siri".)
- In those same monthly meetings, celebrate any new suggestions for how to comply that someone in the organization has developed. (This is where soundproofing an office can be discussed.)
- Pay for equipment that enhances security and is installed in someone's home, such as a work-only computer.
- Require work-from-home employees to use VPNs and other security.
- Disseminate news articles about hacking and other security risks.

You might already be doing some or all of these things, but my own research as to how humans' normal cognitive errors might be helpful here. No matter the lawyer jokes implying that we're not quite human (and I always offer \$1 to anyone who can tell me a lawyer joke that I haven't heard), we have certain ways of thinking that can cause us inadvertently to go off the rails.

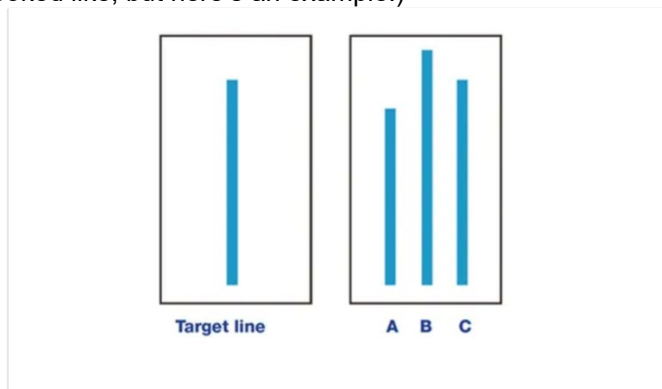
[Cognitive dissonance](#). Humans generally think of themselves as good people, so when they do bad things, their brains will come up with a rationalization of their actions. There is a famous experiment—the [Milgram experiment](#)—that illustrates this point. Milgram wanted to understand why people in Germany and Austria were willing to kill their neighbors during the Holocaust, so he developed an experiment in which two actors and one real subject were together. One of the actors was dressed up as a scientist; the other one walked in with the real subject. The "scientist" asked the other actor and the real subject to draw "teacher" or "learner" from a receptacle (but the real subject didn't know that all of the paper slips said "teacher" on them). The real subject was to administer a series of increasing electric shocks to a learner who failed in the task of memorizing word pairs. The "learner" went behind a screen to memorize those pairs. (You can see a video describing this experiment [here](#).) The box looked fancy (at least, "fancy" for the 1960s), with levers saying "15 volts"; "30 volts"; "45 volts"—all the way to "450 volts." Roughly 2/3 of the real subjects went all the way to what they thought was 450 volts (the machine really didn't go beyond 15 volts), and they heard screaming from the other side of the screen. They heard the "learner" beg to be released from the experiment. They themselves felt miserable, even while increasing the voltage for each missed word pair. But they continued. Why? Because stopping would have caused them to admit that they were wrong to have begun in the first place. How does this lesson apply to remote work? You can hear the excuses now: "I am a good person, so the reason that I worked outside on my apartment patio where my neighbors could overhear me was to be considerate of my loved ones." Sure, it's nice not to disturb loved ones. But breaching confidentiality is one of the big ethics errors.

[Diffusion of responsibility](#). No one wants to be the nail that sticks up, only to be hammered down. If someone knows of something unethical in an organization, it takes extra effort to decide to speak up, because each person assumes that someone else will do it. If someone working remotely goes to a colleague's house at which the colleague is also working remotely—and notices that the colleague has draft deal documents strewn all over the kitchen table—diffusion of responsibility tells us that the observant colleague might ask, "Why should I report

this? [Colleague X] has also seen this. That person can report it, and I can avoid being a ‘rat.’” Your organization must find ways to encourage people to (gently) call out behavior and to let management know.

That’s not easy. No one wants to be a “rat.” But behavioral economics can be your friend here. There are two books—[Nudge](#) and [Noise](#)—that are easy reads and that can help you. The idea behind both books is that there are ways subtly to encourage people to make good decisions. Neither book tries to substitute its own judgment of what counts as a “good” decision but develops ways to help people reach decisions that, in the abstract, they themselves would consider to be good decisions. So ideas like a “splash screen” that can pop up when someone logs into a work-from-home computer, with rotating messages like “are you in a secure location?” or “can anyone else see your work?” (or even “most law organizations do X or Y to protect client confidences”) can gently persuade people to behave more ethically. One of those messages could be “you have a duty to let us know if you see one of your colleagues misapplying our work-from-home guidelines.”

[Social pressure](#). We are likely to conform to our colleagues’ behavior, rather than assuming that some of that behavior is wrong. Solomon Asch had a famous experiment in which he established that it takes only a few people to change other people’s behavior. He had several actors and one experimental subject sit together in a room, and he showed them a series of cards. (In the article hyperlinked in this paragraph, you can see what those slides looked like, but here’s an example.)



The scientist, at the front of the room, would go around the room and ask each person: for each target line, which of the three lines (A, B, or C) was the same length? At first, everyone answered correctly. But as the experiment progressed, first one actor would deliberately choose the wrong line as the scientist went around the room asking for answers. The real subject, at this point, would continue to answer truthfully. But then two actors would choose the same wrong line. Then three. At around 2-3 deliberate wrong answers, the real subject would start to pick the same wrong answer. Why? When the subject was debriefed after the experiment, the two most likely answers were (1) “I didn’t want to embarrass the others” or (2) “I must have been sitting at the wrong angle.” Asch’s experiments reinforce all of you who are parents and who care whether your children play with “good” friends. Children who play with “good” friends are less likely to get into trouble after making bad choices. That’s true when we’re all grown up, too. Remember that colleague who has seen deal documents on someone’s kitchen table? That person might end up thinking, “Well, maybe it’s not so bad for me to put my own documents out where I can see them all and do my work more easily.”

There are countless cognitive errors, and these are just a few of the ones most likely to affect us as we work remotely. (For a great book that explains how cognitive errors affect lawyers, see [this one](#).) As important as supervision is, though, the nurturing of the newest members of the profession is just as crucial. Many of us on the other side of the “bifocal divide” remember the luxury of learning by watching, with our time spent watching more senior lawyers perform certain tasks. Back then, our time was either being comped to clients (in the best case) or heavily discounted (possibly more normal than purely “free” time given to clients). But the more spread-out the members of a department are, the less likely that the same amount of nurturing is taking place. Add to that the fact that the new lawyers of today aren’t being given the same types of tasks (discovery, preparing documents that will help in a closing) that we were, and there’s a real risk that, as those new lawyers become more senior, the less prepared they will be for more sophisticated tasks. Supervisors need to find a way to ensure that junior lawyers are exposed to a wide variety of tasks that will undergird more complicated work as their careers mature. Again, a systems approach is key. The more deliberate the employer is about ensuring that every junior lawyer gets a chance to build a set of skills, the more that that systematic diligence will pay off down the line.

Even before the pandemic, law firms were, on average, notoriously bad about succession planning. The right type of succession planning identifies potential talent early on, develops that talent, and provides leadership opportunities to enable that talent to decide if an administrative role might be attractive. The wrong type of succession planning is a “who’s around?” motif, which is never sustainable. Moreover, the type of succession planning is becoming more important in a world in which clients are ranking potential law firms in part on the diversity of the firms’ workforce. Again, if junior lawyers are not being given equal opportunity to develop the range of skills that they need to have as more senior lawyers, then the law firms with spotty or haphazard associate development will be more likely to lose out in future “beauty contests.”

I worry about this issue more and more as law firms face client pressure to keep bills on the low side. The training that I received as a junior lawyer enabled me to progress in my career. Each new responsibility gave me more options in life. When lawyers aren’t nurtured, they leave. (I left to become a law professor, which is an entirely different reason.) If whole swaths of people in the middle of their careers leave, then who will take over when senior management retires?

Fees

In a virtual world, the ability to monitor billing so as to keep fees reasonable (see Model Rule 1.5(a) (“A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.”)) is more challenging. The “work anywhere, at any time” world can, if not monitored appropriately, lead to overbilling. Certainly, the risk of duplication of work, assigning tasks to the wrong level of professional, excessive time spent on certain tasks, and other billing mistakes occurred when everyone was working together in an office, but the risk is heightened the more diffuse the working environment becomes.⁴

Diligence.

Rule 1.3 is pithy: “A lawyer shall act with reasonable diligence and promptness in representing a client.” But there are two Comments that are particularly apt in work-from-home situations:

[2] A lawyer’s work load must be controlled so that each matter can be handled competently.

⁴ One of us has written extensively about issues related to billing. See, e.g., Nancy B. Rapoport, *Telling the Story on Your Timesheets: A Fee Examiner’s Tips for Creditors’ Lawyers and Bankruptcy Estate Professionals*, 15 BROOK. J. OF CORP. FIN. & COM. L. 359 (2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3853962; Nancy B. Rapoport & Joseph R. Tiano, Jr., *Using Data Analytics to Predict an Individual Lawyer’s Legal Malpractice Risk Profile (Becoming an LPL “Precog”)*, 6 U. PA. J. L. & PUB. AFF. 267 (2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3760626; Nancy B. Rapoport, *Want to Take Control of Professional Fees in Large Chapter 11 Bankruptcy Cases? Talking With Your Client’s General Counsel is a Good First Step*, Harvard Law School Bankruptcy Roundtable, July 28, 2020, available at <http://blogs.harvard.edu/bankruptcyroundtable/2020/07/28/want-to-take-control-of-professional-fees-in-large-chapter-11-bankruptcy-cases-talking-with-your-clients-general-counsel-is-a-good-first-step/>; Nancy B. Rapoport, *Using General Counsel to Set the Tone for Work in Large Chapter 11 Cases*, 88 FORDHAM L. REV. 1727 (2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3591118; Nancy B. Rapoport, *Client-Focused Management of Expectations for Legal Fees in Large Chapter 11 Cases*, 28 AM. BANKR. INST. L. REV. 39 (2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541347; Nancy B. Rapoport & Joseph R. Tiano, Jr., *Leveraging Legal Analytics and Spend Data as a Law Firm Self-Governance Tool*, XIII J. BUS., ENTREPRENEURSHIP & L. 71 (2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3525660; Nancy B. Rapoport & Joseph R. Tiano, Jr., *Legal Analytics, Social Science, and Legal Fees: Reimagining “Legal Spend” Decisions in an Evolving Industry*, Georgia State Symposium on Legal Analytics, 35 GA. ST. U. L. REV. 1269 (2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3418465; Dwayne J. Hermes, Erica R. LaVarnway & Nancy B. Rapoport, *A Solutions-Oriented Approach: Changing How Insurance Litigation Is Handled by Defense Law Firms*, 2017 J. PROF’L L. 129, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3104055; Randy D. Gordon & Nancy B. Rapoport, *Virtuous Billing*, 15 NEV. L.J. 698 (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2670628; Nancy B. Rapoport, *“Nudging” Better Lawyer Behavior: Using Default Rules and Incentives to Change Behavior in Law Firms*, 4 ST. MARY’S J. L. ETHICS & MALP. 42 (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2460078.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

If a supervising attorney isn't careful, it's easy to over-assign work to someone who is working remotely. The supervisor isn't necessarily seeing the bloodshot eyes or the glazed-over look of someone who has too much to do. But the flip side is also true: there are a lot of distractions that come with working from home, and it is easy to set aside work to deal with those other distractions. Some of those "distractions" are actually equally important obligations, such as suddenly becoming an at-home tutor to children or being a caregiver for an ill relative. (Others, though, involve Netflix.) Although Rule 5.2 requires each lawyer to take responsibility for ethics rules compliance, Rules 5.1 and 5.3 still require supervising and managing lawyers to create systems to deal with these all-too-human risks.

All of these ideas are designed to help you find better ways to nudge good ethical behavior during what news articles are telling us is the new normal: there will be organizations that will require a five-day-a-week in-office presence,⁵ and there will be organizations that will allow a hybrid of working remotely and working in-office. But we also now know that the world is now infinitely more scary than it used to be. COVID-19 is not the only pandemic that we'll experience. There will be others. There will be other reasons that will cause legal organizations to pivot from in-person work to remote work.

Even beyond the scary new normal, allowing some remote work might entice your colleagues to stay with your organization, rather than leaving for a more remote-hospitable environment. If you consider the costs that go into training and mentoring your newest colleagues, certainly it is less expensive to retain good people than to have a revolving door. The conclusion, then, is that finding new ways to help keep happy colleagues is worth your while, not just from an ethics perspective but also from a business-preservation perspective.

⁵ Even though we know that we all work more than five days a week.