



Going viral

Get out of your pajamas and seize the opportunities presented by the pandemic to move cases along



Cooper

BY MILES B. COOPER

The lawyer attempted to process the changes that had occurred over the last few days. The office had closed, and everyone now worked from home. The courts had closed, and who knew what the trial backlog would look like when they reopened. Depositions weren't taking place. Mail? It got there some of the time. Practice in the times of pandemic... What would the world look like after so many people and businesses were decimated by the social isolation?

Opportunities present themselves

Imagine back in January, before all this came to pass. Think of the cases where you wanted more time to focus. Perhaps it was a more aggressive discovery arsenal, or some demand packages that needed attention. But those constant depositions, case management conferences, and mediations kept getting in the way. If only there was more time... Now shift that thinking. The slowdown can either be terrifying, and the worst thing ever. Or it can be an opportunity to dig in, ready those cases for action, build more value in ongoing cases, and move the practice forward. Change happens, and between the pandemic and related recession, great changes lie ahead. How to confront this is up to us. We can spend time cursing or creating. While a little cursing is understandable, those who invest time creating stand a much better chance on the other side. An additional benefit: the positive focus of creating, in and of itself, buoys one's spirits.

Face the future

Avoid that fear mire as best as possible. Fear is the mind killer, as Frank Herbert wrote in *Dune*. The moment one finds oneself in a fear loop, take steps to shift out of it. Take three deep breaths and shift the focus from paralyzing fear to problem solving. Start by identifying the root fear. For example, perhaps it is wanting to help one's clients and feeling stymied by the current conditions. Now that the fear is identified, consider how to overcome it. How can one help clients? By coming up with a plan for how to keep the clients' cases moving as best as possible – and being creative. Finally, create a way to move that plan forward. Smaller fear loops may crop up while building that plan. "I need to take depositions to move the case, but I can't!" For each mini-fear, run through the same process.

A little secret? The person one most admires, the fabulous lawyer that everyone wants to model a practice or even a life after? That person faces fears too. Just like all of us. Everyone does. How we address our fears determines how we succeed or fail, and in a related vein whether we choose to be happy or to be miserable.

Gloria Gaynor got it right, "I will survive..."

As consumer attorneys, we've been embattled for a long, long time. Tort actions, in some form, have existed since the 15th century. Whether it be through no-fault insurance, MICRA, disruptive technologies, budget-weakened courts, tort-reform ballot initiatives, recession-stingy insurance companies, or hard-hearted juries, our demise has been greatly exaggerated. We have and will survive. At the same time, we have survived because our bar protects itself, and adapts to change. There will be battles ahead. We need to be prepared to fight, and prepared to accept new ways to prosecute our cases.

Judge not lest ye be judged

In that same hollow where fear dwells, judgment lurks nearby. We judge ourselves. "Am I working hard enough or smart enough? Am I working too hard and ignoring those I am sheltering-in-place with?" We judge others. "Those folks are not distancing properly." "They aren't wearing masks." "They are wearing masks – they must be sick!" An unfortunate symptom of our current condition is an almost Victorian-era regression to judging others and feeling that everyone else is just simply *doing it wrong*. The energy spent judging is energy wasted. Control what can be controlled, which is ourselves. And be as friendly as possible in this most difficult time. Or, with apologies to *Hamilton's* Aaron Burr, judge less – smile more. Judging won't reopen the courts or move cases. But living in judgment will sour our interactions at a time where our limited interactions should be as joyous as possible.

Outro

Back to our lawyer, in the midst of processing the pandemic shutdown. The lawyer set a regular schedule to check in with everyone at the firm, since they all now worked from home. Together, they dug into the cases, identified and worked on points that could be shored up during the shutdown, noticed video depositions, sent out a few Formal Offers to Compromise, set some mediations, and worked the phones. And on the really, really special days, the lawyer even changed out of pajamas.

Miles B. Cooper is a partner at Emison Cooper & Cooper LLP. He represents people with personal injury and wrongful death cases. In addition to litigating his own cases, he associates in as trial counsel and consults on trial matters. He has served as lead counsel, co-counsel, second seat, and schlepper over his career, and is a member of the American Board of Trial Advocates. Cooper's interests beyond litigation include trial presentation technologies and bicycling (although not at the same time). ☒