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Florida Criminal Defense Lawyers Eyeing Civil Work? How COVID-19 is Affecting Attorney Income

Lawyers across the U.S. responded to questions about how their income, client and case intake has changed since the pandemic. Here's what Floridians reported.

By Raychel Lean | May 26, 2020



65% of Florida lawyers surveyed said their income has reduced because of COVID-19. Photo: Brian Jackson/Fotolia.

COVID-19 has already taken money from the pockets of Florida lawyers, who, according to an anonymous survey, expect things to get worse before they get better.

Two hundred and ninety-two lawyers across the U.S. responded to questions between April 1-23 about how their income, client and case intake has changed since the pandemic. That sample included 31 Florida respondents—65% of whom said their income has already decreased.

With narcotics, white-collar and fraud cases down as police make less arrests and federal agents have stopped convening grand juries, some criminal defense lawyers are looking to civil law to supplement lost income, according to Bruce Lehr of Lehr, Levi & Mendez in Miami.

For Lehr, a criminal defense attorney, jury trials are his bread and butter. Before statewide closures — expected to last until at least July 1 — there was rarely a day that didn't start with court, either in federal or state courts across Miami-Dade, Broward and Palm Beach Counties.

Lehr said it's been a bit like having the rug pulled out from under him, and it's already having a financial effect.

"I have felt it because every time that a new client comes, that is income for the future, and that has slowed down to a point," Lehr said. "But luckily, or thank God, the phones never just stopped ringing."

While Lehr said he doesn't fault anyone for making a living by switching practice areas, he's decided to wait it out.

"After fighting for years for people's liberty, I could not imagine now fighting over money. Criminal law is like a specific calling. It cries out for you to help the underdog and to take on the system. All the other laws are very important, but I could not imagine the transition," Lehr said. "If you're in a boat in very rough seas, jumping overboard is rarely the solution."

While plenty of Lehr's cases have major motions pending, they've languished for weeks as they don't qualify as emergencies, so many of his clients are "sitting in jail surrounded by COVID," being held on nonbondable offenses that would have already gone to jury trials by now.

"These people, who are innocent until proven guilty, are doing what's becoming substantial jail time before being convicted of anything," he said.

While courts have just started hearing nonemergency motions via Zoom, Lehr said most clients have so far reluctantly agreed to put off pivotal motions until he can stand before a judge and look him or her in the eye.

"Part of being a defense lawyer is having a certain presence in the courtroom, and it does not come across on Zoom," Lehr said.

New Cases are Drying up

We asked Florida lawyers how COVID-19 has impacted the number of

Lawyers Foresee a Lasting Drop in New Clients

We asked Florida lawyers how COVID-19 has impacted the number of

Requests for flexibility on rates

Equity partners at Etan Mark's Miami commercial litigation firm Mark Migdal & Hayden have stopped taking monthly draws to avoid having to layoff staff, or cut pay.

"We're just bearing the brunt of this because we are the leaders of the firm. We're all in this together, and we love our team. Right now, that's one of the ways in which we're changing to to display our leadership," Mark said. "I'm hopeful in the long term that there's not going to be an effect on our finances. I'm hopeful that at the end of this we're going to come out stronger as a team, and I know we're going to come out stronger culturally."

Though Mark said he doubts there'll be a decline in business disputes over the coming months, he does expect clients to pay special attention to fees and payment plans.

"This is a time for empathy. This is not the time to call up your client every day and ask them, 'Where's the check?' " Mark said. " I think you're going to see a request for a lot more flexibility from clients on things like fee structure, rates, deferred payments and things like that because this all really just trickles down to the client's pocketbooks."

In Mark's view, firms that specialize in corporate transactions could be in for a rough year as some of his corporate peers have said they don't expect anymore big merger and acquisition deals in 2020.

Among the 20 Florida survey respondents who quantified the amount of income they've lost, one quarter said they had lost more than half of their income, while another quarter reported losing between 21 and 30% of their earnings.

But Mark remains optimistic, believing legal professionals will come out of this pandemic "a little bit leaner, a little bit stronger, a little bit hungrier and, I think, more client-focused."

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Statewide shutdowns haven't been bad news for everyone. Robert Harvey says he's seen an increase in new cases and clients at Jenks & Harvey in West Palm Beach, which specializes in securities litigation and arbitration for plaintiffs and defendants — particularly potential plaintiffs who've lost out because of stock market drops.

"Whenever there's stock market volatility or losses like there have been, that generates a lot of activity in our space, on either side," Harvey said.

That said, Harvey is expecting a possible decline in future income, particularly because South Florida isn't opening up quickly as the rest of the state and "There's only so much you can do by Zoom."

"We can do a lot of the upfront and discovery work on cases, but when it comes time for a hearing that's when you're having a problem," Harvey said. "Because if you're a plaintiff, the leverage that you have is an upcoming trial or an arbitration. That's what gets the other side more keen to talk about settling a case. Plaintiffs who don't have that option anymore, those cases are going to be continued or not going to be settled, and that's a problem."

Likewise, Harvey noted, many defense litigators make much of their money through lengthy jury trials, which are no longer happening.

Until then, Harvey's firm is spending more time reaching out to clients over the phone.

"But it's a delicate balance," Harvey said. "You want to stay in touch but not be a burden. And believe me, when clients have a problem, they get ahold of us."

Meanwhile, 61% of survey respondents said they were getting fewer contacts from new clients, while 52% still expected fewer contacts in the future.

Boca Raton solo practitioner Mark Osherow said his income has stayed about the same, thanks to judges transitioning online, but he's also started advertising for mediations and arbitrations as well as his usual business litigation work.

"I haven't really found my practice has been suffering yet. I hope it doesn't," Osherow said. "It seems like I'm moving my cases and new ones are coming in, and it seems that absent of jury trials, which in my practice don't happen that often, that things are being allowed to move forward."

And like Mark in Miami, Osherow said he expects clients might be concerned about paying fees.

"If you have a significant bill, I think it's important to just facilitate the payment if they're not going to pay all of it, then they pay some of it. I think it's a two-way street," Osherow said. "So far it's been pretty good, but there's definitely some concern about that by all lawyers."

Though it's still early days, Osherow says he believes the legal industry's quick pivot to remote technology has and will soften COVID-19-related blows.

"Litigation seems to be moving forward, for the most part," he said. "Even some of the old-timers here are embracing technology."

Infographics created by Tim Schafer.

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