As corporate clients emphasize ESG, law firms should be leading the pack

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Environmental, Social, and Governance (ESG) has gone from a ubiquitous corporate buzzword to a critical consideration for companies looking to remain competitive in a marketplace that is pushing for more social and ethical accountability. The "E" component of ESG — the environmental and sustainability concerns — loom particularly large in the social collective consciousness following two years fraught with natural disasters and public health concerns.

As the values and standards of the purchasing public change, companies must adapt. Environmentalism is not a hobby for a niche group of tree-huggers or whale-savers — it's a corporate responsibility that customers and clients are beginning to expect on a routine basis. For law firms, this means that the time to start formalizing their own ESG strategies is now.

Impending legislation and regulatory considerations

Because there are as of yet no universal mandatory ESG reporting requirements for corporate entities, ESG reporting is largely voluntary and consequently inconsistent. A variety of third-party disclosure frameworks — such as the Greenhouse Gas (GHG) Protocol; the Task Force on Climate-Related Financial Disclosures (TCFD) framework, the Global Reporting Initiative (GRI); and the Carbon Disclosure Project (CDP) — provide guidelines for companies that choose to report on ESG. However, the absence of a single standardized framework can make it difficult to compare metrics across companies.

Efforts to create more formal, centralized frameworks are in the works. In June of 2021, the House of Representatives approved the Corporate Governance Improvement and Investor Protection Act (H.R.1187) (https://bit.ly/3DRcFwl) which, if enacted into law, would require the Securities and Exchange Commission (SEC) to mandate the disclosure of standardized ESG metrics from securities issuers.

SEC Chair Gary Gensler further remarked (https://bit.ly/3pLgpuh) in July 2021 that he had asked SEC staff to develop a "mandatory climate risk disclosure rule proposal" which would require public reporting companies to adhere to a standardized ESG disclosure framework.

Climate action as a whole has been prominently featured on international agendas this year as well. With the United States' rejoining of the Paris Agreement (https://bit.ly/3ybWYyz) in early 2021, the country resumed its pledge to help limit the global average temperature rise to 1.5 degrees Celsius above pre-industrial levels.

The recent U.N. Climate Change Conference of the Parties (COP26) (https://bit.ly/3pBngpU), which took place in Glasgow from Oct. 31 to Nov. 12, further outlined steps to meeting this target, specifically through cutting methane emissions, reducing the use of coal, and curbing deforestation. Additionally, COP26 announced the creation of the International Sustainability Standards Board (ISSB) (https://bit.ly/3EKnUHZ) that will pursue the development of a "comprehensive global baseline of sustainability-related disclosure standards."

If nothing else, the current flurry of ESG-related activity at virtually all regulatory levels should signal to law firms that they need to start getting their own houses in order. Besides the anticipation of forthcoming regulatory and legislative requirements, prioritizing ESG initiatives can benefit firms in a variety of ways.

Correlation between ESG and financial performance

In the course of pursuing environmentally conscious policies, "doing good" and "doing good *business*" are often one in the same.

Take for example a meta-analysis (https://bit.ly/3lyGxky) conducted by the NYU Stern Center for Sustainable Business and Rockefeller Asset Management that looked at over 1,000 studies conducted between 2015 and 2020 that examined the relationship between ESG and financial performance. The meta-analysis revealed that 58% of corporate studies focusing on operational metrics found a positive relationship between ESG initiatives and financial performance. Studies that narrowed their focus to the environmental portion of ESG (specifically, the mitigation of climate change through low-carbon strategies) found that companies managing for a low-carbon future had improved financial performance, with 57% of the analyzed studies finding a positive relationship between the two.

The analysis cites certain ESG-related mediating factors as the primary mechanism driving better returns. Firms that implemented sustainability strategies were seeing improvements in areas such as innovation, operational efficiency, risk management, stakeholder relations, and firm reputation, which in turn was driving better financial results. The analysis also concluded that "improved financial performance due to ESG becomes more marked over longer time horizons." In other words, investment in ESG initiatives was more likely to drive positive returns when enacted over prolonged periods of time.

Perhaps one of the most important takeaways from the meta-analysis was the determination that simply disclosing ESG metrics — without an accompanying strategy for actually boosting ESG performance — did *not* improve financial returns. This suggests that companies must complement measuring and reporting efforts with material actions addressing ESG issues if they want to reap the eventual financial benefits.

Evolving client and stakeholder expectations

Law firm clients and their in-house counsel are looking more closely at the sustainability of the firms they retain. While this may be in part due to increasing ethical concerns, it is also largely the result of these companies being spurred to re-evaluate their own supply chains and vendors amidst growing awareness and pressure from stakeholders (e.g., investors, employees, consumers, etc.).

ESG can also be part of the formula for attracting and retaining talent, especially younger generations of attorneys and staff. In the same way that many potential new hires are now routinely asking questions around diversity, equity, and inclusion, many are also beginning to inquire about firms' environmental policies. Having a clearly stated and well thought out ESG strategy can help to differentiate firms vying for up-and-coming, socially conscious talent.

What law firms can do

For law firms looking to improve their environmental impact, the first step is taking stock of what their current footprint is. This is most commonly done through carbon accounting which measures the greenhouse gas emissions a company produces both directly and indirectly. For purposes of accounting, the Greenhouse Gas Protocol (https://bit.ly/3lDeXm0) categorizes emissions into three separate categories called "scopes":

	Scope	Description	Examples
	Scope 1	Direct emissions from sources owned/controlled by the company	Company-owned vehicles, fuel combustion (e.g., boiler, furnace, etc.)
	Scope 2	Indirect emissions from purchased electricity	Heating, cooling, electricity
	Scope 3	All other indirect emissions; upstream & downstream	Production & transportation of purchased goods, business travel, waste disposal

According to the 2021 ACC Chief Legal Officers Survey (https://bit.ly/3yec1rw) conducted by the Association of Corporate Counsel and Exterro, 65.8% of Chief Legal Officers believe that a focus on ESG will accelerate, as compared to 52.3% of CLOs who indicated the same last year.

As part of clients' supply chains, law firms factor into a company's total carbon footprint and environmental impact, even if indirectly. Many clients are now asking for sustainability credentials or requesting information on law firms' ESG policies in order to remain compliant with their own reporting requirements, whether self-imposed or mandated by a third party. In a 2021 Landscape Survey conducted by the Law Firm Sustainability Network (https://bit.ly/3pHLkaH), 87% of responding law firms indicated that they had received requests for proposals that included the firm's environmental efforts.

Once a firm identifies the different sources of its emissions (be it through the GHG Protocol's scope categories or another reporting framework's), it can begin to measure them. Various reporting standards offer different methods of calculating these emissions. If a firm is not obligated to comply with any specific standard, it should choose one that is most relevant to its ESG goals and the ESG preferences of its clients.

Collecting accurate emissions data is the next step in the process. Some of this information can be gleaned from the owner of the firm's office facilities, vendors, suppliers, and travel agencies. Third-party carbon accounting companies (of which there are many) can also perform comprehensive audits of a firm's carbon footprint and aid in selecting appropriate reporting standards. Additionally, there are numerous online calculation tools and platforms (many of which are free) that can help with measuring, tracking, and managing emissions efficiently.

Once a firm determines the extent of its carbon footprint, it will be able to identify areas where carbon can be reduced, and it can set reduction targets. For most firms, these reductions will come in the form of Scope 2 and Scope 3 emissions, particularly in the area of business travel (https://bit.ly/3DEcUKX). The ICAO Carbon Emissions Calculator (https://bit.ly/3EJa8We) provides an easy way to calculate the carbon impact of air travel. Certain platforms such as Google Flights even allow users to compare emissions between flights, giving the traveler the opportunity to consider their carbon footprint when purchasing a ticket.

Broadly, they can include programs focused on:

- Reforestation (i.e., protecting and planting trees that remove CO2 from the air).
- Renewable energy sources.
- Collection and destruction of greenhouse gases.
- Conversion of methane to electricity.

A combination of emission reduction goals and participation in carbon offset projects can create a well-rounded ESG policy.

8:00 AM – 11:33 AM American · JetBlue	6 hr 33 min JFK–LAX	Nonstop	628 kg CO_2 Avg emissions
6:59 AM – 10:20 AM JetBlue · American	6 hr 21 min JFK–LAX	Nonstop	524 kg CO_2 -12% emissions
7:00 AM – 10:20 AM Delta	6 hr 20 min JFK–LAX	Nonstop	490 kg CO_2 -18% emissions
8:30 AM – 12:00 PM United	6 hr 30 min JFK–LAX	Nonstop	598 kg CO_2 Avg emissions

Carbon emission projections for one-way flights from JFK to LAX airport on Dec. 20th, 2021 (Source: Google Flights)

However, there will be several instances where sources of carbon emissions, even where reduced, cannot realistically be eliminated. Despite this, firms can still take steps to become "carbon neutral" or even "carbon negative" by participating in carbon offset initiatives, which work to either reduce or remove greenhouse gases from the atmosphere.

Such a policy can have many benefits: better firm reputation, financial benefit, risk mitigation, business advantage, and — of course — a cleaner, more sustainable planet. These are all good reasons to evaluate your firm's current ESG standing now and take proactive steps to prepare for a market where sustainability will soon be a requirement as opposed to a philanthropic afterthought.

About the author

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