

December, 2013

**25<sup>th</sup> Annual Report**  
**WHAT'S HOT AND WHAT'S NOT**  
**IN THE LEGAL PROFESSION**

It's hard to believe but this is our 25th annual report on what's going on in the legal profession, not only in the United States but also in other parts of the world. Like all previous reports, it is based on information we compile throughout the year, not just from clients but also from many other sources including surveys, discussions with firms' management and other leaders in the profession.

Much has changed of course, particularly in the last five years. As always, some of our findings are obvious but they must be reported because they may have unexpected consequences. Others are little-noticed but we feel they may be significant now or in the future. *What is most important to recognize is that, more than ever before, the outlook for each firm will vary depending on its size, practice areas, strategic focus and geographic market(s).* The resulting picture is a montage of a profession that is in a state of flux and will continue to be so, not just in 2014 but for years to come.

**PRACTICE AREAS**

**Red Hot**

- ***Energy.*** In many parts of the United States and certain foreign markets.
- ***Regulatory.*** Particularly in Health Care, Energy and Financial Services.
- ***Health Care.*** The Affordable Care Act adds more confusion to a broad and complex area.

**Hot**

- ***Financial Services*** including Banking.
- ***IPOs,*** They have been surprisingly Hot but may be showing signs of cooling.
- ***Litigation.*** Although, except for "bet the company suits", it varies widely by firm. Large companies continue to send work to mid-size and smaller firms due to lower rates.
- ***Labor & Employment.*** Collective bargaining is just one of many reasons.
- ***Intellectual Property.*** Patent Litigation continues to be hot because of infringement claims filed by "patent trolls". Now Garmin International claims to be the first company to fight back by using a new process, inter partes review (IPR), to avoid litigation. Trademark suits have also increased. Patent Prosecution continues to be Hot.
- ***Real Estate,*** due in part to a big increase in multi-family developments.
- ***Corporate*** despite General Counsels efforts to keep more work in-house. Mid-size and even some smaller firms continue to receive more work due, in part, to their lower rates.

**Getting Hot**

- ***Interns Rights.*** A small but growing area due to recent legislation in Oregon and proposed legislation in New York State to give unpaid interns the same protection as employees.
- ***Privately Held & Family Business.*** Also see B Corps under Other Trends & Issues.
- ***Education.*** Many issues here but hourly rates remain low as do profits.
- ***Elder Law.*** Like it or not, we're all getting older.
- ***Alternative Dispute Resolution (ADR).*** The high cost of litigation has reawakened interest in mediation and arbitration.

**HOT GEOGRAPHIC MARKETS**

- ***Asia and Latin America.*** High growth in national and regional economies continues to increase demand for legal services.
- ***South Africa.*** International heavyweight Hogan Lovells acquired a major firm here.

- **Germany** as we reported a year ago. Particularly in Frankfurt and also Berlin although German firms continue to be strong competition.
- **Dubai.** Morgan Lewis is the latest to plant its flag here.
- **Seattle.** Long-time firms growing here plus new arrivals, particularly from California, due to the wide range of national and international business operating in the area. Real Estate is a hot area along with Technology, Intellectual Property and Financial Services.
- **Houston** continues to be Hot due to Energy, Health Care and Technology.
- **Ohio, West Virginia and Western Pennsylvania** due to Energy, particularly the Utica Shale Play. However, while production continues to rise, the pace of drilling natural gas wells has slowed in northern Pennsylvania in response to low gas prices.

## MARKETING & BUSINESS DEVELOPMENT

- **Client feedback.** Despite its importance, a recent Martindale-Hubbell report confirms that it's still more honored in the breach than in the observance. Sad.
- **Social Media.** Continues to be one of the most popular BD strategies – or is it Marketing? Either way, in both content and delivery it's still Hot with LinkedIn and Twitter regarded as the most productive.
- **Content Marketing.** Now being referred to as the “legal marketing buzz phrase of the year.”
- **Business Development vs. Marketing.** More firms are putting increased emphasis on BD and cross-marketing to current clients as compared to Marketing.
- **Marketing by Industry.** Certainly not a new strategy but now a growing number of firms, such as McGuire Woods, are forming more industry teams and marketing them as opposed to practice groups. Actually both approaches are needed. Some clients want substantive area experience while others want knowledge of their industry.
- **Chief Marketing Officer.** The CMO's role is becoming even more strategic to bring ideas and implementation on issues that are important to clients such as pricing, business analysis and project management.

## OTHER TRENDS & ISSUES

- **Non-lawyer competition.** Several developments indicate that non-lawyers may become a larger factor in providing legal services. The Washington State Supreme Court has approved a rule creating non-lawyer legal technicians. The New York State Bar has recommended going ahead with a pilot program to permit trained non-lawyer advocates to provide out-of-court assistance in specific areas to low-income New Yorkers. In California the State Board of Trustees has expressed interest in a limited-practice licensing program. In August the ABA said it was softening its position on fee sharing with non-lawyers. Add these developments to the ongoing litigation on whether firms can have non-lawyer owners (which we discussed in last year's report) and it appears non-lawyers will have a strong impact on the profession.
- **Non-lawyers to have a voice in the profession?** Professor James Moliterno of the Washington and Lee School of Law suggests letting non-lawyers serve in leadership and policy positions in the ABA and also state bar associations. He wrote, “Turning to creative non-lawyers presents the most advantageous way for the legal profession to grow and change on its own terms.”
- **GCs' compensation.** A new survey just released by Equilar Inc. reports that median total compensation for general counsels at Fortune 1000 companies has jumped almost 5% from last year. The reasons? Corporations profits are rising even as they face a host of new regulations as well as other legal challenges and Chief Legal Officers are being given broader responsibilities that require business as well as legal acumen.
- **Divorce is getting easier** thanks to technology. Wevorce, a start-up online service, has run a pilot program that separates the process into discrete steps that are easily managed without getting into a court battle. And Philadelphia-based Fox Rothschild has launched a New Jersey divorce app designed to provide resources and tools for the various stages of the divorce process.

- **Merger Mania.** Although talks involving two major mergers were called off right before Thanksgiving, the number of completed mergers has shot up this year and more are under consideration as we write this report. Some have resulted in even larger international firms while others have mostly involved larger or mid-size U.S. firms acquiring – and that is the proper word – much smaller firms. However, historically half the mergers fail and should not have occurred, as discussed in our November *Legal Communique*, “Pay Attention to the Red Flags”. Furthermore, some top legal officers at Fortune 100 companies say this merger mania doesn’t impress them. One example: IBM General Counsel Robert Weber said, “I’m pretty skeptical about the value these big mergers give to clients.”
- **Virtual law firms.** The trend continues. But what is a “virtual law firm” and are they here to stay? Chad Burton discusses these issues in his recent piece on the excellent “Attorney at Work” website. His conclusion may surprise you.
- **Malpractice claims.** Although there are no definite figures yet for this year, according to seven major insurers the number of law firm malpractice claims increased last year as angry clients filed suits over conflicts of interest and other alleged missteps.
- **Smaller firms are getting a bigger piece of the pie.** As noted twice above under Practice Areas, mid-size and small firms are receiving more work that used to go to big name firms. According to the *Wall Street Journal*, mid-size firms are now getting 41% of the big-ticket litigation. Three years ago they only got 22%. The reasons? 1) Many smaller firms have partners and associates who were trained at the country’s biggest firms and then left; 2) Their rates are lower and 3) Lawyers at these firms are more attentive to their clients’ needs and desires than those at the large firms.
- **Hourly rates.** Many firms, particularly the largest ones, have raised their rates – again! But that’s not the whole picture. You have to look beyond the standard rates. Except for “bet the company work”, these firms are then offering widespread discounts and write-offs which result in lower realization. In fact, as we reported in our Mid-Year Update, full realization – the percentage of collections compared to the dollar value of billable time (DVBT) – has continued to decline. Another factor contributing to lower realization is the increase in aged accounts receivable as clients take longer to pay and contest firms’ charges.
- **Seeking new paths for young lawyers.** The New York City Bar Association is exploring some alternatives for young lawyers who are not getting hired after graduation. One is to place them in apprenticeships with large banks and other employers. Another is to start up a law firm where young lawyers could gain experience – and hopefully earn a decent living – by helping people and small businesses that can’t afford market-rate legal fees. Cisco Systems is exploring a similar route. It plans to team up with the University of Colorado Law School on a program in which students will be paid to work full time in the company’s legal department while taking extra classes to make up for missed coursework. The goal of Cisco’s GC is to develop a number of companies and firms that will take two or three students a year on this basis.
- **B Corps,** a new legal category of company, created by B Lab in Wayne, Pa., that expands its fiduciary responsibility, not just to its shareholders, but also to other stakeholders such as employees, neighbors and the environment. Nineteen states and the District of Columbia have passed B Corp legislation and 850 companies now carry the B Corp certification.
- **Questions raised about Litigation Funding.** As we reported in our Mid-Year Update, “a new wave of investors are funding law suits in hopes of collecting when verdicts come down.” And Kent Gardiner, chairman of Crowell Morning, stated, “I think you would find a notable percentage of the Fortune 100 have engaged in some kind of funded litigation.” But Baker Bott’s Lisa Thomas wrote that the communications necessary for litigation funding groups to perform their due diligence on the merits of the case raise discoverability issues for eventual litigation. Another concern by critics is that third-party investors will exert undue control over legal decisions and that the practice will drive up the overall cost of litigation.
- **Legal Project Management (LPM).** There’s no question that it is necessary but a growing number of COOs continue to state that the process gets more attention than the results.

- **Non-JD programs.** Enrollment has increased 13% in the last three years. Why? They are attracting people such as doctors and environmental consultants, who do not intend to practice law but feel they need grounding in legal basics.
- **Pro Bono.** Despite the reports that show a drop in the number of pro bono hours in the last few years, to paraphrase Mark Twain, “the reports of its death are greatly exaggerated.” There are many examples in addition to New York State increasing the voluntary goal for lawyers to 50 hours a year from 20. Steve Taylor addressed the subject in his lead article in the November issue of *Of Counsel* and included examples such as the IMPACT project, launched by the Association of Pro Bono Counsel, and the programs of several major law firms to provide non-litigation pro bono opportunities. Steve concludes by stating, “One thing that’s certain is that the young generation of lawyers has as much, or perhaps more, interest in performing free legal work and giving to their communities as their older colleagues” and that “law school graduates are attracted to firms that have successful pro bono programs.”
- **For-Profit law schools.** A private-equity firm launched Infilaw in 2004, shortly after buying the Florida Coastal School of Law in Jacksonville. Infilaw then launched two other for-profit schools, the Phoenix School of Law in Arizona and the Charlotte School of Law in North Carolina. The schools have had no trouble getting students but, judged by other metrics, they have been less successful. Graduates’ bar-passage rates have generally been below state averages and so have job-placement rates. Now Infilaw is trying to buy Charleston School of Law in South Carolina but is running into opposition from alumni and even students plus it is now faced with two recent federal law suits.
- **Entry level hiring.** Mid-size and smaller firms continue to benefit from the availability of qualified laterals who have either been pushed out of large firms or leave of their own choice for a different environment. However, some of the mid-size firms continue to hire young lawyers as opposed to laterals because, as one Managing Partner put it, “There’s a deep talent pool and it’s a buyer’s market.”
- **Succession Planning** continues to be one of the hottest and most important issues. Small and mid-size firms are now recognizing this too. It involves much more than transitioning clients. Many factors must also be addressed including retirement funding, mandatory retirement, firm infrastructure, compensation and grooming future firm and practice leaders.
- **Alternate Fee Arrangements.** No report would be complete without discussing them! While many clients exert pressure for something other than hourly fees, what they are really seeking is *transparency: What will the total legal bill amount to?* Fixed fees are obviously one approach but so are hourly fees with a cap or a base fee with a bonus or “kicker” based on results. In other words, the billable hour is not dead.
- **So what’s the outlook for the profession?** Much better than the pessimistic pundits are predicting. Between retirements and reduced hiring of law school graduates, the oversupply of lawyers will work its way down. But if you look at the total market for legal services and not just the number of lawyers, there will be further growth as new laws and regulations are passed and more non-lawyers and entities exist to provide them.

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