December, 2017

WHAT'S HOT AND WHAT'S NOT IN THE LEGAL PROFESSION

This is our 29th annual report on what's going on in the legal profession. As in all the previous reports it is based on information my colleagues and I continually gather from many sources -- law firms, legal networks, other providers of legal services, legal departments, surveys and the legal, general and business press.

As always, this is not an attempt to report on *every* development, many of which are obvious and generally recognized, but only on those that we believe should be noted because, in our opinion, they are having or will have an impact on the profession.

PRACTICE AREAS/INDUSTRY GROUPS

Note: Four years ago we first reported that a few firms were restructuring their practice into industry groups containing multiple practice areas. This trend has continued.

Red Hot

- **Health Care,** regardless of what has happened to ACA.
- **Immigration,** regardless of what policies the Administration pursues.
- **Cybersecurity.** Will continue to be the number one issue for both in-house counsel and consumers.

Hot

- **Financial services.** The economy will continue to strengthen. This will fuel almost every area of FS including IPO's and mergers & acquisitions.
- **Restaurants**
- **Food & Beverage** due to continued increases in labeling, ingredient and testing requirements.
- **Bitcoins for those firms who have or develop the expertise.**
- **Elder Law.** As we have been reporting.
- **Sports.** Particularly contracts.
- **Real Estate & Construction,** both residential and commercial, in most parts of the country.

Getting Hot

- **Other sports**, including eSports and gaming.

Cool

- **Commercial Litigation.** The number of cases, and therefore the profitability, in most large and mid-size firms continues to decrease although there are exceptions. However, as we reported in our Midyear Update, there are reports that litigation funding is re-gaining strength
- Labor & Employment, separate from Immigration.

No reading yet

- **Environmental** except in California, New York, Washington and Oregon which are increasing their regulatory activity.
- **Tax**

HOT GEOGRAPHIC MARKETS

- **Dallas.** One of the most notable signs was Winston & Strawn's opening there early this year.
- **Louisville.** As discussed in the June issue of *Of Counsel.*

MARKETING & BUSINESS DEVELOPMENT

Note: As we said in our MidYear Update, there are so many strategies and activities, old and new, proven and unproven, and so much written about them that, except for the items below, we feel it is redundant to discuss or list them here.

- **Website Design & Development.** The DOJ is expected to start enforcing Web Content Accessibility Guidelines, at least at Level A, early in 2018. Unless they also comply, law firms are not immune to these suits as well as to a loss of reputation and declining SEO performance on their websites according to Content Pilot CEO and Strategy Architect Deborah McMurray.
- **Artificial Intelligence.** Just beginning to be involved in marketing, as well as providing legal services.
- **Sales Professionals.** The most aggressive personal injury firms are supplementing their advertising and promotion programs by hiring sales professionals. Other than personal injury firms, some firms are hiring non-lawyers to uncover and develop new business leads. It took literally several decades for the accounting profession to achieve worthwhile results from this strategy. Even with all the hue and cry for more change in the legal profession, we believe it will still not be successful here.
- **Formal sales training.** Has been productive in some firms where supported and funded by firm management.

OTHER TRENDS & ISSUES

- **Another record number of mergers.** This is due, in part, to some cross-border mergers but most continue to be acquisitions of small firms and smaller mid-size firms by larger firms.
- **Stagnant demand for legal services.** This will continue.
- **Total number of lawyers** in U.S. firms also remains flat. However, some mid-size firms such as Spencer Fane have steadily grown due to cautious first-year hiring and selective lateral entries.
- **First-year hiring** will increase, according to Robert Half, in what it describes as "high-growth areas – Litigation, Commercial Law and Real Estate." Frankly, except for Real Estate, we question this as far as firms go but not necessarily in corporate legal departments.
- **Small offices.** Some firms are closing them to reduce costs and to (hopefully) increase efficiency. However . . .
- **Virtual offices and working from home continue to increase.** A major reason is that millennials prefer this and larger firms are developing systems and policies to accommodate them – as well as reduce space costs.

- **Gender bias law suits continue,** according to the "2017 Law360 Glass Ceiling Report", because, while women comprise over 50% of the current law school graduates, their share of equity partnerships remains around 20% and has not increased in recent years. However, note that each year there are women who are elected Managing Partners, succeeding men, in some mid-larger size firms.
- **Alternate Legal Service Providers (ALSP's)** continue to increase in number as well as in the breadth of services they offer. However, note that there are still a substantial number of smaller in-house legal departments that need specialty services but do not yet use ALSPs**.**

- **In-house client teams.** They continue to increase in both number and size in larger clients.
- **Legal Incubators.** A small but steady increase in the number of these programs continues to provide recent law school graduates with the training and infrastructure they need to launch solo practices.

- **Pressure on general counsels** continues to increase as they are called upon to not only control costs but also provide business counsel as part of a company's or organization's management team.
- **More with less.** Even the largest in-house legal departments continue to face pressure to reduce costs.
- **Blockchain being tested in other uses, not just in relation to Bitcoin**. This is part of the movement in certain states such as Arizona and Nevada to enact legislation or issue guidance regarding new technologies and digital currencies. As it becomes more widely used, this industry should expect more regulatory efforts.
- **Non-legal subsidiaries. As** we reported in June, 15 years ago there were several hundred firms that owned and managed them in a variety of industries. Although less noted until now, estimates are that many of them have continued. If properly integrated into the structure of the firm and well-managed, they can enable firms to counter revenue and profit challenges as well as provide expanded service to clients.

- **Multi-disciplinary practices (MDPs).** As Susan Duncan discusses in her excellent October post, some of the larger firms have gone beyond the subsidiary structure and have hired non-lawyers, i.e. consultants and other professionals, and integrated them into the practice or industry group structure as part of teams to serve their clients.
- **Other service delivery approaches involving technology, process improvement and knowledge management continue to be developed.**
- **Non-lawyers managing firms.** A Chicago firm recently announced it would hire a business executive to handle the firm's operations, apparently at a level above that of Chief Operating Officer. As much as law firms could benefit from effective business management, does this indicate a trend toward non-lawyer MPs and CEOs? Very, very doubtful. Several years ago a national firm based in Philadelphia brought in a Big 4 partner to be CEO. After several years he left the firm and the firm again elected one of its partners CEO.

- **Transition and Succession Plans.** Not only solos but a gradually increasing number of partners in firms are addressing these issues in mid-practice so-to-speak rather than waiting until age, health or other issues force them to.
- **Contract and "flex-time" lawyers**. The steady decline in the amount of billable work which began with the recent recession had already resulted in some of the larger firms replacing full-time associates – and even partners – with part-time lawyers who work only on projects as needed. Several of these firms have now formalized this structure and created flex-time lawyer platforms. There are now also several stand-alone flex-lawyer businesses such as Axiom and Caravel as well as virtual firms such as Taylor English and FisherBroyles.

- **Fee sharing.** The District of Columbia is the only U.S. jurisdiction to allow fee sharing with non-lawyers. Otherwise, fees are not federally mandated but are set state-by-state. For the last four years we have reported on the small but growing momentum to change these rules and allow non-lawyer ownership of U.S. law firms. Now, with PwC's forming a separate entity called ILC Legal, the Big 4 will be perfectly positioned to take advantage of new rules and pose a big threat to the law firm business. As Craig Brown stated in a recent post, "ILC" really stands for "I Like your Clients".
- **Less need for lawyers.** Simultaneous with the gradual trend towards fee-sharing with non-lawyers is the continued growth of technology-powered services that do not require lawyers to deliver them. While lawyers are needed at various stages to help build these services, they are increasingly less needed in many areas to delivery them.

- **Chief Legal Operations Consortium.** This group is comprised of people within law departments who develop and keep the metrics on cases won and lost, fees billed and even diversity to provide information to the GCs so they can determine who they want to assign to a specific case or deal.
- **Artificial Intelligence** continues to grow in its impact on not only planning and business decisions but also on the practice of law.
- **Cyber attacks and theft** continue to rise around the world and law firms are becoming prime targets. A principal reason why Cybersecurity is a Red Hot practice area.
- **Law firm networks.** As more of them are formed, they offer clients an alternative to efficient and targeted legal services without having to research large firms.
- **Alternate Fee Arrangements.** Despite the predictions of the last several years, they have not replaced the billable hour except in two extremes: 1) Major litigation where clients want to drive down the fees and 2) In many of the "basic" matters such as uncontested divorce where a fixed fee is more appropriate and accepted.

As stated on page one, this is our 29th annual "What's Hot and What's Not" report. Like all the previous reports, it could not have been developed without the contributions of my colleagues, most of whose comments – by agreement – are not attributed to them. I am most appreciative of their input. I will continue to publish periodic Legal Communiques as I see the need for them. However, this is the final "What's Hot" report. As Kenny Rogers used to sing:

> "You got to know when to hold 'em,
> Know when to fold 'em,
> Know when to walk away,
> Know when to run.
> Never count your money
> When you're sitting' at the table.
> There'll be time enough for countin'
> When the dealing's done."

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