

RDA LEGAL COMMUNIQUE...

ROBERT DENNEY Associates, Inc.

Management, Marketing, Strategic Planning

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MIDYEAR UPDATE

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

Thanks to the economy and the election, much is happening in the legal profession right now. Some of it is good, some not-so-good. Based on information we gather from sources throughout the U.S. and around the world, we have selected these as the most significant or unusual developments.

PRACTICE AREAS

Hot – many areas but particularly these:

- ∞ Sub-Prime Litigation of course. Jeff Nielsen, managing director of Navigant Consulting, reports the number of cases filed appear likely to eclipse the total filed in the Savings-and-Loan crisis of the early 1990s. Categories include borrower class action, securities and contract disputes.
- ∞ Immigration Law. A big issue facing companies and universities is a shortage of H-1B visas and quotas for green cards since the Federal Government instituted a cap for the visas last year.
- ∞ Foreclosures.
- ∞ Intellectual Property. More and more litigation.
- ∞ Environmental, Global Warming and related areas. Also many law firms now “going green”.
- ∞ Industries. Particularly Energy, Health Care, Telecommunications.

Getting Hot

- ∞ Bankruptcy. Although filings were increasing, this remained Cool until a few months ago. However, firms are being cautious in staffing up.
- ∞ Multi-jurisdictional Class Action Litigation in firms that are positioned to defend European companies because firms there don't have the experience U.S. firms have.
- ∞ Construction Litigation. Always picks up in a down economy.

Hot or Cool

- ∞ Commercial Litigation. Mixed readings except for “bet the company” cases which are still Hot.

GEOGRAPHIC MARKETS

- ∞ Dubai. Continues to be Hot. Nearly 30 Western firms have a presence. While most are from the UK, at least 11 U.S. firms have opened or expanded offices there.

MARKETING & BUSINESS DEVELOPMENT

- ∞ Web 2.0 & Other Online Networking. LinkedIn (mostly for business networking) and Facebook (more for social networking) are just two options but neither should ever be the primary marketing tactic. Blogs continue to grow in number, scope, versatility and impact. Now it's not unusual for courts to cite blogs.
- ∞ Advertising. While most states prohibit false or misleading ads, some – including New York, South Carolina and Florida – are going further with tighter-than-ever restrictions.
- ∞ Full-Time Client Interviewers. Ballard Spahr recently brought on board a full-time person whose sole job is to interview clients and report findings to the firm. Interesting move. But keep in mind two caveats: 1) As with any case of client feedback, the firm must do something with the information, particularly any negative aspects. 2) This still doesn't replace the impact of the firm Chair or Managing Partner meeting with clients.
- ∞ Video Magazine. Baker & Daniels recently posted one in the recruiting section on their web site. A new example of creative marketing being applied to recruiting.

- ∞ **Annual reports.** What began 10 years ago as simply a letter from the Chair of Drinker Biddle & Reath has evolved into well-done, glossy reports, three of which received awards at this year's Legal Marketing Association's annual conference. Jenner & Block took a different approach with its "Pro Bono & Community Service Report".
- ∞ **Anniversary Celebrations.** Freeborn & Peters recently celebrated its 25th with a unique approach. It published a soft-cover book telling the stories of 25 of its clients and how the firm is "proud to have played a small role in their success."
- ∞ **Competitive Intelligence.** Continues to grow but firms still struggling with how to create and use it. See Anne Lee Gibson's superb article in the March issue of *Law Practice* for the answers.

OTHER TRENDS & ISSUES

- ∞ **Layoffs.** A slowly increasing number of firms, mostly large, are laying off associates and support staff. Others, including mid-size firms, are "de-equitizing" some partners. But few are addressing the critical issue of unproductive equity partners and retiring or releasing them.
- ∞ **Contract lawyers.** While only a small percentage of large firms use them, look for this to increase as the result of associate layoffs.
- ∞ **Lateral partners.** Despite layoffs, firms are still looking for lateral partners – with portable "books of business" in most cases.
- ∞ **Summer associate programs.** Some large firms have shortened their programs or hired fewer clerks this year. A steadily growing number of small and mid-size firms are discontinuing their summer programs due to cost and the fact that 50%-70% of the associates leave within five years. Instead these firms are increasing their recruiting of two- and three-year associates.
- ∞ **Non-equity partners.** Various reports indicate that the total number of NEPs in U.S. firms now equals the number of equity partners.
- ∞ **Mandatory retirement.** The trend to end this began last year when the American and New York Bar Associations approved measures calling for firms to recognize the value of older lawyers. According to one expert, "It's a recognition that society has changed."
- ∞ **Diversity programs.** Although more firms are hiring Diversity Managers, The National Association for Law Placement (NALP) 2007 Diversity Report Card on the nation's largest firms showed only modest increases since 1993 in the percentage of women and minority partners.
- ∞ **Outside investors in law firms.** As we reported a year ago, an Australian firm became the first publicly traded law firm in the world and, beginning this year, the UK Legal Services Bill (Clementi Reforms) permits firms located there to seek outside equity investors. Now third-party investors are funding litigation, including commercial cases, in Canada. Is the U.S. next?
- ∞ **"Secondment"** – a British Army term referring to officers assigned temporary duty in other regiments. Now, a growing number of U.S. firms are lending their lawyers to international organizations or to the legal departments of important clients.
- ∞ **Retaining talent.** Several major firms have appointed task forces to examine ways to reduce attrition. They would do well to learn from Husch Blackwell Sanders. The firm reported it has reduced its attrition 50% since cutting out lockstep evaluations of associates seven years ago.
- ∞ **Going against the trend.** As we have been reporting for several years, a growing number of the largest firms have created the full-time position of in-house general counsel. Now, for reasons that are not completely clear, 800-lawyer Sherman & Sterling has eliminated the job and designated one of the partners to handle risk management, conflicts and ethics issues while continuing his own practice.

Further discussions of some items in this report, as well as of other timely issues, are posted in the Writings and Legal Communiques sections on our web site, www.robertdenney.com.