

June, 2013

## **MIDYEAR UPDATE**

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

So much happening in the legal profession today that we can't begin to report on all of it so we have selected developments we feel are among the most significant or harbingers of things to come.

#### **PRACTICE AREAS**

##### **Red Hot**

- **Intellectual Property Litigation.** Fueled even more by the Obama administration's taking aim at "patent trolls". Also see "Other Trends & Issues".
- **Health Care**
- **Energy**
- **Regulatory.** One of the areas that keeps Chief Legal Officers awake at night. Covers a wide range of matters including cybersecurity and social media, Also see "Other Trends & Issues".

##### **Hot**

- **Labor & Employment.**
- **Immigration** whether or not there is any real reform.

##### **Cool**

- **Bankruptcy** unless the economy goes back in the tank again.
- **Commercial Litigation** except for "bet the company" suits.
- **IPOs.** But some sources say there will be a lot coming in the global market later this year.
- **Securities Fraud.** The SEC is filing significantly fewer cases.

#### **GEOGRAPHIC MARKETS**

- **Houston** continues to be hot because of health care and technology in addition to energy.

#### **MARKETING & BUSINESS DEVELOPMENT**

- **Marketing Segmentation** is increasing among MidLaw and even SmallLaw firms as they strategically shift from being "all things to all people" to focusing on specific practice areas, industries or geographic markets. Combined with their more reasonable rates, these firms are doing well. See "Other Trends & Issues" below.

#### **OTHER TRENDS & ISSUES**

- **Full Realization.** Leading U.S. law firms have been raising their rates substantially. However, full realization, the percentage of collections to the Dollar Value of Billable Time at standard rates (DVBT), continues to decline. For firms in the Peer Monitor data base it now averages 83.6%. For AmLaw 100 firms it is 82.8%
- **Alternate Fee Arrangements.** In its annual Litigation Trends Survey, Fulbright & Jaworski found that the percent of companies using AFAs dropped from 62% in 2011 to 52% in 2012.. Has the AFA trend run its course, at least for litigation?
- **MidLaw and SmallLaw firms** continue to benefit as large corporate clients shift work to them because their rates are lower, they have skilled lawyers and have fewer, if any, conflicts.
- **Litigation Funding.** A new wave of investors are funding law suits in hopes of collecting when verdicts come down. Some law firms are even seeking funding arrangements for clients who need help to carry their suits.
- **Outsourcing to "virtual law firms"** such as Axiom Legal, Paragon Legal and VLP Law Group that provide lawyers to clients at less cost than law firms.

- **Project Management.** Workshops and some consultants continue to provide counsel on this. However, at least one highly regarded COO says the process is so complex that it gets priority over the results.
- **Chief Legal Officers' (CLOs)** responsibilities are increasing, particularly in large companies, to include far more than practicing law and setting legal policy. Now members of the C-suite, they provide oversight in such areas as corporate governance, compliance and risk management because of the increased regulatory environment. As a result, their compensation has increased.
- **International Mergers & Alliances.** They continue. But, faced with challenges including management, capital, marketing and cultural differences, how many will survive? See my article, "Can All the Multi-National Firms Survive?" in the summer symposium issue of *The Advocate*, published by the litigation section of the Texas State Bar.
- **Intellectual Property Boutiques.** BigLaw firms have been acquiring them to add the needed technical expertise to their litigation practices. So can IP boutiques survive? Definitely if, like RatnerPrestia, they develop strong litigation capabilities.
- **Succession Planning,** for both management and client responsibility, is becoming a major concern for mid-size firms.
  
- **Law Schools.** The number of applicants for this year is the lowest in 30 years. As a result law professors are predicting large faculty layoffs and even some school closings.
- **More on Law Schools.** Various groups, including the ABA's Task Force on the Future of Education, are wrestling with ideas on how to fix legal education such as the "three and three program" in which students receive both undergraduate and law degrees in six years, eliminating C grades and allowing students to take the bar exam after two years. The last would have to be decided by each state's supreme court (Arizona has approved a three-year pilot program).
- **Non-J.D. programs.** More schools are introducing such programs or expanding existing ones.
- **Career Assessments.** Late last year attorney Richard Brock and his partner, an industrial psychologist, launched LawFit. The company offers online career assessments to law students and lawyers to identify the practice areas and also non-legal career fields which best fit their interests and values.
- **Equity Partner Compensation.** According to several sources, the average spread between the highest and lowest paid partners is now 7:1. In some firms, mostly large, it is much wider. And it is 2.5 times that of Non-Equity Partners
  
- **No-Frill Legal Services** continue to grow. The latest is from Wevorce, an online service started by lawyer Michelle Crosby and digital marketer Jeff Reynolds to "walk a family through all the steps involved in divorce."
- **De-Equitization.** 169 of the AmLaw 200 firms now have at least one non-equity tier. While no statistics are available on other firms, the number that now have NEPs appears to have increased as well. Of course this is the way to increase reported profits per partner, a tactic which K&L Gates alone opposes – and which we agree with. However, in March the firm did disclose its financial statements.
- **Pro Bono.** New York State recently increased the voluntary pro bono goal for lawyers from 20 hours/year to 50. The Chief Judge denied this is a prelude to mandatory pro bono which bar groups in many states besides New York have opposed for years.
- **Hiring.** According to the National Association of Law Placement, entry-level hiring nationally was flat last year and is still uncertain for this year. That continues to be the picture in the AmLaw 100 according to the American Lawyer. However, the "Second Hundred" are now adding lawyers in anticipation that more clients will be giving them more work because of their more reasonable rates.

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