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AFTER THE CRISIS: MANAGEMENT LESSONS FOR LAW FIRMS

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Published by Portfolio Media, Inc. 648 Broadway, Suite 200, New York, NY 10012

INTRODUCTION

The recession has precipitated a crisis not only in client demand but in how law firms manage and conduct their business. In the current economic climate, firms must meet short-term needs and find ways to evolve that will enable them to grow their practices over the long term. With 40 articles packed with insight from legal industry analysts, corporate counsel, business development experts and managing partners, *After The Crisis: Management Lessons For Law Firms* is an essential resource for firm management looking to excel amid today's choppy waters. Here you will find coverage that is relevant to virtually every aspect of your business, whether you are rethinking your approach to hiring, seeking tips on how avoid malpractice suits, or mulling the pros and cons of alternative billing.

Section 1, "Lessons From The Recession For Firm Management," takes you through the most valuable lessons of the recession thus far. Here you get a rundown of the "Top 5" lessons for firms in the top half of 2009. You'll also find some practical tips for hiring and a Law360 look at the changes firms are making to their business models to ensure survival and long-term growth. And you'll be able to take a look at the impact the crisis is having on firms' internal practices, as well as on attorneys, their ethics, outlook and work habits.

Section 2, "Managing Recession-Driven Billing Pressure," covers billing from myriad angles. At a time when business is down, clients are watching their pennies and layoffs are an ever-present risk, attorneys may be tempted to pad their bills, and firms are more likely than ever to face accusations of overbilling. What does it mean for your firm if a client calls in an auditor? These articles will help you negotiate relationships with clients and staff so that you don't end up facing malpractice or employment-related lawsuits. You'll also find pieces on alternative fee structures, discount rates, innovative approaches to billing, and legal outsourcing — the latest challenge to traditional billing practices for BigLaw.

Section 3, "Perspectives On Cost-Cutting," covers actions firms are taking to trim expenses. While paycuts top the list, they may not be the best solution even in the short-term, according to some experts. Modified schedules, technology, training programs, paralegals — all will play an increasingly important role for managers seeking to manage costs in the recession.

Section 4, "Getting Creative With Business Development," covers everything from marketing to cross-selling to RFPs. Here you will find valuable techniques for building business, with tips from in-house counsel, studies on the cost-effectiveness of RFPs, and even an in-depth look at social networking.

You can draw on this collection for insights into just about any aspect of your firm's business, and be sure Law360 will continue to provide the most thoughtful, up-to-date analysis going forward into 2010.

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LESSONS FROM THE RECESSION FOR FIRM MANAGEMENT

TOP 5 RECESSION LESSONS FOR LAW FIRMS

By Anne Urda

Though the economy looks to be gaining strength, law firms would be wise to pay attention to some of the lasting lessons of the crisis and not return to their old ways once they have fully recovered, legal experts say.

Here are the top lessons for law firms to take away from the crisis:

1. Approach The Law Like A Business

The days of the powers-that-be conducting a full-time legal practice on top of their managerial duties may be over to some degree, according to Gary Klein, the president and founder of New York-based recruiting firm Klein, Landau & Romm.

"From what I have been hearing from chairpersons of law firms or management, a law firm has to be run like a well-managed business going forward — and while many people thought before the meltdown that was the case, apparently it was not," Klein said. "The people in charge of firms are focusing a great deal more of their time on correctly running a business."

Michael Magness, the managing director and member of the partner practice group in Major, Lindsey & Africa's New York office, indicated that part of the task ahead for law firms is not to embrace a front-loaded set-up, but to let economics be their guide.

Rather than dole out money, firms need to focus on restructuring the model so that the right people are being rewarded.

"I have always maintained that a more rational model would be much less at the front end, and paying more to people that are truly valuable," he said. "You are buying talent that you do not know is going to develop."

The effects of this new business mentality are already being seen in the recruiting world, with candidates told to come to interviews armed with a business plan, according to Magness.

"These days, law firms want to see business plans from their lateral recruits," he said, noting that, in general, lawyers should "think in a more business-like way."

2. Be More Efficient And Flexible On The Client's Dime

"Firms are going to have to learn — which they have not been doing — how to be more efficient in the work that they do for their clients," Magness said. "They have to be mindful of the client's bottom-line needs in terms of legal services.

Firms were in the habit of staffing projects with armies of young associates, but clients put their foot down as the economy crumbled.

"Clients will be checking their bills and not wanting to pay for training untried lawyers," Magness said.

A lot of general counsels say that they will pay for the $800 an hour partner because an hour of that partner's time will be worth it to their venture, but they are refusing to pay for the junior associates who would take 20 hours to do the same task, according to Magness.

"Firms need to be more flexible," he said. "A lawyer is only as good as the worst client and clients become unhappy when the billing rate starts to look like the national debt."

The law business tends to be a trailing economic indicator, not a leading one, meaning that lawyers are not out of the woods just yet.

Given that lawyers are likely to continue to struggle in the coming months, it is important for firms to find a workable billing situation for clients, including doing away with the billable hour.

"You need to figure out how to meet the client's need without just turning a meter on," Magness said. "You can't just go ahead and throw copying costs into all of those expenses. Clients have gotten tired of firms billing them for the time and services and then all of this separate stuff."

3. Keep The Talent Happy

"Firms are going to be looking for ways to retain their top talent," said Charles Volkert, the executive director of staffing agency Robert Half Legal. "They will be asking themselves, 'How can we hire the best talent on the market that can also maximize our growth goals?'"

Part of the answer lies in what firms can offer the candidates, and there has been a lot more interest in the idea of bonus dollars based on performance.

"Some firms may say we are no longer able to pay you 'x,' but we'll pay you more if you can hit certain targets," he said.

But firms may need to go beyond just salary to attract the upper echelon of attorneys at this point, Volkert said.

"Mentoring programs, flex time, benefits, etc. these are all attractive things," he said. "Retaining the top talent will depend on the firms' ability to provide more than just salary," he said.

4. Don't Jump The Gun On Money

Firms are likely to continue to evaluate how much associates are being paid, with some backing away from the idea that they need to match salaries with other firms, according to Magness.

"It is to be hoped fervently that lawyers have learned that you don't have to jump the gun on the money situation every time somebody else does it," he said. "There were a number of firms that were not in a position to increase but they did and struggled as a result."

That kind of "keeping up with the Jones'" mentality backfired for many firms, which felt the pressure to match the Cravath, Swain & Moores of the world once they all leapt from $125,000 to $165,000 overnight, Magness said.

"They wanted to look good at the schools where they recruit and they wanted to look as strong as everybody else, but not everybody is Cravath," he said. "Cravath will always get those people and it's foolish to try to match that."

Now, a little more than a year after the last big run-up of associate compensation, many of those same attorneys who were promised thousands of extra dollars have been shown the door.

"The takeaway is that you have to be flexible, move quickly and every one has to understand if the market doesn't bear," he said. "Firms are acting faster now to strip back unneeded personnel power and getting smarter about saying we don't really need all these bodies."

5. Train More

Law firms are used to paying first-years so much that all they can do is put them on the production floor to crank out the bills and earn money for the firm, according to Magness.

"This is the only business model where people are overpaid, with so little value," he said. "Law school does not train people to practice law. The law industry is crying out for an internship model that they probably won't ever get — better to pay them less and train them better."

Firms paid the ultimate price by cramming large numbers of associates into areas like structured finance, which seemed lucrative and easy, but led to mass layoffs after the recession set in.

"Let's not overhire," Magness said. "The firms have played the game of too many associates to partners and had to get rid of huge numbers of people. If you concentrate too much in an area and that area disappears, you could have a hard time staying afloat."

Firms would be wise to take a page from Drinker Biddle & Reath LLP, who in mid-May adopted a model that cuts first-year associate pay to $105,000 and offers an intensive training program to its first-year class.

The multipronged training program is meant to make associates more valuable to clients and educate young lawyers in traditional legal skills and clients' backgrounds, firm representatives said at the time.

"It would be nice to see one of the major New York law firms take that step," Magness said.

While some lessons may appear obvious in retrospect, it is still hard to fathom the devastation, and know how to avoid such a fate in the future, according to Klein.

"In thinking about how the financial crisis has affected the law firms, it is somewhat mystifying that the impact was as great as it was on the management of major law firms because of the generally high level of experience of the people that run the AmLaw100," he said.

For law firm leaders, the crisis is not something they will forget soon, but figuring out what to take away might turn out to be even harder.

"I think it's a seminal moment for most law firm leaders," Klein said. "It has been a wrenching, at times, tragic situation that everyone is going to strive to never repeat. The caveat to that is trying to understand precisely what did happen and why it happened. I didn't think I was overstaffed last summer, and I was clearly wrong."

RECESSION GIVES LAW FIRMS CHANCE FOR CHANGE

By Julie Zeveloff

The recession will likely eat away at law firms' profit margins and keep client demand low through 2009, a new report from Citi Private Bank and Hildebrandt International Inc. predicts, but the downturn has also created a ripe opportunity for law firms to make fundamental structural changes with major long-term benefits.

In a 2009 client advisory released Feb. 2, 2009, Citi Private Bank and Hildebrandt conceded that U.S. law firms will face a tough time at least through the end of the year, but they said the legal industry as a whole would fare better than other industries because of the critical role it will play in rebuilding the economy.

"We believe that, while most firms will struggle in 2009 and a few will not survive the current economic crisis, others will emerge with structures and practices that are more flexible, more efficient and more responsive to the needs of their clients," the advisory said.

Despite a dip in demand for transactional legal services last year, law firms overall experienced the highest increase in head count in the past seven years, putting even greater pressure on profit margins.

"The hiring pipeline in law firms is very long," explained James Jones, managing director of Hildebrandt. "Unless you are going to retract offers, it's going to take awhile to turn the supertanker around."

Associate attrition rates are also down to essentially zero, from an average of 17 or 18 percent in a normal year, Jones said, meaning that law firms are forced to pay a higher number of associates.

The advisory recommended that law firms use the economic downturn as an opportunity to overhaul their associate pay systems.

"In the current economic climate, it is irrational to have half or more of a firm's highly compensated lawyers on largely seniority-based salaries, a reality that has led several firms recently to announce salary freezes for associates in 2009," the advisory said.

But salary freezes are a temporary measure, and the advisory suggested that firms adopt permanent, competency-based pay systems for associates.

"You want to give people goals that are consistent with the values of the institution," said Dan DiPietro, client head for the law firm group at Citi Private Bank. "If [a change in compensation] is part of an overall plan, and if it's positioned properly, the top performers at any particular firm would make more money than they do under the current structure."

"People who would not make as much money would be the below-average performers," DiPietro added. "They would be highlighted in a system like that, and I certainly don't think that's a bad thing."

Some practices areas, such as regulatory work for financial institutions and bankruptcy, significantly increased in 2008, the advisory said, but it called the relative softness in litigation "somewhat surprising," noting that litigation tends to be countercyclical during downturns.

"What we may be starting to see is a fundamental shift in the willingness of major corporations to take things to litigation," Jones said, pointing to the extraordinary increase in the cost of litigation and the effects of the Sarbanes-Oxley Act.

The advisory also suggested that firms pursue more efficient approaches to deliver legal services to clients, especially as clients become more aggressive about reducing their own spending.

DiPietro suggested the "project management approach" commonly used in corporations, whereby experts take a process or product apart and then figure out a way to rebuild it more efficiently.

Already, some progressive law firms are beginning to offer clients customized project pricing and unbundled services and to increase their use of offshore partners and contract lawyers, the advisory said.

"I think the legal industry will weather this somewhat better than others," Jones said. "The legal industry is a leading indicator of the economy. When it finally does begin to turn around, the legal market will lead that."

HIRING STRATEGIES, DIVERSIFICATION HELP FIRMS KEEP LAYOFFS AT BAY

By Anne Urda

Thousands of lawyers have been shown the door since the economic crisis began in earnest last fall. But not all firms are looking at dwindling numbers. Luck may be a factor in these cases — though differences in strategy and in the approach to hiring may also come into play.

On April 2, 2009, Mayer Brown LLP made its third round of cuts in less than five months — 45 attorneys and 90 administrative staff members at its U.S. offices — and Hogan & Hartson LLP terminated 93 secretarial positions.

That news capped off a week where Fried Frank Harris Shriver & Jacobson LLP cut 41 associates and 58 administrative staff members, Manatt Phelps & Phillips LLP said goodbye to 17 attorneys and eight staff members, and Stroock & Stroock & Lavan LLP revealed that it would cut 10 percent of its 750-strong work force.

The firms join scores of others that have been forced to take this measure, with even New York powerhouse Skadden, Arps, Meagher, Slate & Flom recently letting go of 50 legal support staffers, including some staff attorneys who worked for the firm on a contract basis.

But despite the widespread nature of the problem, not everyone is in the same boat, according to a Law360 report of the 50 biggest law firms.

Jones Day, Weil, Gotshal & Manges LLP, Vinson & Elkins LLP, Winston & Strawn LLP and Foley & Lardner LLP are among a handful of firms that have been able to avoid handing out pink slips, leading to speculation in the legal community about the reasons behind their security.

"There are firms that have weathered the storm beautifully and continue to do that," said Gary Klein, founder and president of legal recruiting firm Klein, Landau & Romm Inc. "I think that they have employed a luckier strategy more than a better one necessarily. Although the real foundation of luck is preparation."

For some firms, the key to survival has been not biting off more than they can chew or getting swept up in the latest legal trend, and instead playing to their strengths, according to Klein.

"What we see throughout the country is that very strong firms in particular cities that have maintained their vision of not being all things to all people have done very well," he said.

While some firms bulked up and brought in massive numbers of associates over the past few years, those that took a more deliberate approach to hiring are now reaping the benefits, according to Klein.

"It's extremely distressing to hire and fire people based on perceived needs," he said. "It is very, very tough on the staff both who have left and who stay."

Joe Dilg, the managing partner at Vinson & Elkins LLP, attributes the firm's ability to weather the current economic storm to its diversified nature.

"I think the breadth of our practice areas has really helped us," he said. "We have a strong litigation practice, strong insolvency and restructuring, and we are not as focused on some of the financial products that were very popular in the past few years."

The firm's growth has also been deliberate, which has allowed them to shift people around as needed.

"We didn't beef up in certain areas that others were," he said. "We have always been a bit more leanly staffed and have been able to move people around to areas with the biggest needs like intellectual property, environmental and restructuring."

That kind of conservative thinking when it comes to expansion has proven to be a blessing for Vinson & Elkins, which does not foresee having to make any significant reductions at this point.

"I'd like to say that we knew all of this was coming but the truth is we have always been pretty conservative on growth for growth's sake," he said. "We are interested in the quality of individuals that join the firm. We have built what we consider to be a very cohesive and high quality firm even if we haven't grown as fast as some of the other firms have."

While Dilg predicts that there will be fewer laterals in 2009 given the economic crisis, he also believes that the firm will continue to grow in strategic areas like Washington, D.C., New York and China.

"We have been very pleased with the quality of individuals we have attracted," he said. "We are very happy with where we are."

Though they may not be considered the big guns, local firms with a national footprint have also done very well when it comes to navigating the current storm, Klein said.

"They don't have a desire to be the strongest firm in the galaxy, and they have not had significant layoffs," he said. "It may be a lucky stroke in that they didn't represent the giant capital market players who imploded and who essentially looked for lawyers for years and years to paper dubious transactions that caused the meltdown."

Midwestern-based Barnes & Thornburg LLP has managed to avoid layoffs and even grow during the midst of the economic crisis, one of the advantages of being a smaller firm with a wide-ranging practice.

"We are not really tied to the financial industry so we don't have the same kind of highs and lows," said the firm's managing partner, Alan Levin. "We have seen the impact of the downturn on clients but we are still doing fine."

Barnes and Thornburg is continuing to expand its operations right now, opening its eighth office in Atlanta this week, thereby marking its first official foray into the Southeast.

The firm is also still holding a summer associate program in 2009 and will welcome a new class of attorneys in the fall, both increasing rarities in today's legal climate.

"We are adequately staffed now and we were not overstaffed before," said Levin. "If you look at the growth of the firm, it has been constant but we have not tried to double our size."

While consistency is the name of the game, you also have to learn to enjoy your spot in the marketplace and what you bring to the table, according to Levin.

"We are not going to be that highly leveraged East Coast firm that needs a bunch of associates," he said. "We would love to get some of the cases that they get but we are not really situated for it. We have our sweet spot and are a good value for our clients and are staffed accordingly."

But that's not to say that some of the firms that have not publicly announced layoffs may not be encouraging lawyers to move on behind closed doors or employing other "voluntary" methods to reduce their numbers out of the public eye, Klein said.

"These are lawyers. They invented closed doors," he said. "There is no question that is occurring. But they are not public companies and there is nothing nefarious about firms handling their affairs without telling the media or head hunting community. I find it remarkable that any of them report layoffs."

Additional reporting by Abigail Rubenstein

BOUTIQUES USE SIZE, BILLING TO THRIVE IN TOUGH TIMES

By Anne Urda

While big law firms continue to lay off scores of attorneys in hopes of being able to ride out the economic storm, boutique firms are well-positioned to take advantage of the situation if they play their cards right, legal experts say.

Even with daily tidings of cutbacks, cracks in the market-place have appeared, leaving room for leaner, meaner operations to swoop in and fill the void right now.

"Boutiques are in a good position to survive and in a good position to pick up more work," said Rehman Bashey, a managing partner at Major Lindsey & Africa's Seattle office. "You look at places like Heller Ehrman and Thelen Reid, and they imploded because they were over-concentrated in certain practice areas and over-leveraged. Boutiques don't really have that issue."

With clients more focused than ever on the bottom line, boutiques enjoy a leg-up these days in the billing arena, according to Bashey.

"Boutiques in a strong practice area are in a great position," he said. "The biggest issue right now is billing and some of the boutiques have an easier time of being more flexible."

As clients push for a reduced rate or a flat rate for legal services, some bigger firms may be hard-pressed to comply, according to Bashey.

"Big firms often find it quite difficult to structure a flat rate when dealing with clients and different practice groups," he said. "Usually, boutiques are focused on only one practice area and that makes it easier to respond to billing rates."

Janice Mitrius, the president of intellectual property boutique firm Banner & Witcoff, believes that boutiques provide a good alternative for clients right now given their flexibility.

"Large general practice firms have dramatically higher hourly rates, and with clients now being highly cost conscious, especially in IP litigation, the GP firms are not in positions to offer large discounts or fixed-fee arrangements for the first time or to compete with the hourly rates of boutique firms," she said.

Boutiques are also reaping the benefits of the GP firms being conflicted out on some cases, with a firm like Banner & Witcoff enjoying more and more referrals these days.

"GP firms would be more hesitant to refer their clients to a another GP firm, especially in this climate, because they may have a greater chance of losing the client completely," she said. "The culture of the boutique is still attractive to lawyers and clients alike."

While not immune to the economic crisis, boutiques specializing in areas like IP are more insulated from the conditions affecting Big Law.

"We as a firm are thriving, and I understand that other IP boutiques also have not seen a downturn in the amount of work," she said. "In a highly technical field such as intellectual property law, clients want to hire the right lawyer with the strongest technical and legal background."

Part of the reason behind boutique firms' ability to weather the storm can also be the way these smaller firms are structured, according to Bashey.

"One thing the boutiques have is that a lot of the partners do their own work, so they are not having to feed all these salaried employees," he said. "While that may not translate into profitability, they are in a good position to wait out the economy. They are not doing the outlays."

When the economy turns and the work disappears, the big firms still have all the "timekeepers" they have to pay, which can lead to the bind that many firms find themselves in today.

"At boutique firms, they can hunker down, slow down the work," he said. "They are not having to do the outlay and the expenses are way down."

Like the boutiques, strategic pricing and staffing have also worked to the advantage of a middle-market firm like Morrison Cohen, according to David Scherl, its chairman and managing partner.

"We have been very fortunate to enjoy a tremendous amount of success through all the good times, but I always say that we are actually better modeled to do really well in more challenging times," he said. "The reason is multifaceted, but from a client perspective and a user perspective, you get very sophisticated counsel from senior-level people at much more rational pricing than our larger competitors."

In good times, when the money is flowing and no one is focused on the bottom line, companies may continue using the large law firms, but an economic downturn can cause them to reevaluate, according to Scherl.

"When things get tighter, you certainly don't want to trade down in substance, but if you can get the best legal talent at slightly more rational pricing, then they are obviously going to go for it because that is going to help business' cash flow," Scherl said.

The middle-market firm currently boasts 46 partners out of the approximately 95 attorneys overall, and that structure has proven to be an advantage in lean times.

"At the big firms, you usually have at least three or more associates per partner," he said. "I joke that our weakness is that our partners work very hard. We leverage off each other and that is one big difference."

These days, more and more referrals are pouring in for Morrison Cohen, as clients continue to hand down mandates regarding pricing, Scherl said.

"All things being equal, we are going to win more of those opportunities than we lose," he said. "The operation tends to be a lot more efficient because you are dealing with more senior people, and you do not have associates learning on your dime."

Scherl also said that it proves there is a "sweet spot" in the marketplace for all size firms, despite the notion that bigger is better.

"For many years, we heard that the boutique or that the middle-market firm was dead and that you had to merge or have offices in every major city in order to survive," he said. "We never believed it, and we never bought into it. You don't have to be all things to all people. You just have to do what you do at an extraordinarily high level."

Given clients' desires right now for the same talent at a discounted price, the recession is likely to drive certain lawyers to start their own boutiques as they seek to hold onto their portfolio, Scherl said.

"As a practitioner, you have to look at the situation and say, I don't want to lose that business and I can't do that business in the large law firm platform," he said. "People are saying let's spin off, let's three or four or five of us hang up a shingle. That is happening and it is going to happen more and more."

But not every boutique is immune to the economic dip. Firms that live and die by areas like real estate and land use are feeling the same crunch as the general practice firms, according to Bashey.

"Those areas are really quite slow," he said. "Once you start to get into some of the larger boutiques, you have higher overhead and more leverage — more associates to partner ratio — and you see the same things impact them as the big firms in a down economy. I think the success of boutiques depends on the practice area that they specialize in and the size of the firm."

Boutiques are also facing an upward battle in terms of perception, as some clients remain skittish about the "small firm" experience, according to Brian Manoff, a senior recruiter with Pittleman & Associates.

"Given that big firms are realizing they must adjust billing rates and billable time to reflect the economy, I believe it's more likely that clients will try to get the 'best price' with the firms that they have long worked with and trusted rather than move on to other firms whose work quality, experience and results are completely or largely unknown," he said.

Though the fears are often unfounded, some people worry that the boutique firms will not be able to get the job done and will have to rely on outside sources to complete the task.

"There is an inherent skepticism with small firms — not all valid, of course — regarding the sufficiency of their capabilities, resources and so forth, which is difficult to overcome simply by offering better rates," he said.

On the flip side, though, the current economic struggles give boutiques a rare chance to prove their mettle and show that they belong in the big leagues, according to Manoff.

"The unique circumstances of the times offers boutiques a 'once in a career' chance to build relationships with otherwise untouchable — or uninterested — clients that can endure even after market conditions improve," he said.

The trick is to figure out how to market your boutique as one that provides everything a big firm can at a much lower rate, according to Manoff.

"If a boutique is successful in carving out a specialty practice or can, through tangible results, establish itself as providing 'big firm' quality with small firm prices, it could emerge a real winner in this difficult economy, not just today but perhaps for the long term," he said.

BAD TIMES MAY BRING OUT BAD BEHAVIOR IN LAWYERS

By Anne Urda

With lawyers in survival mode these days, the question of how far attorneys are willing to go to save their positions has entered the spotlight as legal consultants fret that associates' desire for self-preservation may lead to inflated hours and bills for clients.

About 1,045 lawyers worldwide — the bulk of them associates — received pink slips in February, marking the bloodiest month so far in one of many industries rocked by the economic crisis.

March appears to be following that trend, with Sidley Austin LLP reportedly axing 89 associates and 140 staff members, and at least three other firms — Blank Rome LLP, Baker Botts LLP and Gardere Wynne Sewell LLP — also making cuts.

Against such a Darwinian backdrop, attorney ethics, particularly when it comes to padding hours, could take a hit as associates and partners alike struggle to stay afloat in the shrinking legal world.

While overbilling has always been a persistent and prevalent problem at law firms, the temptation to engage in that practice could become even worse in the months ahead, according to William G. Ross, a professor at Samford University's Cumberland School of Law who specializes in billing ethics.

"I think job pressure will inevitably increase billing pressure, which will encourage unethical billing," Ross said. "It's been a chronic problem since hourly billing first came about in the 1960s and 1970s."

Over the past few decades, pressure on associates to generate a substantial number of billable hours has increased even more under this system, according to Ross, who has published a series of surveys on attorney billing.

In his most recent study on the topic, which appeared in 2007, Ross found that two-thirds of survey respondents indicated they had "specific knowledge" of bill-padding at law firms.

Ross also found that 54.6 percent copped to performing unnecessary tasks just to puff up their billable figures, a marked increase from previous years.

While some associates do simply fabricate their hours in order to meet quotas and expectations, most of the overbilling that takes place tends to come from excessive work performed by the attorney, Ross said.

"Often associates spend too much time performing tasks that are not of great benefit to the client," he said. "Sometimes it's due to a loss of perspective or supervision rather than unethical billing.

Given how much law firm work has slowed over the past year, the fight for hours — often used to determine bonuses and other rewards — has gotten even more fierce and could lead some to bend the rules a little.

"That is likely to become worse in the severe recession," he said. "The pressure to generate hours only becomes more of a problem when there is less work."

With work scarce, associates will face increased temptation to inflate numbers in an effort to survive the mass layoffs, according to Charles H. Green, founder and CEO of Trusted Advisor Associates and a long-time advisor to various law firms, accounting and consulting firms.

"There is a clear answer: Yes, economic downturns are more likely to produce bad behavior than good behavior in such businesses — in fact, especially in law firms," Green said.

He thinks that there are several reasons why this is true, including a human tendency to embrace self- preservation under pressure and law firms' emphasis on short-term utilization.

"Add up all the above, and you get enormous pressures to demonstrate one's value to others by the numbers, in particular, billability," Green said. "And, when managing partners have to consider making difficult decisions about laying off people, the most comfortable metric to go to is billability."

"It is quantifiable; it is critical to their business model; and — most important — it has the appearance of being 'objective,' as in, 'Hey, you can't argue with the numbers,'" he said.

While some law firms do take pains to retain quality associates and not make it all about the raw billable numbers, Ross says that even the firms with the best of intentions may be more inclined to think with their wallet in the current climate.

"Facing economic pressure and vulnerability, it is natural that the firms would focus more on the bottom line and feel the pressure to retain associates with more billable hours," he said.

This leads to a situation where law firms feel justified to base their decisions on these billable hours alone, and associates know this and feel pressure to hit those hourly marks, according to experts.

"The creation of an environment that encourages such behavior is obviously suborning unethical behavior, and makes no long-term sense either," Green said.

Not everyone, though, thinks that lawyers are tempted to engage in ethical abuse, even in difficult times.

While admitting he may be a Pollyanna of sorts, Gary Klein, the founder and president of legal recruiting firm Klein Landau & Romm Inc., rejects the idea that attorneys would be guilty of this kind of ethical lapse.

"Despite the gospel of Wall Street and the nation's financial institutions that avarice and cheating are good, I believe that law firm lawyers are of a higher caliber than those bankers," Klein said.

Though anything is possible, Klein expressed serious doubt that associates were padding their hours in hopes of avoiding layoffs.

"I for one still have faith that our legal system attracts the best, brightest and most ethical people, and as a result, law firms have a culture of checks and balances to discourage the abusive behavior that has been so common elsewhere in our society," he said.

Clients, however, may prove to be the ultimate guard against overbilling as many are pushing back against what they view as overinflated legal bills and services.

"In the past, clients have been unduly deferential and have not wanted to ruffle attorneys' feathers," Ross said. "Often they know the attorney well and don't want to question the bills too closely, but now they are scrutinizing the bills more carefully."

Firms are talking more and more about doing away with the billable hour and exploring billing alternatives as clients demand meaner and leaner legal services, according to Ross.

"I have heard more in the last year about the demise of the billable hour than in the last 15 years," he said. "What may happen is that hourly billing returns to its roots, where hourly rates are the starting point but not the end all and be all. This could be adjusted for results or contingencies and blended with other types of billings."

As clients scrutinize their bills more closely, such newfound attention may also cause law firms to look harder internally at what their attorneys are billing, knowing that now is not the time to offend clients, according to Ross.

"Firms may be more inclined than even in the past to question attorneys who generate a large number of hours," he said.

On the other hand, the pressure to generate higher bills could make the firms more inclined to look the other way as they need the revenue, according to Ross.

"Firms may not want too look too closely," he said. "They may be afraid of what they might find."

Regardless, Green thinks the best way to guard against even the possibility of attorneys padding their hours is for law firms to bring the problem out into the open and start a discussion with associates on the matter.

"The main answer is to talk about it," he said. "Acknowledge the stupidity of making employment decisions based on such short term metrics, and against the better interest of clients. This is not something that is easy for law firm leadership to do, but — so what? It's critical."

STEPS FIRMS SHOULD TAKE TO PREVENT LAYOFF-RELATED SUITS

By Shannon Henson

When faced with a reduction in force, law firms are well served to follow the old adage: he who represents himself has a fool for a client.

Some firms should strongly consider seeking guidance when conducting a layoff — just as they would advise any other corporation or business to do, employment lawyers say.

While there are a few things that might distinguish one firm from others, like partnership and signing bonuses, all firms face the same potential pitfalls, including employment discrimination claims.

"The first thing firms need to remember is that they are an employer like anyone else, and they need to go through the process like any other employer. A lot of people at law firms are bad at taking their own advice," said Charles Baldwin, the managing shareholder of Ogletree, Deakins, Nash, Smoak & Stewart PC's Indianapolis office.

"If you ask them what a client should do, they'd be spot on with suggestions. But when it comes to doing it for themselves, they act like the clients they complain about — they can be emotional and not well reasoned."

The economic downturn has brought widespread layoffs and financial strife to the legal industry, meaning that most law firms are faced with choices they have never or seldom faced before. The legal industry has shed more than 13,000 jobs since the recession hit, according to statistics from the U.S. Department of Labor.

On the bright side, layoff rates have slowed considerably in recent weeks. According to a Law360 analysis, 160 lawyers were laid off in April 2009, down from the whopping 1,121 lawyers who lost their jobs in March and the 1,045 who were let go in February.

Until the economy turns around, though, firms will continue to lay off staff and attorneys. Employment lawyers and others said that firms can take steps — including protecting themselves with insurance — to stave off discrimination and breach of contract claims and the ensuing financial hits.

At a meeting with law firm human resources managers and others in March, Roy Tyson, the worldwide assistant employment practices liability manager for the Chubb Group of Insurance Companies, said that when making decisions, firms should use quantitative criteria like tenure and performance instead of so-called soft criteria such as social situations and financial hardship.

"Most important, remember to treat all employees — those who will be laid off and those who will stay— with dignity," Tyson said. "Laying off employees is unpleasant, but firms that try to do the right thing can help mitigate the potential for an even more unpleasant [employment practices liability] lawsuit."

He also directed firms to review the demographics of the staff that will be laid off to eliminate any appearance of discrimination, and advised them to use outside counsel to evaluate employment practices and severance policies.

Kerry Notestine, a shareholder at Littler Mendelson, said law firms are more apt to seek advice from other counsel if they do not have a labor and employment practice group or if they have only a few attorneys focused on that practice area. Some firms may also ask for help if they do not have attorneys with extensive reduction in force experience.

"Even if they do [have such experience], there may be some concern about involving partners," Notestine said. "It may just be better to go outside and get an unbiased opinion."

Some firms are willing to seek out an employment-centric law firm in such situations because they aren't a direct competitor or only compete in the labor field, according to Notestine.

One way to avoid employment lawsuits is to offer furloughs and compensation changes to cut costs instead. Penny Ann Lieberman, a partner with Jackson Lewis, said that while circumstances may seem dire, all employers, including law firms, need to take time to review their plans and consider alternatives before taking action.

"There is often still time to be preventive and proactive rather than entirely reactive," Lieberman said.

So far, law firm layoffs have largely impacted members of the the legal staff and associate ranks. Some firms, however, have also let partners go.

Not all partners are created equal when pursuing employment discrimination claims in court. Notestine said that partners were traditionally not considered employees and, therefore, couldn't sue.

But the courts and the U.S. Equal Employment Opportunity Commission have said that not all partners are alike and there are certain realities in partnerships that make some partners more like employees then employers, according to Notestine. The EEOC uses a six-factor test to determine whether a partner is an employee.

Baldwin said the risk for lawsuits related to layoffs is likely as high if not higher for law firms than for other employers.

"The impacted people are those who understand the law whether they are paralegals, lawyers or legal secretaries, " he said. "Litigation isn't as foreign an element to them."

However, law firms may be less prone to ending up in court because they often offer generous severance packages to those being asked to leave the firm, Notestine said.

"If a firm is providing severance, they would almost always get a release in return, so employees are more likely to sign releases" than in some industries, he said.

Additional reporting by Anne Urda

CRISIS HIGHLIGHTS NEED FOR LAWYERS TO MANAGE STRESS

By Shannon Henson

The economic downturn has caused some lawyers — who are already at statistically greater risk for suicide and depression because of their profession — to suffer anxiety and stress, sometimes with tragic results. However, consultants say law firms and attorneys themselves can take steps to alleviate the pressure.

Lawyers and consultants said firms should strive to be as transparent as possible with their attorneys because uncertainty is the most stressful aspect of the recession for many professionals. Meanwhile, legal industry watchers said it would behoove attorneys to be as proactive as possible and to try to remain positive.

Daniel Lukasik, managing partner of Cantor Lukasik Dolce & Panepinto and the voice behind the Web site Lawyers with Depression, noted that numerous medical studies show attorneys suffer from depression at a much higher rate than people in other professions.

Attorneys tend to be perfectionists, overachievers and people who look for external affirmations of success, he said.

If they also have a genetic risk for depression or a traumatic history and are thrown "in a very stressful, confrontational workplace, it is the perfect storm for someone to develop depression," Lukasik said. "Then what happens when someone loses their job? It's the last straw."

Not only are lawyers at high risk of depression, Lukasik and others said, they are unlikely to ask for help.

"There is a tremendous stigma," Lukasik said. "There's an expectation on lawyers, especially lawyers at large firms, to be super people. They are impervious to problems. They aren't the ones with problems, they are the problem-solvers."

Since attorneys are at a high risk for depression and work in stressful situations even in a good economy, lawyers are now facing potentially unparalleled mental and emotional challenges.

There is a "crisis in terms of pandemic clinical depression existing at every level at almost every law firm," said Jerry Kowalski of law firm consulting company Kowalski & Associates.

Kowalski cited anecdotes about suicide and divorce and said the offices of cardiologists and psychiatrists were teeming with attorneys.

Attorneys aren't just struggling with the loss of their jobs or worrying that they will be the next one to be laid off. Many who aren't on the chopping block are suffering from "survivors' guilt" and may be under additional work stress to fill the void of the lawyers who have been laid off, said Kathleen Brady of Brady & Associates Career Planners LLC.

"I think the stress too is just generally higher because the old rules don't seem to apply any more," Brady said. "Historically, firms never fired first-years, and now first-years are being laid off."

Legal consultants agreed with Brady that the uncertainty is causing a great deal of stress in the industry. But she and others said law firms could try to abate that stress factor by being open and honest with their employees.

"Rumors just exacerbate the stress level," she said. "It's difficult for firms when it involves personnel issues, but in this economy, as much as they can share about the fiscal health of the firm will lessen anxiety."

Kowalski said virtually all law firms were guilty of not being transparent, a problem made worse in the Internet era.

"Firms are afraid to discuss with candor what the thinking is and what options are being considered because they know that within three minutes it will appear on some blog. But they need to stop being afraid and understand that opening up the discussion and making things more transparent enhances the law firm's reputation and standing."

At the same time, many lawyers are learning about the inner workings of their firms from the media, said Deborah Epstein Henry, president of Flex-Time Lawyers LLC.

"That's a really big problem," she added.

Douglas Richardson, head of the Richardson Group and an adjunct consultant with Shannon & Manch LLP and Altman Weil Inc., said that when firms communicate with their attorneys, they should aim to do so face-to-face.

"An e-mail or a memo isn't enough," he said. "At the practice group or office leader level, there should be very intense and frequent communication about how a firm is doing and the steps the firm is going to take. It does not even have to be good news to reduce stress. Young people are cynical, so they are not looking for that. But they want information on how much risk they face."

Aside from increased communication, consultants said, senior members of law firms need to be educated about the warning signs of when associates and partners are suffering from anxiety and depression and may need help.

Richardson said lawyers don't often trust human resource employees and are reluctant to utilize employee assistance programs. He said senior attorneys should be taught to "recognize when people are stressed and having trouble coping."

Knowing when someone needs help is tricky because people display stress differently, he said. But if an attorney displays a dramatic change in behavior, a partner may be able to help by reaching out and asking specific questions about whether the attorney is sleeping well and if they feel they are struggling to manage their hours.

Lukasik said the signs of trouble are very specific, starting with a lack of concentration, which leads to a drop in productivity. Firms should be educated on what resources, such as lawyer assistance programs, are available, he said.

Assisting attorneys who are struggling and trying to understand the source of their anxiety is not only the right thing to do — it also has an impact on the bottom line, Richardson said.

"It pays off practically," Richardson said. "Less absenteeism, fewer junk hours, fewer instances of poaching work from other lawyers. There's a business case to be made. It's not just humanitarian."

Both laid off and still employed attorneys can also take steps to minimize their anxiety, consultants and others agreed. Henry advised that attorneys who are fearful of losing their jobs should get up to speed on the practice areas that are busier right now or take continuing legal education courses.

"The other thing they can do rather than just sitting at their desks waiting for the phone to ring is to use their time to do nonbillable work they normally don't have time for," Henry said. She advised that lawyers write articles or speak publicly, which are opportunities to get some nonbillable visibility.

In addition to career steps and lawyer assistance programs, Lukasik said, therapy and medication may help. Exercising and starting a "gratitude journal" can also be tools to fight depression.

"Lawyers are pessimists as opposed to optimists, and they can't turn it off," he said. "They are used to seeing the problems in every situation. There's a strong correlation between depression and pessimism. Keeping a journal can turn the thinking around."

Lauren Wachtler, a partner with Mitchell Silberberg & Knupp LLP and chair of the New York Bar Association's Lawyers In Transition Committee, said the bar's programs had encouraged laid off attorneys to embrace their situation rather than apologize for it. Lawyers should take care of themselves, just tackling maybe one task a day they've been dreading.

One positive aspect of the situation, Wachtler pointed out, is that everyone is "in the same boat. It's not 'Woe is me,'" she said.

In the end, the downturn may give many attorneys a chance to retool their career or redirect their energies, she added.

TOP REASONS PARTNERS ITCHING TO JUMP SHIP

By Shannon Henson

Legal industry observers predict that the lateral market will continue to be hot for the foreseeable future, in part because the downturn has provided partners with some compelling reasons to leave their firms.

Some of the tried and true reasons attorneys name — such as seeking a different scale of platform or client conflicts — are still prompting partners to leave. But consultants said that economic uncertainty has created unexpected opportunities for some attorneys, while forcing others to to take a hard look at their options.

"All in all, the current environment is providing pockets of opportunities for lawyers with the right books of business, practice skills and leadership abilities to make positive career moves," said Toni Whittier of Whittier Legal Consulting.

Here are the top reasons legal consultants said partners are likely to switch firms:

Intense Billing Rate Pressure

Clients who are facing budgetary pressures are demanding lower fees from their attorneys, consultants say. But many can only drop rates so low because of the high costs associated with running a large firm, prompting partners to make moves that allow them to make their clients happy.

"Clients are saying to attorneys, 'We love you, but we can't afford to pay the rates your firm is charging," said Jerry Kowalski with Kowalski & Associates. "Lawyers are saying, 'Where can I go to retain my client base and serve my clients?' That place is the mid-sized firm that isn't straddled by high fixed expenses."

Kathleen Brady of Brady & Associates CareerPlanners LLC said that if partners feel they can provide a "high level of service somewhere with lower overhead, they might consider a move."

Clearly there are young partners charging $700 or $800 an hour for work that clients don't consider to be "rocket science," said Gary Klein of Klein Landau &Romm Inc. Attorneys "will have to move if they want to reduce their rates."

Large firm partners aren't just jumping ship to smaller and mid-sized firms with lower fixed costs and billing rates. Whittier said she has also seen a number of smaller firms formed by attorneys who are splitting off from larger firms.

"More than ever in the current economy, clients are demanding lower rates or alternative rate structures," Whittier said. "A lot of lawyers believe that they can charge lower rates and be more profitable in a smaller firm."

Worry About The Firm's Future

Strategy and management of a firm can be very important to partners, said Frank Michael D'Amore of Attorney Career Catalysts LLC. But as attorneys have seen law firms go under, the recession is prompting lawyers to scrutinize their firms more than before.

"People are looking at how the firm is positioned and its strengths," D'Amore said. "It's a two-headed coin. If firms are doing well, some partners feel they are doing OK, the firm is coming through and they are convinced they are in the right place. The other side is that others see cracks in the foundation and they wonder whether those cracks will become true fissures."

Partners are taking a serious look at the business models of their firms and considering whether they will be successful post-meltdown, according to Klein. "Firms that are perceived by partners to be over-leveraged by associates and overextended with offices have lawyers seriously considering whether it is time to make a move," he said.

Meanwhile, some law firms are also scrutinizing their business models, deciding on changes and whether they should emphasize different practice areas. If partners feel their practice area will no longer be a priority, they may opt to look elsewhere, according to Brady.

Better Opportunities

Some law firms are seeking to emphasize different practice areas, anticipating that those areas will see growth as the economy recovers, Kowalski said. For example, energy and regulatory attorneys are likely to be in greater demand than in the past, meaning some are screening job offers.

"Firms want to stock up and make sure they have bench strength," Kowalski said. "Sophisticated, well-run law firms are on the prowl to make sure they are purchasing talent so they can pursue those needs."

Charles Volkert, executive director of Robert Half Legal, said that law firms are also attracting partners if they have a strong practice in one of the practice areas that is busy right now, such as intellectual property or bankruptcy.

The recession has prompted a number of firms to shake up their leadership and management structures, leaving coveted openings at the top, according to Whittier. "Lawyers who have always wanted more of a prominent leadership role are making the jump to head up practice areas and take management roles," she said.

Volkert said partners who may have a healthy but not "tremendous book of business" may also be looking to move to a firm that allows them an opportunity to build up their client base by giving them time and assistance with marketing, among other things.

Compensation

Nine times out of 10 compensation isn't the reason people look to leave a job, D'Amore said. But that doesn't mean it can't be a factor — especially in the recession.

"In this economy, people may be performing well, but their firms have taken a hit, didn't meet budget and didn't meet the level of distribution they did before ... so ... compensation has gone down significantly," he said.

Meanwhile, some firms in a better financial state may have a leg up in winning talent.

"Law firms realize that their ability to come up with solid and creative compensation packages may be attractive," Volkert said.

NONEQUITY SPOTS MAY ENTICE LATERAL PARTNERS: EXPERTS

By Morgan Bettex

As the strained credit landscape forces firms to raise capital through increased partner contributions, nonequity positions may become more attractive to partners considering lateral moves, industry experts say.

Faced with depleted capital reserves and expensive bank lending, more firms are rethinking their business policies and models by increasing partner contributions, requiring income partners to contribute and making it more difficult for partners to get their contribution back when they leave the firm.

Some lateral partners are considering nonequity positions partly to avoid paying capital contributions, according to Gary Klein, founder and president of legal recruiting firm Klein Landau & Romm Inc., who said that the trend has accelerated since the recession.

If profits wane as expected in 2009, a steady salary with no partnership interest may appeal more to some lawyers than making hefty capital contributions to a firm in exchange for a piece of the profit pie.

Increasing partner capital contributions is one of the top five choices firms are making or considering internally in response to the recession, along with cutting operating expenses, deferring capital expenditures, and terminating staff and associates, according to a survey of 85 law firms conducted by legal consulting firm Altman Weil Inc. in November 2008.

Traditionally, partners contribute capital by paying a lump sum when they join the firm, either by borrowing from a bank or using their own cash, according to Frank D'Amore, president of legal recruiting and consulting firm Attorney Career Catalysts. A less common method of contributing is to have the firm hold back a percentage of a partner's earnings over a period of time.

While there is no way of knowing which option is the most common, larger firms are more likely to ask partners to shell out the money up front, though the amount differs from firm to firm, said John Cashman, a manager at global recruiting firm Major, Lindsey & Africa.

"Increasing capital contributions is a quick fix for injecting cash flow and liquidity back into the business," explained Suzanne E. Pollaro, founder of attorney search firm Krebs Consulting LLC, who said the trend is largely a result of the credit crisis facing many businesses.

But the trend predates the economic meltdown. Law firms typically prefer to keep debt low and have relied on partners to help fund expansion in recent boom years.

What has changed since the recession is an increase in the amount of capital firms want to have on hand, experts say.

"In general, law firms don't keep a lot of capital, it's really deferred income that gets paid out to partners a couple of times per year," Cashman explained.

For years, consultants advised firms to beef up their capital reserves, but firms were reluctant to do so for fear that they would lose partners if they significantly increased contributions, according to Cashman.

But as liquidity becomes crucial to their business, more firms are considering other measures for raising capital, including overhauling their partnership structure and tapping nonequity ranks.

"It goes to show that the model falls apart the minute the equity partners' earnings fall below the break-even point," Pollaro said.

In January 2009, DLA Piper, one of the nation's largest firms with more than 3,700 attorneys, voted to invite income partners to contribute capital in exchange for a limited stake in the firm's profits.

"It is so interesting to see some firms de-equitizing attorneys to increase profits, and others equitizing attorneys to increase investment, all with the same goal in mind," Pollaro said.

To Cashman, DLA Piper's maneuver is an attempt to reduce the number of income partners and focus the firm's resources on more highly valued work. The change also aligns DLA Piper with the elite New York and London firms that have always operated a one-tier partnership with no income partners.

"It's symbolic more than anything," Cashman said.

Although Cashman said it's too soon to tell whether firms will follow DLA Piper's lead, London-based Clifford Chance LLP revealed earlier this week that its partners have voted to review the firm's partnership structure.

Another advantage to the DLA Piper model is that it can create more of an ownership mentality among income partners, who may decide to pony up the capital as a way to commit to the firm until they become an equity partner.

"It is likely that those in favor are in it for the long haul, and those opposed don't envision sticking around for the time it may take to reap the benefit," Pollaro said.

D'Amore said the details of the partnership agreement will likely govern whether income partners decide to stay, particularly younger partners who must examine what rights and obligations come with making that capital contribution.

"If you don't have the right to vote, or to attend certain meetings, then one would wonder why you would want to contribute capital, but it depends on what the partnership agreement provides," D'Amore said.

On March 23, DLA Piper announced that most of its partners in the U.S. will be looking at a 11.5 percent pay cut in 2009, which the firm expects to be a down year.

Describing DLA's partner capital contribution plan as "contrarian, to say the least," Klein said he does not believe it will be a popular model.

Instead, Klein cites a trend that some recruiters and consultants say has picked up speed since the economic meltdown and is actually the opposite of the DLA move: the increasing interest of lateral partners in considering nonequity positions, partly as a way to avoid paying capital contributions.

These partners may also choose a nonequity position as a means of making sure the firm is a good match and will be around at the end of the guarantee period that usually governs such agreements.

"Many partners who would not have considered it in the past will do this as a way to put it off and to have a dating period before they really tie the knot [with that firm]," Klein said.

While her clients have not explicitly sought nonequity positions, Lori J. Carpenter, president of recruiting firm Carpenter Legal Search Inc., said the trend is something she is hearing more about in the industry.

Carpenter recently worked with a group of nonequity partners who were not offered equity partnerships at their firm as expected in 2009. While they recognized that business was down, they were prepared and willing to make capital contributions in order to join the equity ranks.

But to some, not having to make that capital contribution is a blessing in disguise.

"There are those who say that it's not a bad year not to be an equity partner," Carpenter said. "It depends firm to firm, and what the outlook of any particular partner is."

While Klein said it is unlikely a partner would be drawn to a firm simply because it does not require upfront capital contributions, if that factor is combined with others, such as more stability, less layoffs and less debt, that firm could lure more lateral partners.

"There's a certain subset of factors that would make that kind of firm significantly more attractive than a mega or global firm that can't say all those things," Klein said.

Carpenter agrees, pointing out that many partners in large firms are examining their required billing rates and considering taking their clients to smaller or mid-size firms.

"For years, people were looking for larger firms, but in this market it's different," Carpenter said,

But Cashman said that he's not necessarily seeing evidence that smaller firms require less capital as a percentage of a partner's income than larger firms.

And, while increasing capital contributions and changing partnership structures may seem like obvious and inevitable solutions for raising cash, another trend is emerging that could hinder partner-firm relationships and cause lateral partners to consider nonequity positions.

More firms are trying to delay the return of capital contributions to departing partners, D'Amore said.

Typically, when partners leave a firm, they roll over their capital account from the old firm to the new firm in order to help defray the required upfront capital contribution.

This is becoming harder to do as firms drag their feet to return the capital, which historically would be paid out in 30 days or by the end of the fiscal year at the latest.

"Now more firms are stretching out the return over multiple years, as far as five years," D'Amore said.

Cashman and Klein claim that the trend is not recent and that it is a way for firms to discourage lateral partner movement.

"It's like a loose form of golden handcuffs," Cashman said, noting that firms don't have many other options to discourage lateral movement.

Industry insiders agree that partners will usually resolve a dispute with their former firms before filing suits like the one a former partner launched against Hunton & Williams LLP in February 2007, alleging the firm breached its partnership agreement when it refused to return his entire capital contribution.

Cashman does not anticipate litigation stemming from this issue unless a firm gets "really aggressive" with the practice.

It is still too soon to tell how the trend will develop, according to Pollaro.

"As with the rest of the markets, whether or not the delay works will largely depend on how and if the financial markets repair themselves, hence whether the cash will be there for departing partners," Pollaro said. "If the cash is not there, law suits are the obvious result when desperation hits."

Regardless of whether the trend sparks litigation, D'Amore said it creates ill will among departing partners and sends a strong message to lawyers who may be interested in joining the firm.

"The key implication here is that when firms put a lot of strictures in place, [the maneuvers] can very well turn around and bite them with respect to recruiting new partners," he said.

As it becomes more common to work for at least one firm during their career, Lawyers consider a number of factors when selecting that firm, including the terms governing the return of their capital contribution.

Partners will think twice about going to a firm that makes it difficult for capital contributions to be returned, D'Amore said.

Industry insiders agree that it is still too early to pinpoint whether these trends could have negative implications with respect to partner-firm relationships, although it appears partner satisfaction will take some sort of hit as firms are forced to prioritize their bottom line.

"The real challenge facing these firms is the question of whether to keep partners happy or keep your financial house in order," Cashman said.

Additional reporting by Anne Urda and Ben James

CRISIS COULD BRING OPPORTUNITY FOR FEMALE LAWYERS

By Anne Urda

While the economic crisis has hit the legal market particularly hard over the past year, some legal experts predict the financial turmoil may prove to be a rare opportunity for female attorneys as they continue to vie for their place in what many still consider to be a man's world.

In mid-January 2009, Dewey & LeBoeuf LLP and Foley Hoag LLP became the latest to slash their work forces, joining dozens of other firms that have shown attorneys the door in recent months.

But though layoffs are taking place left and right at the major law firms, the reshuffling could work to female attorneys' advantage, according to Jack Zaremski, a law firm consultant and president of New York-based legal recruiting company Hanover Legal Personnel Services Inc.

"I am very optimistic on the impact that all the law firm turmoil will have on women in Big Law," he said. "There are going to be opportunities for female attorneys as well as other diversity groups."

With firms beginning to re-evaluate their business strategy, they have a chance to embrace a retooled development plan, and some may look to retain more women and minorities, according to Zaremski.

"Firms are in restructuring mode," he said. "The layoffs are at least in part motivated by the recognition of the need to trim a significant amount of fat from the law firm machines and produce more efficient firms going forward as a result."

Part of that will be implementing certain policies that make law firms better and healthier places, with women likely to be the beneficiaries of such changes.

"It is pretty universally accepted that enhanced diversity, which includes the hiring and elevation of female attorneys, is part and parcel of a healthier, better work place at law firms," Zaremski said.

Natasha Innocenti, a partner and office practice co-leader of the partner practice group in Major Lindsey & Africa LLC's San Francisco and Palo Alto, Calif., offices, says that the crisis could work to women's advantage, but only if they heed the wake-up call.

For many firms, keeping a woman — or any attorney on staff for that matter — comes down to the bottom line, and women tend to be at a disadvantage in that area, she said.

"Laying people off because of their gender is a thing of the past," Innocenti said. "I don't see the current economy affecting women disproportionately, except that they are disproportionately in flexible or reduced schedule programs, which may have greater exposure in lay offs."

But part of a woman's chance at success can hinge on the firm's ability to retain and promote women, she said.

"In terms of firms, there are real winners and real losers when it comes to attracting women partners," she said. "Some firms have just done a very good job of having women on the executive committee and having very progressive partnership-track plans."

Many women are also stymied by the notion that they will shortly leave to start a family or do something else, according to Zaremski.

"There is no question that it's still an issue," Zaremski said. "I think it's naive to not think when law firms are thinking of hiring women that part of the consideration as to whether or not it will be a successful hire is the extent to which they are available to work."

Innocenti acknowledges that such an idea can affect female advancement in law firms, especially given that they are likelier to be the ones to take chunks of time off.

"I think there is still a pervasive, unexamined bias against anybody who has a part-time schedule or who takes a significant amount of time off, and that is disproportionately women," Innocenti said.

But more law firms are recognizing that it's worth it to keep talented women around, according to Zaremski.

"Even with the possibility that they will take time off or go on maternity leave, the benefit to the firm of having high-quality female attorneys certainly outweighs the costs," Zaremski said.

Innocenti says that most firms are worried about the female brain drain in this kind of climate and are anxious to hold on to their top female partners and associates.

"Talent is the name of the game," she said. "Most firms are asking, 'How do we retain our female attorneys?'"

Ultimately, figuring out how to successfully incorporate and promote females is in everyone's best interest, according to Innocenti.

"The loyalty that is engendered by understanding how to retain women is a phenomenal ancillary benefit to law firms," she said.

More and more firms are beginning to embrace that idea as they seek to restructure their outfits in the midst of the crisis, Zaremski said.

"It's very important for everyone to understand that the law firm market, especially in New York, is a huge market," Zaremski said. "There are a great many players, and some are better managed and some are worse managed. We just saw four of the AmLaw 200 firms disappear over the last year."

Zaremski, however, pointed to the recent suggestion made by Cravath Swaine & Moore LLP managing partner Evan Chesler to do away with the billable hour at law firms as a sign that the times are changing.

"Part of his idea is to make law firms more efficient and healthier places," Zaremski said. "It's all related in the sense that some places just have a better understanding and appreciation about how it is in the firm's benefit to have prominent and talented female attorneys, not only as part of their staff but as part of their management."

Zaremski predicted that the firms that seize the opportunity to hire and promote talented female attorneys would be the ones to thrive in these tumultuous times.

"Firms at the forefront of increasing the involvement of women in management and more broadly are much more likely to be successful in the future — similar to how firms that are on the forefront of other aspects of diversity hiring and promotion of minority groups do well," he said.

Most people agree that there are significant problems with the way firms have been operating, with the dearth of women and other diversity groups a factor, according to Zaremski.

"Firms still have a long way to go, and it's a great opportunity for women," Zaremski said. "There is a tremendous amount of support to do things like recruit extraordinarily talented women and also promote them to positions of management within firms."

As always, some firms will take more advantage than others during the economic crisis to make changes, Zaremski said.

"Turmoil presents opportunities for the implementation of some good policies," Zaremski said. "You have to be ready, willing and able, and courageous enough to change the old and entrenched ways of doing business."

But given the unusual nature of the economic crisis law firms are facing, it may not be that simple, according to Ann Israel, the founder of New York-based recruiting firm Ann Israel & Associates.

"I don't think anyone can draw any conclusions one way or another," she said. "We have entered territory that no one understands at all, and I don't think anyone understands what's going on in terms of the layoffs."

Israel says she had thought the cuts were an opportunity for firms to get rid of some of the dead weight and regroup for 2009, but now she says no one knows exactly what the coming year will bring.

"I think firms are just trying to stay alive," Israel said. "I don't know if it's a gender situation at all. I don't know if there are going to be better opportunities for women."

Israel said everyone is vulnerable in times like these.

"Firms don't know what to do," she said. "They are worried about summer hiring. They look terrible for the law students. They are damned if they do and damned if they don't."

Innocenti said the best thing female attorneys can do during this time of tumult and transition at law firms is to build up their own practices.

"In order for women to achieve parity, they need to have autonomous practices," Innocenti said. "It's not that they shouldn't be team players, but they need to take the time to develop their own clients as well. Doing so gives them more lateral opportunities and a greater voice."

DOWNTURN BATTERS FINANCIAL IN-HOUSE ATTORNEYS

By Shannon Henson

Salary cuts and layoffs abound as law firms and businesses face the doom and gloom of the economic downturn, but consultants said one sector has been hit especially hard — the corporate legal departments of financial services companies.

Consultants said that when faced with cutting legal costs, banks and other finance companies are slashing salaries and laying off their own lawyers rather than finding ways to decrease their outside legal costs. Experts said the impact on in-house financial services attorneys can be especially crushing because many are ill-equipped to move to law firms or corporations in other industries.

Pamela Woldow, a principal with legal consulting firm Altman Weil Inc., said that businesses in the financial sector are cutting bonuses, salaries, head counts and training in their legal departments. "Anything that can be trimmed back is certainly game for consideration," she said.

Woldow said that when corporations are balancing their two big legal costs — in-house salary and outside counsel — they are deciding to trim internally first.

Many financial firm leaders said they cut in-house counsel first because much of their external costs were attributed to deals. "The cost is wrapped up in the deal. The price is the price, and it's wrapped up in the product," Woldow said.

Financial company honchos also said that external legal spending was harder to control because it's difficult to predict the costs of litigation or when a company will be hit with a suit. "The mentality is that it's easier to cut what you can control," Woldow said.

Dimitri Mastrocola, a managing director at legal search firm Major Lindsey & Africa LLC and a former lawyer at Citigroup Inc., also said when financial firms "reach for the knife, they tend to cut internal cost structures first."

He speculated that decision is made because the impact is more immediate. "The cuts can be made quickly and have a quick impact as opposed to analyzing outside costs and either asking outside firms to lower rates or trying to consolidate the law firms they use in an effort to attain volume discounts," Mastrocola said.

Compensation reductions and layoffs have been widespread in the downturn, he said. "I can't think of any large bank that hasn't shed some legal or compliance staff," Mastrocola said. "That includes some firms that one might never have thought of laying off lawyers, like Goldman Sachs."

Yet Mastrocola's colleague at Major Lindsay & Africa, managing director Brian Davis, noted that lawyers are key to the business model of financial firms because attorneys deal with regulation and the creation of financial products.

"Firms are reticent to jettison all this talent," Davis said. "They know they will need attorneys, so layoffs with most of these firms is the step they least like to make."

While internal reductions for banks and other finance firms may be necessary, it leaves the attorneys who are fortunate enough to keep their jobs in a bad spot.

"It's not like legal work is going away," Mastrocola said. "Internal legal staffs have been in crisis mode since last fall. They are working longer hours with expectations of being paid much less, and if some of their colleagues are being cut, there are fewer lawyers to do the work. That really puts a strain on legal resources."

He said that financial firms are gambling that their attorneys will stay put because they have no other options.

"They are counting on lawyers' interest in self-preservation," Mastrocola said. "There aren't other options at the moment, so what are you going to do but put your head down and keep working?"

If attorneys at financial firms do lose their jobs, they are often poorly suited to head to corporations in other industries — not that many of those jobs are available either. Davis said many attorneys may have worked for years on a particular financial instrument or another narrowly focused area of the law.

"Major financial firms have really large legal departments so they closely resemble law firms," Davis said. "Many in-house attorneys outside of financial services tend to work in small departments, so they are generalists with perhaps an expertise."

Mastrocola said that those who reach the management ranks of a legal department at a financial firm have a better chance at transitioning to other industries because of the leadership skills they have attained. He noted that he has had some success in placing former senior in-house lawyers in law firms.

"But for the most part, it's pretty tough for most staff attorneys to make a leap," Mastrocola said. "That being said, one attraction to taking these positions is that when times are good there's a lot of positions and a lot of opportunities to move around. The problem now is that times aren't good. The tide is moving in the other direction."

Peter Zeughauser, founder of consulting firm Zeughauser Group, also said it's difficult for corporate attorneys at financial companies to transition to law firms.

"In an economy like this, law firms are not inclined to hire people without books of business, and in-house people don't have books," Zeughauser said. "A lot of people go in-house because they are not adept at making the rain. This is a tougher time to go try and do that."

FIRMS RETHINKING BUSINESS MODELS IN RECESSION

By Shannon Henson

As law firms struggle to make their way through these tough economic times, many are reconsidering everything about their operations and business models — including their governance structure.

While legal consultants said few firms had made changes to their governance so far, all agreed that law firms were reassessing every aspect of their businesses. Some consultants, however, cautioned that the middle of a recession might not be the best time for wholesale changes because no one knows yet where the chips are going to fall.

Brad Hildebrandt, chairman and founder of legal profession management consulting firm Hildebrandt International, said many firms were re-evaluating whether their governance structures were suited to the uncertain economic times.

"I am a big advocate for looking at governance," Hildebrandt said. "Too often, it's neglected."

Hildebrandt recently helped guide Mayer Brown LLP through a governance change, which the firm said would allow it to be more nimble when making decisions.

In mid-April 2009, the law firm announced that under a new governance structure two smaller groups would take the place of its 16-member policy and planning committee. Going forward, the firm will have a management committee consisting of six members plus the chairman, and a partnership board with 12 members plus the chairman.

The change was concurrent with the naming of the firm's new chairman, Herbert W. "Bert" Krueger. He succeeds James D. Holzhauer, who announced his resignation in March.

"The management committee, which will have most of the authority now vested in [policy and planning], will be the small, nimble group needed to respond quickly and decisively to changing market conditions and capitalize more fully on the inherent strengths of our global platform," Holzhauer said at the time of the announcement.

"The partnership board will ensure that the broader voice of the partnership is heard on key decisions, including partner compensation and the selection of individuals for leadership roles. Together, they will provide a more effective and efficient approach to managing the firm," he said.

It's smart for firms to reconsider their management and governance strategies when they are undergoing a changing of the guard, as Mayer Brown did, Hildebrandt said.

"Here, they said, 'We are electing a new chairman. We should make sure the structure inherited is the right structure,'" he said.

But Hildebrandt urged law firms to reconsider their structures periodically even if they are not going through a substantive change. "Often the governance isn't consistent with the growth of the firm," he said.

Many firms are reassessing their structures to see whether they are best situated to navigate these economic times, Hildebrandt said.

Frank Michael D'Amore, president of legal recruiting and consulting firm Attorney Career Catalysts LLC, said the magnitude of the economic recession was prompting law firms to rethink just about everything. "It's causing firms to really look anew at all aspects from operations to the structure of the firm," D'Amore said.

However, D'Amore said that any governance changes made without alterations to the partnership agreement were unlikely to mean a fundamental shift for the firm.

If a law firm switches to a smaller governance structure, it may allow the law firm to move more quickly on big decisions, he said. However, a smaller structure can also lead to complaints that partners are being left out of the loop, since fewer people are ultimately in the know.

"It's a little tricky," D'Amore said.

Ward Bower, a principal of Altman Weil Inc., said he found that firms weren't looking to make sweeping changes, but were instead looking at making changes to the constituency at the management table.

"I don't think the economy is prompting firms to reconsider their structures, but rather they are reconsidering who is occupying those positions," Bower said.

Toni Whittier of Whittier Legal Consulting said she also thought firms were concentrating their efforts these days on getting business and emphasizing preferred practice areas. Large governance changes are taking a back seat to more immediate management function evaluations, she said.

"I think most firms, like everybody else, are looking to see the economy snap back, and they are waiting it out before making structural changes," Whittier said. "Firms will want to see where they are before they make fundamental changes. Right now, we are in a period of flux."

However, Whittier anticipates that the recession will cause one trend to persist: Law firms will continue to bring in officers who have no background in the law, but rather are business executives, she said.

"The recession has underscored that law firms are businesses that need to plan for or be adaptable in a downturn just like everybody else," Whittier said.

DOWNTURN PROMPTS SHIFT IN POWER TO FIRMS' COOS

By Shannon Henson

While the economic downturn has forced many law firms to turn to layoffs and salary cuts as means to stay afloat, legal consultants say the occupants of one position — chief operating officer — not only have job security, but are likely gaining power at their firms.

Law firms increasingly are turning to their business executives for guidance as they rethink every aspect of their business models, from corporate governance to the billable hour, consultants said.

Meanwhile, the small number of law firms that don't have COOs, who are sometimes called executive directors, will likely add them amid uncertain times, legal industry watchers said.

"The number of firms with businesspeople is going to increase, and those people are going to have more say in how a law firm should be run," said Gary Klein of Klein Landau & Romm Inc.

Law firms started hiring business professionals to help guide the business side of things more than a decade ago, consultants said. The hiring of business professionals was a sign that lawyers wanted to turn over aspects of their operations to those with more expertise.

Over time, many law firms grew in size, and the business professionals they employed became more sophisticated, said Joseph Altonji, a co-leader of the strategy practice of the professional services firm Hildebrandt International Inc.

Those occupying the offices of COO or executive director are often in charge of most of the operations of the firm, including technology, finances, human resources, facilities and marketing.

Typically, they report to the head of the firm — a lawyer who is focused on clients, the firm's market position and the practice of law.

Toni Whittier of Whittier Legal Consulting said law firms traditionally had been run by lawyers, "and that was fine as long as firms enjoyed increasing revenues each year. But the changing economic realities will prompt firms to seek out more people with business backgrounds to bring new ideas and additional levels of understanding."

Some consultants said COOs might not have much power in their firms or might not have the access to the head of the firm or the board that they should enjoy.

"Plenty of law firms have businesspeople in place, but the question is how much attention is paid to those people," Klein said. "Whether that will change is clearly a function of where a law firm finds itself positioned post-meltdown. There are some chairpeople who don't want to give up the trappings of power. And some chairs think of themselves as astute businesspeople. Some are, some aren't."

No matter the business acumen of those at the top of the firm, consultants said the CEOs and the partnerships at firms would likely demand heightened participation from their business experts. And the recommendations of the business executives would more likely be heeded, they said.

"In the recession, firms are relying on the MBAs and accountants to find ways to cut costs and shore up finances," Whittier said.

Consultants said that before the downturn hit, COOs were increasingly being welcomed into the highest echelons of the firm. That will continue, and the lines of communication between business executives at firms and the heads of firms will open up further, consultants said.

Klein also expects that some lawyers who have been in management positions may hand over the reins, he said.

"Some people will reach the conclusion: 'I am bad at this job. I didn't want it to begin with, so I am going to turn it over to the business executives and MBAs," Klein said.

Altonji said he wondered whether law firms would reach a point at which the ranks of chief executives are filled with nonlawyers.

The arguable benefit, he said, is that the firms would be run even more like businesses. The drawbacks could include a loss of appreciation of the history and culture of a firm. "It's been tried, it just isn't common," Altonji said.

Whittier noted that law firms have also tried an alternative route to increase their business prowess — building up the business skills of their attorneys.

Before the recession hit, firms were increasingly sending their lawyers to business schools, she said. Over the past year, firms have also been dispatching attorneys to work in the business operations of their clients.

"It's attractive from two standpoints: The attorneys get a better understanding of the client and help the client with additional personnel. It also exposes the attorneys to business operations," Whittier said.

But consultants said just as many aspects of the operations of law firms remained unclear, making it difficult to say how much importance firms will put on their business folks.

However, Whittier said, "something is changing right now."

LAW FIRM GC APPOINTMENTS ON THE RISE

By Morgan Bettex

More law firms are appointing general counsel, and firm managers are taking on corporate titles and responsibilities as part of a trend toward professional, centralized management, according to the first stage of a report of an ongoing study conducted by the American Bar Foundation's Law Firms Working Group.

Citing Altman Weil's annual "Flash Surveys" of law firm general counsel, the report said the percentage of AmLaw 200 firms with designated general counsel increased from 63 percent in 2004 to 85 percent in 2008. The percentage of designated general counsel who are full time increased from 26 percent in 2004 to 38 percent in 2008, it said.

The report includes the first stage of the "Professionalization of Law Firm Management" project by Elizabeth Chambliss of New York Law School, which analyzed quantitative and qualitative data culled from 16 interviews with law firm general counsel, executive managers and former executive managers in AmLaw200 firms.

The project also analyzed data from a national, non-random survey of 76 law firm general counsel.

Although analysis of the survey data continues, some preliminary results suggest that large law firms are moving toward dedicated management at the executive level, the report revealed.

Specifically, the report cites the evolution of law firm management titles, noting that many firms have replaced the title "managing partner," which incorporates both practice and management roles, with a title that has more executive emphasis, such as "chairman" or "chief executive officer."

Meanwhile, law schools, business schools and consultants have begun to offer specialized training programs for law firm managers, including Harvard Law School, which instituted an executive education program in 2007.

The results contrast with traditional academic research on large law firms, which has typically emphasized the limited authority of professional managers compared to rainmaking partners.

"Research suggests that bureaucratic management structures, such as full-time, professional managers, tend to be weak or unstable in law firms, where compensation and status are tied to control over clients," the report said.

Based on interviews and previous fieldwork, the report identifies three mechanisms for embracing change in the structure and culture of managerial authority in large law firms.

First, the report claims that merger activity and the continued trend toward industry consolidation increase law firms' functional demand for dedicated, centralized management. This is partly because the sheer scale of some law firms makes it difficult for even the top rainmakers to handle executive management.

The report also suggests that the trend toward increased professional management will likely increase because of the development of interfirm networks among law firm managers and management consultants that provide opportunities to exchange information and develop shared professional norms, which may provide an alternative basis for managerial authority within firms.

"This consulting market promotes the legitimacy of law firm management as a distinct professional skill, separate from that of practicing partners," the report said.

Generational change among partners is another factor that will likely hasten the acceptance of professional management, according to the report.

Lawyers older than 55 represent a decreasing percentage in large law firms where younger partners may think nothing of deferring to CEO-style leaders or even nonlawyer managers, the report said.

The next stage of the project will focus on developing workable measures of professionalization for firm management and will investigate the relationship between different management models and the economic performance of law firms.

The American Bar Foundation's program of sociolegal research is conducted by an interdisciplinary staff of research fellows who teamed with Incisive Media, a specialized business news provider, to analyze a wide range of law firm business and practice issues.

PARTNER TRACK SLOWS AS FIRMS STRUGGLE TO DELEVERAGE

By Anne Urda

As many law firms continue to hand dozens of associates their walking papers, the question of how to restructure going forward rages on, with some legal experts predicting that the deleveraging will restrict the partnership track even further.

February 2009 marked the bloodiest month so far in a slew of layoffs in the legal industry that began building last fall as the economic crisis set in, but the trend appears to be accelerating as March's numbers continue to rise, Law360's analysis shows.

About 1,045 lawyers worldwide — the bulk of them associates — received pink slips in February, nearly double the number of layoffs in October 2008, the second-worst month in the past year, when 646 attorneys lost their jobs, our data shows.

Though partner job losses are also on the rise, according to our research, partner hiring announcements continue to pour in, leaving some to question whether firms will begin to thin out the associate classes in favor of hiring more partners going forward.

For years, large law firms have relied on a system where they hire a big class of associates two years prior to when they actually begin working at the firm, but unforeseen problems can arise in the lag time between when law students accept summer associate positions and when they start at the firm the fall after graduation and put some firms in a bind, according to Mark Jungers, a partner with Major, Lindsey & Africa in Chicago.

"A year ago, people did not fully predict the current economic mess, and they certainly did not do it two years ago," said Jungers. "Back then, everybody was flying high and firms committed to bring in 100, 200 or even 300 associates. Now they don't have work for the current associates, let alone 300 more."

Part of this bottom-heavy structure was due to the fact that certain kinds of work were very easy to leverage, according to Jungers.

"For much of the heavily financed corporate transactions, firms really could have one partner and 10 associates working on those deals," he said. "Law firms scaled up and leveraged up to do the work and now that work is gone and it may be awhile before it comes back. Some of it may never come back."

Alan Miles, the founder and principal of legal recruitment firm Alan Miles & Associates, says that pressure from clients is forcing law firms to rethink the way they structure deals and dole out work.

"Everybody is deleveraging and the whole model is upside down," he said. "Under the old model, you have three to four associates to every partner. Now because money is so tight, clients don't want to pay for extra people."

Whereas before a senior attorney may have brought an "army" of first and second-year associates with him to learn as they get paid, clients are demanding that the more experienced attorneys leave the entourage at home now, according to Miles.

"Clients are saying, 'give me the one lawyer who knows what he's doing,'" he said. "You are going to see senior lawyers working a lot harder. Partners are going to be a lot more hands-on as opposed to just editing and supervising."

But while the economic crisis and client demand may spur firms to embrace a more even associate-to-partner ratio, the leverage question extends beyond associates versus partners and into the partnership tiers themselves.

Gary Miles, the head of the corporate practice at Miles & Associates, believes that firms are ready to try anything, including instituting a longer track to partnership.

"Firms are re-evaluating the one-tier partnerships," he said. "A multi-tier partnership allows firms to move people out of the world of associates, but they are not drawing equity and income like other partners at the firm. We are seeing everything — all bets are off."

But last month, a new study released by the American Bar Foundation's project on the world of law practice found that law firms that embraced a two-tier partnership system tend to be significantly less profitable than those that shun a nonequity partnership track.

John Gordanier, a professor at the University of South Carolina in the Department of Economics, found that after looking at firms included in the AmLaw 200, between 2002 and 2005, those with a nonequity track tended to be 20 percent less profitable than those without this tier.

"There was already pressure on the nonequity partner class to be more productive, and the economic crisis has just increased pressure on that general trend," Jungers said. "This is true in both up or out systems where lawyers have a finite period of time to make the grade and become an equity partner and in systems that allow for a permanent non-equity partners status."

A seventh-year associate that is trying to make partner often works harder and is more profitable for the firm than a nonequity partner, according to Jungers.

"When work gets tight like now, there can be a problem with equity partners giving work to long-time nonequity partners over fifth, sixth, and seventh year associates," he said. "Firms need to make sure those associates continue to progress and that work gravitates towards them so there is continued development of their future superstars."

As law firm management wrestles with tough decisions about future staffing and operations, the partnership track overall is likely to become even more limited, according to Jungers.

"I think right now firms are not going to embrace bumper crops of either nonequity or equity partners," Jungers said. "I see partnership classes at both levels being very small."

Part of the partner shrinking may be due to the firm's reluctance to slash associate salaries, with management needing to find other ways to address the fact that revenues are down.

"Making additional equity partners in the face of [down revenues] is not something that many of these firms are going to want to do," he said. "The trend over the last several years is that equity partners drive business and that bar has continued to go up. I don't really see that bar going down even in face of less business to be had. Relative to the past, I think it will be even higher."

Still, partners with substantial portable business may find themselves in higher demand than ever as law firms continue looking for ways to get more bang for their buck in such tough economic times.

"Firms are concentrating on hiring partners with substantial portables as all is driven by the bottom line," said Flo Frey, the founder of legal recruitment firm Frey & Sher Associates Inc. "Lean teams are the word of the day. It is what the clients are demanding."

But Frey predicts that even if the big-name firms are able to lure some partners in this market, others will be forced to find sanctuary elsewhere.

"The mega firms will continue losing partners because of client conflicts, and you will see defections to boutiques where billing rates are lower or flexible, conflicts are not an issue and management woes do not impact the bottom line and production," she said.

While the corporate work is not gone forever, Jungers believes that even when financial institutions start lending again and some of this business returns, law firms will not be as bottom-heavy as they were in the past.

"I don't think we will see a light switch flip and everything turning back to go-go for some period of time," Jungers said. "I don't think law firms will start massive associate hiring any time soon, as many are not yet cutting into muscle with these layoffs."

While no one doubts that the de-leveraging will be a painful process, the financial crisis may prove to be positive for the legal industry in the long-run, according to Jungers.

"I think the changes are good for the industry," he said. "Firms like Howrey and now Orrick are leading the way to eliminate lock-step associate compensation and many firms are using outsourcing and adapting concepts from corporate America as Seyfarth has done with Six Sigma. We are seeing firms re-examine how they deliver legal services to their clients and finally start to innovate. Some of this would have happened anyway but the pace of change has increased rapidly."

Additional reporting by Erin Marie Daly

MANAGING RECESSION-DRIVEN BILLING PRESSURE

HOW TO STEER CLEAR OF MALPRACTICE SUITS IN THE RECESSION

By Denise Oliveira

Experts are predicting that the current economic depression will give rise to an uptick in legal malpractice lawsuits, and they advise law firms to ring in 2009 by revisiting their risk management strategies to avoid unnecessary exposure.

Historically, the volume of malpractice claims against lawyers rises during economic downturns, said Michael Furlong, a senior vice president in the legal business division of Swiss Re, a company that provides malpractice insurance to lawyers nationwide.

When the economy is hurting and many deals go sour, clients and third parties alike start looking for targets with deep pockets or healthy insurance policies to sue, industry insiders said, likening the current situation to the savings and loans crisis of the 1980s, which led to a flurry of lawsuits against lawyers.

"It's not that law firms are making more mistakes in a slow economy," Furlong said. "It's just that in a slow economy they get sued more because as assets lose value, clients might be looking to get out of transactions or seek recovery for their losses."

The malpractice suits are likely to stem from both commercial and residential real estate transactions, financial institution representation, collections and bankruptcy work and a host of other business transactions and merger and acquisition matters, the experts said.

"In a good economy, where deals are going well, there's less incentive for people to blame their lawyers. As the economy worsens, that's not so," said a past president of the Association for Professional Responsibility Lawyers, Peter R. Jarvis, who now chairs Hinshaw & Culbertson LLP's attorney professional responsibility and risk management subgroup.

What can law firms do to minimize their exposure to malpractice suits? Experts discussed several strategies that are always important, but especially relevant during a recession.

Do Not Stray From Your Area Of Expertise

Lawyers can limit their malpractice exposure in these turbulent times by resisting the temptation to take on whatever work comes in the door simply to keep themselves busy and billing, experts said.

Lawyers feeling economic pressure are more likely to retain work they would otherwise refer out to someone with more specific knowledge, but that can be a real trap, according to Mark Foster, a partner in Zuckerman Spaeder LLP's legal profession and ethics practice.

"Where lawyers get in trouble is when they dabble in areas outside their expertise," Furlong said. "If you're going to dabble in those areas in a slow economy, you're in dangerous territory."

Be Diligent In Collecting Fees

Disputes over unpaid bills often balloon into malpractice lawsuits, experts said.

The recession may mean some law firms are having a harder time collecting fees from their clients, but this is precisely the time to be diligent about collections in order to avoid legal disputes over unpaid bills, they said.

"Particularly in a slow economy, you do not want to sue your clients, because historical data shows that as many as 30 to 40 percent of lawsuits over fees result in counterclaims for negligence," Furlong said.

Lawyers are often willing to take their clients' word that they will catch up on delinquent bills, but the longer a bills sits unpaid, the more likely it is to turn into a legal dispute, Jarvis said, advising firms to catch and address payment issues as early as possible.

Steer Clear Of Problematic Or Risky Clients

Proper client screening is especially important in litigious climates, the experts said, advising firms to thoroughly research and evaluate new clients before bringing them into the firm to make sure they're not involved in shady activities, that they don't have a history of suing their lawyers and that they're sufficiently solvent to pay their legal bills, the experts said.

"Do some background checking to determine whether it's someone you want to represent," said William P. Schuman, a partner at McDermott Will & Emery who chairs the firm's professional responsibility committee. Clients who get into trouble often get the lawyers in trouble with them, he noted.

It's critical to have defined client intake policies and to make sure they are followed by every single lawyer in the firm, Jarvis said, adding that individual lawyers often see the benefit-risk ratio of bringing on a particular client differently than the law firm overall would see it.

"Firms tend to be more conservative about these things than individual lawyers within the firm," Jarvis said. "Part of the risk management process is seeing to it that cooler and wiser heads prevail."

Communicate, Communicate, Communicate

"Don't open yourself up to being second-guessed," Furlong said. "In a slow economy, firms need to react quickly to their clients' needs and communicate more regularly with them."

This means both providing responsive client service and keeping a thorough paper trail of client communications, the malpractice advisers said.

Dissatisfied clients are the ones who tend to sue, and responsive client service — like returning phone calls quickly and keeping clients in the loop — goes a long way to keep clients satisfied, the advisers said.

Likewise, lawyers can protect themselves by keeping accurate records of client communications.

"It's unfortunate that lawyers have to practice defensively, but it's important for lawyers to keep records so a client can't say, 'you didn't consider this,' or 'you didn't tell me about that' or 'we didn't agree on this particular strategy,'" said John May of Jordan Coyne & Savits LLP, who defends lawyers in professional negligence cases and served as a hearing commissioner for the Washington, D.C., board on professional responsibility.

"Sometimes, it's your word against the client's, and if you have to prove it in court, it's best to have a contemporaneous written record of what happened," May said.

An important aspect of accurate record-keeping is having an efficient and timely process for recording time spent on client matters, McDermott's Schuman said. At his firm, lawyers are required to record their time within three days of performing the work, he said.

"We believe that's important, because if lawyers get lazy and wait two weeks, the accuracy of reporting has to suffer," Schuman said. "And if there's ever a quarrel with the client, demonstrating that you were timely in recording helps."

Do Not Forget The Obvious Risk Management Tools

Time-tested risk management best practices that should be in place at all times should not be overlooked or taken for granted just because they might sound obvious, the malpractice experts said.

These range from having sophisticated systems to keep track of deadlines, not overbooking lawyers to the point where they get rushed and sloppy with client work, maintaining a well-oiled conflicts check system and drafting engagement letters that clearly define the scope and limits of each client representation.

It's also important for every single lawyer in the firm to know she should report potential red flags to the firm's management or general counsel as soon as a problem is detected, the advisers said. Associates must have a way to report problems without fear they'll be fired for doing so, Zuckerman Spaeder's Foster said.

"Many problems can be minimized by timely action, but things will get worse if left unattended, and many lawyers seem to not understand that," Jarvis added.

Likewise, it's important to train lawyers at all levels on general ethics rules and on the rules as they apply to particular practice areas, the malpractice lawyers said.

"If lawyers were to concentrate on the rules of professional responsibility and go back and read them because they haven't done so since they left law school 20 years ago, they would realize that by following the rules more carefully they would avoid problems," May said.

Law firms are aware of these best practices but don't always follow them, Furlong, of Swiss Re insurer, said. "We're aware of what drives the mistakes, because they're very similar, year after year," he added. "Although law firms have made progress, there's always room for improvement."

"Lawyers don't seem to learn from their mistakes" was a conclusion the American Bar Association's Standing Committee on Lawyers' Professional Liability drew from its analysis of almost 40,500 legal malpractice claims filed nationwide between 2004 and 2007 and reported by insurers who provide legal malpractice coverage.

The ABA's study was published in September and showed that, as in prior studies, about one-quarter of all claims stem from drafting errors in documents such as contracts, leases, deeds and wills.

The percentage of claims arising from substantive errors — such as failure to properly know or apply the law, or conflict of interest problems — accounted for 46.61 percent of claims, compared with 47.28 percent in a similar ABA study published in 2003.

The majority of malpractice claims are brought against small firms, the ABA study noted.

But large law firms are certainly not immune, May said, noting that he has detected an increase in the number of malpractice suits accusing lawyers of breach of fiduciary duty, which larger firms are particularly vulnerable to.

"Most people think of malpractice as a duty of competence issue, as in 'don't make a mistake,'" May said. "But more plaintiffs are bringing claims of breach of fiduciary duty, which goes to loyalty issues, like classic conflict of interest matters."

The bottom line is that this is a time when law firms need to be taking a hearty dose of their own medicine.

Lawyers are in the business of helping clients avoid unnecessary risk. "When it comes to looking out for themselves and their firms, lawyers need to go through a similar process," Jarvis said.

"If there's one thing that stands out from the present financial crisis, it's that rules really do matter," he said.

BILLABLE HOUR LEAVES FIRMS VULNERABLE TO OVERBILLING ATTACK

By Anne Urda

Some clients, more leery than ever of being overcharged, have taken to the courts recently and launched overbilling suits against major law firms. But legal experts differ as to whether more firms will be targeted overall.

Last month, a Swedish heiress sued Proskauer Rose for nearly $9 million, alleging that the firm manipulated its billing practices to overcharge her by millions in a case over a Andy Warhol silkscreen.

In the complaint, Kerstin Lindholm included a memo purportedly penned by a Proskauer associate, suggesting that the firm had double-billed her for some of the work and that the case had been excessively handled overall.

While Proskauer has denied the allegations, calling the suit without merit, it is hardly the only firm faced with such accusations in recent days.

WilmerHale is currently duking it out in a Texas court over accusations brought by McAfee Inc. that it overbilled the company in its defense of former chief financial officer Prabhat Goyal in a white-collar criminal case.

McAfee maintains that nearly $7 million of the $12 million expended to defend Goyal was frittered away on excessive fees and expenses for WimerHale partners and associates, including luxury hotel rooms, limos and bar tabs.

Foley & Lardner was hit with a lawsuit in February by three technology clients who said the firm billed them for unnecessary work and did not sufficiently pursue their patent infringement case.

A suit filed against Chadbourne & Parke in March echoes those sentiments, with the firm accused of

overcharging J. Virgil Waggoner, a Texas businessman, for computerized legal research. His bill for those services was around $20,000 but his lawyer claims that it should have been closer to $5,000.

The suits may turn out to be isolated incidents, but the pressure facing both clients and law firms these days when it comes to billing is real, according to William G. Ross, a professor at Samford University's Cumberland School of Law who specializes in billing ethics.

"In a recession, it is not surprising that law firms will scrutinize bills and some disgruntled clients will pursue litigation against former attorneys," said Professor Ross. "It depends on the individual case."

In his most recent study on overbilling, which appeared in 2007, Ross found that two-thirds of survey respondents indicated they had "specific knowledge" of bill-padding at law firms.

Ross also found that 54.6 percent copped to performing unnecessary tasks just to puff up their billable figures, a marked increase from previous years.

While some associates do simply fabricate their hours in order to meet quotas and expectations, most of the overbilling that takes place tends to come from excessive work performed by the attorney, Ross said.

"Often associates spend too much time performing tasks that are not of great benefit to the client," he said. "Sometimes it's due to a loss of perspective or supervision rather than unethical billing."

If a law firm has an ongoing relationship with a client, it is not unusual for the firm to conduct a front-end audit to ensure that clients know what they can expect to pay, but not everyone does that, according to Ross.

"Some cases could be avoided if an attorney would have communicated effectively with the client before any problem arose and they felt they needed to litigate," he said. "But communication is a two-way street. Clients need to communicate to attorneys what is expected of them."

With the increased concern about costs and layoffs these days, some attorneys might feel the need to impress the powers-that-be with their billing records, he said.

"In a more competitive law firm environment, they may feel pressure to bill as many hours as possible to try to keep their jobs, and that could lead to unnecessary work," he said. "I think unnecessary work is the greater contributor to unethical billing than time fabrication. That can go on but it's not particularly common; it's more widespread to milk files and it's more likely to happen when there is less work."

When times are good and firms are thriving, lawyers have their hands so full, they do not need to think about tampering with the billing process, Ross said. But in an economic downturn, quotas and expectations can lead some astray.

"There is more of a temptation to leave fewer stones unturned or do a little extra research," he said. "To the extent that the recession continues and worsens, there is likely to be greater friction between everybody and that could lead to an environment in which there is more likely to be litigation."

Michael Downey, a partner with Hinshaw & Culbertson LLP and an adjunct professor of legal ethics at Washington University School of Law, believes that such suits could take the form of counterclaims in future months as clients drag their feet about paying bills.

"I think what we are likely to see is that like every other business, clients are slower about paying their bills," he said. "Firms start to make noise about payments and then clients hit back with counterclaims saying they are not going to pay that amount and saying, look, you have overbilled us."

Given the likelihood of counterclaims, law firms have to be very careful about suing on bills, he said.

But that's not to say, of course, that attorneys are without blame in some of these scenarios, Downey said.

"Human nature being what it is, there is pressure to bill so much, especially given that partner compensation in the past was linked with how many hours and what revenue you bring in," he said. "The people who are prone to engage in this conduct will try to inflate hours."

Downey pointed to various academic studies that have been done over the years that suggest most attorneys have some suspicion of overbilling at their own firms.

"I do think there is a sense that there are always lawyers that bill a massive amount of hours and people are not sure how they ever got there," he said. "They may be doing other things but frankly, there are some people that deserve the suspicion."

While overbilling suits have been out there for a long time, the worry for law firms, especially in the current economic crisis, is the rippling effect it can have on other business.

"Those suits are a huge potential problem for a law firm because the natural inclination is for a client to ask, 'How do I know I have been charged properly?'" Downey said.

If an attorney were even to add .1 hours to their billables every day, that could mean a significant amount of money for the client, said Downey.

"A little bit of inflation can go a long way," he said.

Law firms and attorneys may have a hard time defending themselves from such accusations, too, based on the way they handle their billing.

"Success really depends on what the attorney is able to show about how promptly they entered their time and kept records," he said. "New York, for example, has very strict timekeeping rules."

Every lawyer, though, has been in a situation where you have missed a day or forgotten to record the billing, he said.

"Honest lawyers will dock themselves," he said. "That said, if you are trying to prove what you have done, it can be somewhat difficult to judge the output, especially in a lawsuit that could be years later.

Sometimes, I spend .3 hours on a quarter page letter and sometimes I spend that on a three-page motion."

Such shades of gray are part of the reason why firms are vulnerable to attack and why so much outcry has surrounded the billable hour lately, with some prominent attorneys, including Evan Chesler of Cravath, Swain & Moore, calling for its demise.

"The billable hour can create an unhealthy situation for lawyers and an unverifiable situation for clients," Downey said. "Most people are trying to bill honestly, but it is a hard process."

Jack Zaremski, president of Hanover Legal Personnel Services Inc., a Manhattan-based law firm consulting and attorney placement firm, believes that overbilling charges may drop off in New York City in the coming months.

"I think it's going to be less of a problem rather than more of one, because I feel we are turning a corner with respect to the downturn," he said. "My sense is that clients might be going a bit too far in questioning the integrity and honesty of great law firms."

Given that revenue is almost entirely a function of the billable hour, there will also be a certain amount of abuse and inefficiency, but it could be clients who pay the ultimate price in the end by pursuing such suits.

"I think that the overzealousness with which clients are going after firms with respect to the way they bill is going to come back to haunt them," he said. "The legal market is a two-way street and attorneys have a choice as to who they represent."

Once a client gets a reputation as being difficult, it can be harder to find good representation, according to Zaremski.

"The market is starting to turn, and clients are going to find they are not quite as empowered when the competition for any business was at its peak," he said. "They are going to find that the overzealousness may come back to haunt them. People have short memories and forget things are cyclical and that what you do today might have repercussions for tomorrow."

AUDITORS CREATE STICKY SITUATION FOR FIRMS, CLIENTS

By Anne Urda

With money tight and fears high, some clients are cracking down on potential billing abuse by looking to auditors for help — creating a contentious set-up that could backfire on clients and cost law firms some jobs, according to legal experts.

"Clients have used auditors extensively for at least 20 years to review bills, but the trend in the past has been towards the use of front-end audits as a financial planning tool," said William G. Ross, a professor at Samford University's Cumberland School of Law, who specializes in billing ethics.

"As the recession continues, there will be an increase in the use of auditors retrospectively as clients try to find a way to contest bills that they have already been given," he said.

While some clients may indeed be paranoid about overbilling, law firms should be concerned about what the use of an auditor says about the state of the client-firm relationship, according to Charles H. Green, founder and CEO of Trusted Advisor Associates and a long-time advisor to various law, accounting and consulting firms.

"Any law firm with a client who hires an auditor to review their bills should feel horrified," he said. "If they don't feel horrified, they should — this is an indicator of an extremely low level of trust between firms and their clients. It is one of the final stages of trust-rot."

Once clients begin to think of bringing in an auditor to review billings statement, firms are fighting an uphill battle, according to Green.

"If that thought comes up, it means the client is thinking, 'They are hiding something here. Why are they not giving me more information? What are they afraid of?'" he said. "Those questions all go to motives. The client thinks, 'either they are in it for themselves and just trying to make as much as they can from me,' or 'they don't even care enough about me to explain things.'"

But Gary Klein, the founder of and president of legal recruiting firm Klein Landau & Romm Inc., questions how useful legal auditors can be, noting that they have their own economic incentives to find instances of puffed up bills.

"In order to justify their cost, some auditors need to 'discover' overbilling, rendering their very existence a conflict of interest," he said. "If a client thinks they need an auditor, what they probably need is a different law firm. Part of trusting your lawyer is trusting the fairness and accuracy of the bill."

Then again, clients have sometimes been too deferential to firms in the past, failing to examine their bills closely enough and to acknowledge that chronic overbilling might be a problem, according to Ross.

Given current economic straits, clients will be on high alert about becoming victims of this practice, which could have significant repercussions for the firm if they catch or suspect anything improper.

"If they don't trust your bills, they are unlikely to trust your legal advice — your motives become suspect," he said. "If they don't trust your bills, they're not going to recommend you to other potential clients."

Most firms cannot afford to lose business right now and law firms consequently need to take the use of an auditor as a serious omen, Green said.

"If a law firm does not see these as serious warning signs, then they have a very poor understanding of client relationships, and before very long, it will hurt them in terms of market presence and profitability," he said.

These days, transparency is the name of the game and law firms are paying the price for keeping their methods under wraps, according to Green.

"Consulting firms and CPA firms have for many years gotten more transparent about their billings, whereas law firms have not," he said. "That makes the comparison even worse — companies are getting far more transparency from their other service providers, and are beginning to ask why."

Green pointed to an example of a corporate client that complained to a firm for sending him a bill that was two thirds higher than he thought it would be, with no explanation and the names of 37 lawyers — most of whom he had never heard of — attached.

"Law firms are afraid of being transparent, but the irony is, the willingness to be transparent translates into far greater trust, including trust that your rates and hours are fair," he said. "Openness doesn't translate into lower billings, it translates into higher billings. Law firms focused on keeping billing information closely guarded are shooting themselves in the foot."

Communication is the key. Firms need to reach out to clients at the outset and set a monthly level of "run rate" of expected billings, making it clear that actual rates will vary from month to month and that such differences and the reasons behind them will be discussed along the way, according to Green.

"Ask your client occasionally whether there are any concerns about the level of billing," he said. "Most lawyers think that clients are concerned about billing rates. They're not, they're concerned more about time. Discussions about time spent are far easier to have than discussions about hourly rates."

But the fault does not lie entirely with the firms, according to Ross, who says that communication is a two-way street that clients don't always walk down.

"Sometimes, clients don't effectively communicate or are not receptive, and then they complain when they are overbilled," he said. "I have been retained many times to review bills of clients, and while in most instances, I found problems with the bills, sometimes I have not. Some clients are overly suspicious."

Part of that suspicion, though, derives from firms' billing methods, which puts firms under increasing pressure to charge clients in a way that does not leave as much room for potential abuse.

"I think probably there will be more of a tendency for clients to scrutinize the billing arrangements they have with firms as the economic situations continues to deteriorate and businesses becomes more competitive," said Jack Zaremski, president of Hanover Legal Personnel Services Inc., a Manhattan-based law firm consulting and attorney placement firm. "The billable hour lends itself to inefficiency — there is no question about that."

Zaremski pointed to prominent attorneys like Evan Chesler of Cravath, Swaine & Moore, who have recently called for the end of the billable hour as a sign that times might be changing, in order to please clients.

While it may be a buyers' market now, clients need to be aware that they can only push firms so far, he said.

"Law firms do not have unbounded tolerance for dealing with certain demands that clients make of them, and clients need to be cognizant of that," he said. "The best lawyers will not put up with what at a certain point could feel like harassment."

If clients insist on checking up on lawyers' work, they could make it difficult for the firm to provide the service that has been requested and they may end up with a lower quality service provider, he said.

"There needs to be a balance and accommodation on both ends," he said. "One industry that is notoriously difficult when it comes to paying anything is the insurance industry. Many law firms don't have insurance practices because they don't want to have insurance companies as clients."

Zaremski said that it is important that clients remember that while they may have the advantage now, that might not always be the case.

"We will come out of this at some point in some way," he said. "The storm will not last forever and people will remember how law firms and also clients reacted to a very difficult environment. Behavior during this difficult time will have repercussions into the future."

IN-HOUSE COUNSEL MOVE TO REALIGN VALUE WITH RATES

By Jocelyn Allison

There are just two reasons the general counsel at Sprint Nextel Corp. seeks outside legal services: either he needs the expertise or he needs the extra staff. Otherwise, it's all in-house.

"I'm in a situation where outsourcing is more expensive than in-sourcing; law firms are anywhere from 50 percent to 300 or 400 percent higher than my internal rates," said Charlie Wunsch, general counsel and corporate secretary at the Chicago area-based telecommunications firm.

"I don't think I'm unique," he said. "I don't think I'm particularly low on my internal rates compared to my colleagues in other parts of the country."

When he does have to go outside — which is often the case with litigation — Wunsch has become much more selective. He's bidding things out more, exploring alternative rate structures and opening himself much more to boutiques and regional firms than in the past. He's also not afraid to say no.

"There are some firms out there that say, 'Hey, here is our rate, and either you pay it or you don't,' and we don't," Wunsch said.

The clash between clients and law firms over high rates is hardly new, but some say it has reached a tipping point that is prompting many in the corporate counsel community to finally take action.

For many, that moment came in 2008, when law firms, some of whom were already paying partners $1,000 an hour, decided to start paying first-year associates $160,000, said Susan Hackett, senior vice president and general counsel for the Association of Corporate Counsel.

"Clients at that point have to say, 'Was there really any additional value provided? Was the market really that tight? What possibly justified this increase in rates except that law firm lawyers decided they wanted to make more money?'" Hackett said. "It's just really crazy."

The Association of Corporate Counsel, which has about 25,000 members representing about 10,000 companies, has been working since September 2008 to connect what many on the inside see as the runaway cost of outside legal services back to the actual value they provide.

Through the Value Challenge, they're working to bring together chief legal officers and corporate counsel from companies across the U.S. with law firm leaders to open the lines of communication and come up with better ways of doing business.

The recession has been a helpful motivator in prompting law firms to come on board, Hackett said. Many firms are starting to realize that the old ways of doing business are gone for good. Others, however, don't even know they're "off the list," Wunsch said.

"With the recession, everybody thinks the volume is down," Wunsch said. "Well, the volume is down, but it's also going elsewhere."

So what can law firms do to ensure they stay on that list? There's no one answer, but deleveraging and focusing on retention are two good places to start, according to Michael Roster, chairman of the ACC Value Challenge Steering Committee.

"Most of our outside lawyers are very hardworking. The problem is, they're turning out a lot of stuff that may not be worthwhile," said Roster, former general counsel for Golden West Financial and Standford University. "The task is to be more efficient while maintaining their profitability."

Instead of limiting the number of equity partners to increase profits per partner, firms should be focused on decreasing their associate-to-partner ratio and improving retention, Roster said.

"Imagine the difference if one firm has a 3-to-1 ratio and 85 percent turnover versus another firm that has a 1-to-1 ratio and 20 percent turnover. Guess which one is going to give you better [value]?" he said. "It's not even a close call."

In addition to improving communication and highlighting firms and in-house departments that are making efforts to change the way they do business, the ACC is looking to develop a "value index" that would assess firms based on factors that matter most to clients.

"It's like the Zagat guide," Roster said. "If you've been running a restaurant and you've got a 1.5 or a low rating and the newcomers down the street get a better rating, that starts changing the behavior."

ACC officials say they know the law firms won't change their business models overnight. Hackett describes the change as a "slow motion riot." But if even 10 to 15 percent of a law firm's matters are being handled using alternative fees by the end of the year, "that's seismic change," she said.

Law firms, of course, aren't the only ones who must change, ACC officials said. In-house lawyers must be willing to do more than just pay the same old rates or merely continue to ask for discounts. They must take risks of their own.

"We are addressing the risk issues that make many inside and outside counsel skittish about trying out new ways to work," Hackett said. "They may hate the devil they know, but they are afraid of what they have no experience with."

That could mean a client hiring a firm with innovative proposals that they haven't hired before, or a firm deciding to "put some skin in the game" and risk losing money on some matters in order to make much more overall because they'll profit on the majority, Hackett said.

That could also include in-house counsel agreeing to establish solid, long-term relationships with law firms or handing over all of their litigation to a single firm for a set period, Roster said.

Through the Value Challenge, ACC encourages in-house counsel to pick their three best law firms or practice groups, then invite them over for a two-hour bag lunch to discuss how to improve the value of legal services. Law firms are encouraged to do the same with their three best clients.

At the end of the session, both sides should agree to try out some of the ideas — similar to a pilot project — and then regularly assess them to see what works and what doesn't. If it does, try it on a larger scale, Roster said.

Another tool ACC has offered through the Value Challenge is an online economic model that allows users to input different numbers, billing rates, salaries and other information for associates, partners and other timekeepers into an Excel spread sheet, then test various staffing approaches to see the results.

In one test, the model showed that a law firm with about 1,000 lawyers that cut its incoming associate class by half and returned the attrition rate to what it was 10 years ago could increase profits 30 percent, Roster said.

The tool is one example of how certain changes in the law firm business model could help both the firms and their clients, though ACC officials said there's no one-size-fits-all solution. What's clear is that changes need to be made, they said.

"Even when the markets get better, I don't think you're going to see people going back to what they were doing before as if this were some kind of blip on the screen," Hackett said. "I think we're seeing corporations making changes that they're not going to retreat from."

CLOS WANT FIRMS TO CHANGE FEE STRUCTURES

By Ryan Davis

With the recession taking a toll on in-house legal departments, chief legal officers at U.S. companies are cutting back on hiring and would like outside counsel to increase their use of alternative fee arrangements, a new survey has found.

Among the 619 chief legal officers or general counsel that responded to the survey by the Association of Corporate Counsel, use of alternative fees, fixed fees or discounted rates was the No. 1 response to the question of what outside counsel could do to improve relations with in-house counsel, with 60 percent of respondents endorsing the idea.

Other top responses to the question fell along similar lines, including focusing more on budget management (57 percent), improved status updates and communication (49 percent) and offering nonbillable advice (46 percent).

In its executive summary of the survey, the ACC said that respondents felt there was a disconnect between the current billable-hour model deployed by law firms and the "service" or "value-focus" model favored by law departments.

Alternative fee arrangements are attractive because in-house counsel feel it provides a predictable expense and that by sharing the risk, there is a greater incentive for outside counsel to perform their best.

"Too often there is a disconnect between the costs associated with legal work and the value clients receive," ACC senior vice president and general counsel Susan Hackett said in a statement. "Law firms must not only recognize the increased economic pressure in-house counsel and their companies are facing, but focus on new efficiencies that will help reconnect their billing practices to client satisfaction with the value of their services."

Past ACC surveys have shown a similar interest in alternative fee arrangements, but the 2008 survey addressed the relationship between in-house and outside counsel more closely. The recession was also a major theme of the new survey, which was conducted between November and December.

Fifty-four percent of respondents said that the economic downturn had affected the operations of their law department, leading to more work being done in-house, budget cuts and cost-saving measures, longer hours, and layoffs, the survey found.

Only 23 percent of respondents plan to hire additional staff in the coming year.

Increased use of paralegals and other support staff was reported by 48 percent of respondents to cut costs, while contract management systems and document management were also popular measures, used by 44 percent and 43 percent of respondents, respectively.

Alternative fee arrangements have been implemented by 41 percent of respondents.

A political environment that appears conducive to stricter government regulation of business is also on the minds of chief legal officers, the survey found, with 48 percent of respondents saying they place great importance on the increased scrutiny from regulators and law enforcement.

Thirty-six percent said such scrutiny would impact whether they retire or seek another position.

Despite all of these concerns, 88 percent of chief legal officers said they were satisfied with their career.

The ACC has been conducting the survey annually for nine years. Of those who responded in 2009, 46 percent were from private companies, 30 percent were from public companies and the rest from other organizations.

The majority of respondents work at companies with 1,000 employees or fewer and annual revenue under $500 million.

RIO TINTO OUTSOURCING SIGNALS NEW THREAT TO BIGLAW

By Anne Urda

In an effort to save on its legal bills, Anglo-Australian mining giant Rio Tinto has put together a team of Indian attorneys to tackle contract review, drafting and legal research, triggering fears that BigLaw firms will start to lose out as companies look for cheaper ways to meet their legal needs.

Rio Tinto sent a chill through the legal community when on June 18, 2009 the company revealed that it had reached a deal with outsourcing provider CPA Global to hire 12 Delhi-based attorneys to handle various legal matters for the company.

"We took a long hard look at our internal costs and the amount we were spending with outside counsel and saw an opportunity to make significant changes to the way we deliver legal services to the group," said Rio Tinto's managing attorney Leah Cooper. "We have developed a groundbreaking legal model with CPA Global that will generate tremendous savings and serve the business without compromising quality."

Cooper predicts the move will save the company up to 20 per cent annually in legal costs, and will allow Rio Tinto's in-house counsel to take over more of the work previously shipped to outside counsel like Linklaters LLP and Baker & McKenzie LLP.

"As more of our standard legal work is filtered though to CPA Global, we will have more time to lift our heads up from the day-to-day reactive delivery of legal services and focus on being more proactive," Cooper said. "We will have more time to spend with the business, develop stronger relationships and understand what we can do to prevent legal issues developing in the first place with a stronger focus on prevention rather than cure."

While outsourcing is not entirely new, Rio Tinto's decision to shift staffing at such a crucial economic juncture should serve as a further wake-up call to BigLaw about what clients are willing to put up with these days, according to Timothy Corcoran, a senior consultant at Altman Weil Inc.

"Many law firms, particularly the largest and most prestigious, think of themselves as 'best of breed' in all categories, which suggests that for all legal work their clients can expect to pay premium prices," he said. "The fallacy in that assumption is that there are many components of a deal or of a major litigation that are routine and mundane and that don't necessarily require the services of a top partner at a leading firm who attended the most prestigious schools."

Part of the problem lies in law firms' refusal or reluctance to break down for clients what tasks actually require or deserve top dollar, according to Corcoran.

While clients may have accepted this situation in the past, they are now taking it upon themselves to make the call as to which tasks merit and deserve the attention of the legal big guns.

"The Rio Tinto outsourcing deal reflects one client determining that routine contract review and drafting and basic legal research are tasks that are more commodity than premium, and therefore a lower-cost provider can and should perform these tasks," he said.

That's not to say, however, that clients will start to turn exclusively to outsourcing in order to meet their legal needs, Corcoran said.

"Undoubtedly Rio Tinto will continue to retain top law firms for the premium aspects of its deals and litigation, but this division between premium and commodity work will soon be commonplace," he said.

Gary Klein, the president and founder of New York-based recruiting firm Klein, Landau & Romm, believes that companies like Rio Tinto will stick to the big names when it really counts.

"My sense is the company may be sending a message to its regular counsel by doing this," he said. "In matters of utmost importance or first impression or a bet the company type of situation, I would seriously doubt that a company like Rio Tinto would outsource those types of matters to nontraditional law firms."

Though outsourcing may look like a great deal right now, companies must also be aware that most of the time, you get what you pay for, Klein said.

"To the extent that it becomes a trend to use inexpensive law firms on matters, when train wrecks start occurring, the trend will stop," he said. "The reason why people use the most prominent law firm is because they believe the most creative and most analytically thoughtfully lawyers are there, and I think that's justified."

While outsourcing legal work may help companies save some money in the short time, the bottom line should not be the ultimate priority when choosing counsel, Klein said.

"If I were running a big company, I would use the lawyers I thought most capable of handling my matter, not the cheapest," he said.

That said, most law firms have caught on to the idea that they need to start offering some kind of discount or alternative pricing arrangement so that clients do not start walking away.

But the ones who can take that flexibility a step further and figure out how to embrace the outsourcing model will thrive, said Corcoran.

"The irony of the situation is that law firms are themselves merely outsource providers of legal services to corporations whose main objective is to make and sell products," he said. "Once law firm leaders fully realize this, they will look to their own operations and apply business process re-engineering principles to reduce inefficiencies in the delivery of legal services, which can increase quality while decreasing delivery time, eliminate redundant or unnecessary steps, and allow for the use of prior work product rather than viewing each project as unique."

By improving efficiencies, firms are likely to boost profits even if prices are flat or declining as other industries have already found, Corcoran said.

"We view the Rio Tinto announcement as fairly novel in the legal profession, though it's an unexceptional and routine business approach in other businesses," he said. "We expect to see more clients take this approach and we also expect top law firms to move slowly in response, but those that do embrace this as an opportunity to make some fundamental changes in the delivery of legal services will have a significant and sustainable competitive advantage."

At the end of the day, a law firm's ability to adapt in this economy may mean more to clients than the big name outside the door, according to Corcoran.

"The new measure of law differentiation is not limited to pedigree and brand, but efficiency and business sense will now become important factors," he said.

RATE PRESSURE A BOON TO MID-SIZED FIRMS

By Shannon Henson

As the economic downturn takes its toll on large law firms, mid-sized firms find themselves in a position for growth — attracting partners from their bigger but less stable rivals and touting their lower rates to compete for cash-strapped clients.

The downturn has been a bit of a boon for smaller and mid-sized firms, which were more conservative during prosperous times than their larger counterparts and now find themselves appealing to partners looking to flee unstable larger ships, consultants and a managing partner at a regional law firm said.

Mid-sized firms "didn't have as much of a boom in the boom, and they aren't experiencing as much of a bust in the bust," said John Cashman, a regional practice manager for the legal search firm Major Lindsey & Africa LLC. "On average, these firms are not exposed to capital markets work, which has been substantially impacted. They also aren't seeing as much rate pressure because they were already cheaper on average."

"Many mid-sized firms see this as an opportunity to grow," Cashman said. "They had not been able to attract star laterals, and they see this as a buying opportunity."

The firms hit hardest by the downturn are those that grew quickly and were highly leveraged with associates, said Toni Whittier of Whittier Legal Consulting.

"Those firms are hurt more than law firms that are more conservative," she said. "And mid-sized and smaller firms have been a bit more conservative."

As a result, lateral partners from large firms have been more interested in midsize firms than they had been because they seem more stable, she said.

"Mid-sized law firms can offer a less financially turbulent environment," Whittier said. "Senior attorneys are looking at a range of options."

Cashman agreed that partners at large firms are now more open to working at mid-sized, regional law firms. He said he'd only seen a few such moves, but anticipated more partners would make the jump.

"Large firms had been attracting lateral talent because there was a perceived need to have expertise in London and New York," Cashman said. "The first thing a corporate partner would ask when we'd talk to them was, 'How strong are they in New York?' We're not hearing that at all now. The bloom has fallen off the rose of globalization."

Joseph Altonji, a co-leader of the strategy practice of the professional services firm Hildebrandt International Inc., said partners at large firms may be thinking of their clients when expressing interest in smaller firms, which would most likely have lower billing rates. It's hard for large firms to make significant rate cuts given their overhead and cost structures, he said.

Partners "are looking for an opportunity to make their clients happier, and they can do so if they can cut their rate and deliver the same service," Altonji said.

John Langan, managing partner of the 210-attorney Hiscock & Barclay LLP, said the downturn has presented growth opportunities. The firm has its eye on expanding its platform and strengthening its ranks with experienced attorneys.

Hiscock & Barclay has added five partners and one counsel from K&L Gates LLP, Sonnenschein Nath & Rosenthal LLP and Greenberg Traurig LLP over the past few months. The firm is in talks to add more partners in the coming months, Langan said.

Langan said Hiscock & Barclay was in a stable position in a down economy because it had been operating on a lower cost structure given its size and its significant presence in upstate New York, an area that has long faced economic hardship.

The firm largely does "bread and butter" work for clients that isn't as "sexy or lucrative," but is necessary even in bleak economic times, Langan said. Combined, the factors "put us in an interesting position of being in a mode of growth in a difficult time," Langan said.

Langan said lateral partners were increasingly looking to midsize firms such as Hiscock & Barclay even before the recession hit. Some sought to flee the culture, client conflicts and other aspects of working at a large firm.

"We have seen laterals with seven-figure books of business getting squeezed by firms that were chasing the AmLaw 100. The firms were raising rate structures to a point where attorneys were going to lose clients. Attorneys can join our firm and not have to charge $800 or $1,000 an hour," Langan said.

Mid-sized firms, however, say they're looking for a certain type of attorney in the downturn — those with significant portable books of business. Such lawyers are the ones Hiscock & Barclay is most interested in attracting, Langan said.

Altonji said: "As a general proposition, there isn't a lot of hiring going on for people who don't have a book of business. It's a tough market to be in right now."

Still, Altonji said a mid-sized firm might deem a book of business strong that a large firm would not.

"Someone who is relatively weak at a large firm may be considered good at a mid-sized firm," Altonji said.

When it comes to attracting clients, Langan said his firm had been making its case to general counsel who face pressure from their boards to decrease legal expenses.

Langan tells such clients that they will also receive more attention at his firm than they would at a large firm, he said.

"If they are willing to unbundle their legal spend a bit, we represent a great alternative," Langan said. "A client with even a couple hundred thousand in business is a respectable client for us. They are going to get attention, and a client with a half million or a million of business is going to get a lot of attention."

Whittier said mid-sized firms could win work that traditionally had gone to larger firms. But she said it's not just a matter of lower rates — even in the downturn.

"All law firms have to be very articulate about what services they are providing," she said.

FLEXIBLE BILLING LURES SOME TO SMALLER FIRMS

By Jocelyn Allison

After nearly 15 years at Mayer Brown LLP, Andy Morris decided he was ready to shift his practice away from a global focus to a firm where flexible billing allowed him to handle matters less suited for a larger firm.

Morris turned to Carr Maloney PC, a regional mid-Atlantic firm with offices in Washington, D.C., Maryland and Virginia, where he recently joined as a member.

"As firms have gone more global, I thought I wanted to return to a more Washington, D.C.- and Virginia-centered practice," he said. "That has been my long-term goal, and the rate structure makes that possible."

Morris will be handling commercial litigation and government investigations with an emphasis on high-stakes disputes involving financial reporting, professional liability, securities fraud and corporate governance.

Small to mid-sized firms such as Carr Maloney have been touting their ability to offer alternative billing structures, and larger firms have been taking a look at their own structures, as clients put pressure on law firms for lower rates.

Some legal experts have speculated that larger firms are at a risk of losing clients and partners if they remain too inflexible in a flailing economy, but others say the move to a low rate-friendly firm is merely a reflection of the partner's focus.

"Firms may be advising partners that their practice doesn't fit in the firm, so those partners are looking at places where, if it's a more rate-challenged practice, it might fit in better," said Lisa Smith, vice president of the law firm consultancy Hildebrandt International.

Clients have long been concerned about the cost of legal services, but the recent recession has brought that concern to the forefront and, for the first time in a while, put clients in the "driver's seat," Smith said.

"Ultimately firms at all sizes are going to be much more flexible on alternative billing and fees," she said.

Flo Frey, principal with Virginia-based legal recruiting firm Frey & Sher Associates Inc., said partner moves from large firms to smaller ones with more flexible billing structures have been prompted less by economic pressure from clients than by the sheer size of law firms today.

"The biggest problem is conflicts," she said. "As these large firms become larger and continue merging and absorbing smaller firms and midsize firms, the client list becomes more extensive and partners are seeing more conflicts."

"If it's a merger, it's a whole new set of billing structures, and that's turning people off," she said. "So they're going to boutiques or midsize firms where they have fewer conflicts and more flexible billing structures, and that's the main reason."

Morris said the recession did not prompt his decision to leave Mayer Brown. He said the business model at Carr Maloney was part of what would allow him to pursue the kinds of work he's most interested in at this point in his career.

"[Large firms] are set up to handle certain kinds of important matters that they do very well and at certain rates, and it does limit the rates they can offer," Morris said. "In an environment like this in a setting like Carr Maloney's, we have more options. We're leaner in some ways and have a lower billing structure."

"It's not a criticism of either side," he added. "It's just a different part of the world."

FIRMS INNOVATE TO MAKE ALTERNATIVE BILLING WORK

By Anne Urda

With clients looking for flexibility from firms these days, outfits such as Sheppard Mullin Richter & Hampton LLP have sought to answer the call by creating alternative-fee czars as firms struggle to balance client demands with their own business needs.

Sensing the need to devise more billing solutions for clients, Sheppard Mullin opted to establish four alternative czar positions late last year to serve as a billing gatekeeper of sorts, according to Guy Halgren, chairman of the firm.

"We knew we wanted to be able to offer our clients more alternative fee deals," he said. "But we wanted to have flexibility with responsibility."

To achieve that goal, the firm decided to create a few positions that would be spread throughout the firm, with four partners tasked with developing and reviewing alternative billing proposals.

"We wanted a situation that was close enough to the business side to be unencumbered but high enough to be responsible," he said. "We didn't want to have just one person be responsible for the whole thing because he or she would not be close enough to the different practice areas, and we wanted more objectivity."

Ultimately, the firm decided to appoint czars in litigation, corporate, real estate and regulatory since the subsidiary practice areas all fall under one of these branches.

In these positions, the quartet is charged with devising ideas about how to structure engagements, according to Halgren.

"They review proposals made by particular partners, and then they have the threshold authority of dollars to approve or disapprove," he said. "Above a certain amount, the executive committee also needs to weigh in with their approval or disapproval."

While the firm also has software to help determine the best fee arrangements, Sheppard Mullin made it a priority to also have a live person make some of these calls.

"We have software additionally, but you need a qualitative as well as a quantitative review," Halgren said.

Though many clients do not appear to know about the formal czar program, they do appear to be happy with the results, he said.

"Clients have certainly been receptive to our alternative fee proposals," he said. "They appreciate the fact that we have been able to quickly get back with a decision on their proposals, too. They know they like the process, even if they are not sure what the process totally entails."

But Sheppard Mullin is not the only firm to get into the alternative fee game, with Bryan Cave LLP and others instituting a software program years ago to help address the billing conundrum.

"Since 2003, we have provided our lawyers with 'engagement planning tools' which let them make very quick staffing and pricing engagement decisions," said John Alber, a strategic technology partner and leader of the firm's client technology group.

With the use of the program, the attorneys can develop flat pricing, fixed pricing, blended rates and a series of alternate scenarios, according to Alber.

"Practicing law is certainly a profession, but it is also a business," he said. "We have tried to provide business tools in addition to managing it as a profession."

While other firms may be starting to implement such programs in light of the current recession, Alber said it might take them awhile to get up to speed on how to use the tools effectively.

"I would not want to be a firm just now adopting that technology," he said. "It has taken us since 2003 to really get the usage up and to appeal to a broad base of lawyers."

But there is more than just technology to the plan, with the firm's lawyers remaining the driving force behind the initiative, according to Alber.

"For years now, the management inside the law firm has been attuned to the business of law," he said. "We have a client technology group whose only job is to make us more responsive to clients, and that is the group that created this program."

As clients look for breaks in the still-struggling economy, Bryan Cave stands poised to deliver given its "unique capability to respond," he said.

"We are making more use of these tools now than ever before," he said. "Some of that is related to the times, and we have been quite conscious in cultivating the use of tools. The usage of our suite of financial tools has climbed year after year and has now spiked."

Though clients may not directly see the software, the result is reflected in Bryan Cave's ability to quickly and flexibly look at prices, according to Alber.

"A lot of firms say they are relationship law firms, but we work very hard to serve our clients," he said. "You really ought to be able to price well and you ought to be able to respond to those needs, and to do that you ought to be able to understand your business."

Kathi Lemons, the director of global client services at Legalbill.com LLC, which specializes in legal cost analysis and management, said other firms would be wise to follow suit and develop specific ways to handle the alternative billing issue.

"You do not want to be perceived as a highly expensive firm that is inflexible right now," Lemons said. "Clients do not want to take a lot of time negotiating right now so a firm needs to be reasonable and understanding."

But while czar positions may not be popping up everywhere, most firms do grasp the delicate nature of the situation and are responding in kind, she said.

"There are lots of different ways that people are looking at alternative billing," Lemons said. "Some firms are looking at blended rates, others are offering flat fees overall, some are doing a per diem for a certain type of event."

While firms should be analyzing their historical data to look for alternative fee proposals, it takes more than just presenting the client with budgets and a slew of caveats, she said.

"All in all, the process can be kind of confusing to the client," Lemons said. "The proposal might look good on the surface, but when you analyze it, you are not really saving any money. It does not help to give a lower rate or a flat fee — you need to have some kind of parameter."

The prime issue often when it comes to alternative billing is the overall cost, not the rates themselves, Lemons said.

"Staffing is of huge importance," she said. "Sometimes, you can have one person doing exactly what you need in a lot less time, and that would be better than a lot more lawyers at a lower rate taking more time."

While such formulas can be helpful, the firms needs to analyze a lot of comparative data in order to come up with a formula to make it worth a client's while.

"I always think firms are genuinely trying, even if some of it is just to show that they are trying," she said. "It really is in the firm's best interest to have the best deal for their client so that they give them the work. Even if they come up with the best flat fee, if the quality of the work suffers, it is not going to do them any good in the long run."

WHEN A BIG DISCOUNT MAY BE A MISTAKE

By Anne Urda

Clients may be demanding discounts from law firms more and more these days, but knowing when to walk away from giving a company a price cut is just as important as knowing when to offer clients a break, according to legal experts.

With the economy still struggling, many clients are expecting firms to knock a chunk off their bottom line, pushing back against what many perceive as years of overcharging for legal services.

Anxious to bring in new business or retain the clients they have, law firms may feel trapped into going along with whatever a client suggests. But that would be a mistake, said Charles H. Green, founder and CEO of consulting firm Trusted Advisor Associates.

"Do anything except cut the hourly rate," he said. "If a client is saying, 'We are looking for a big discount,' do like the consulting firms and say, 'If you have a budget problem, we will work to downsize or reduce the scope or the manpower.'"

Part of the key to understanding when to give a discount is understanding the motivation behind the request, Green said.

"Sometimes if a client hears a price for a first time, they are shocked," he said. "What they are really saying is that the price tag is bigger than I thought and I don't have the budget for that and can you do anything for me."

In some scenarios, a discount is absolutely the right call, such as when a client is going to buy a ton of business from that particular firm, Green said.

"That client has saved you a lot of time and effort, and that is worth something," he said. "There's nothing wrong with giving something back to the client."

If a firm is also trying to break into a new area of the law, it can be well worth it to offer a break on the the legal services offered, Green said.

But other times, clients are simply jumping on the discount bandwagon and trying to hold the firm's feet to the fire, according to Green.

"Some clients think, 'I need to get a deal' or 'I need to walk away saying I got my pound of flesh,'" he said. "Maybe the thought process is, 'They have been gouging us for years.'"

The worst thing you can do is just give in to a client's demands without a clear-cut reason, though, Green said.

"Too often, the client threatens and the law firm caves," he said. "Worse yet, a client says, 'I should have pushed for more,' and since firms are unwilling to share information about rates and structures, they clam up. Nobody knows why you cut prices and everybody walks away suspicious."

The trick is to have a clear policy about when your firm is going to cut rates, or modify the structure and design of the project, he said.

"If it is simply a client pressuring you, let another competitor have that client," Green said.

While admitting that it's easier said than done, Green contended that firms would save themselves a lot of heartache down the line.

"It is easy to cut rates but awfully hard to bring them back up," he said. "Once you have done work for a client at that rate, good luck bringing it back up. Good luck when they tell all their friends."

However, Julie Savarino, managing director of Business Development Inc., cautioned that firms should be very careful about who they walk away from right now.

"The bottom line is that for the last five to seven years, and especially in 2009, rack rates are obsolete in the Fortune 500 world," she said. "The sophisticated corporate client base know they have all the buying power, so walking away should be done very carefully and selectively."

Firms need to base their decision on whether to offer a discount on two main factors: intake and qualification, according to Savarino.

"Do they meet the firm's criteria as a quality client? What is their ability to pay? Is this discount going to help me maintain the work I have? Am I likely to get other types of work?" she said. "Any major client asking for 5 to 15 percent off the rates is normal."

If clients push for a break beyond that percentage cut, a firm could have more than a bottom line problem on their hands, Savarino said.

"Any request for a discount over 10 to 15 percent, firms need to ask themselves, 'Do we have some internal inefficiencies?'" she said.

The bottom line for firms is learning how to create fixed fees and budgets while recognizing when a client is simply asking for a discount for the sake of asking, Savarino said.

"You really have to analyze it — take it apart and do a financial analysis," she said. "'Can we work together in coming up with something that is more of a win-win?' is what firms need to ask themselves."

But firms have no choice but to consider each discount request, especially in the current climate, Savarino said.

"Since about 1995, clients started requesting discounts and firms started giving discounts," she said. "How good is billing right now? What is the standard rate really reflecting? The billable hour is becoming more and more obsolete."

Joseph L. Beachboard, a shareholder and chair of the client services committee at labor and employment boutique Ogletree Deakins Nash Smoak & Stewart PC, warned that discounts should not lead to a race to the bottom among firms.

"You have to be careful in the quest, the excitement of the case," he said. "You try to be as competitive as you can, but at the end of the day, it's still a business. Pricing needs to be responsible."

Beachboard acknowledged the pressure that firms are under in this arena these days, with clients' expectations running high.

"I think there is an ever-increasing expectation from larger, more sophisticated clients that there will be some rate reduction mechanism available to them, whether it be alternative billing or a flat discount," he said. "In the past, some of the larger general practice firms said that that price is the price and that gets them knocked out of a lot of work."

Though firms may have to consider offering a price cut if they want to stay competitive in the current climate, they should not do so at all costs, Beachboard said.

In the desire to undercut other firms, low bidders can often find themselves in a jam after they have scored the gig, he said.

"There are several high-profile alternative billing arrangements where the company had one idea of how it was going to go and the law firm had another, and neither party ended up being happy," Beachboard said.

"Some firms bid as low as they need to and then deal with actually assigning the work," he said. "But you need to try to carefully evaluate the work and try to bid it on that basis. That is what leads to long-term successful relationships."

In order to offer a discount that works for both the firm and the client, it must be a two-way street, according to Beachboard.

If you can't afford to drop your price to what the client is demanding, it's better to let them go and see if they come back to you, Beachboard said.

"If you can't give them quality work at the price they want, it is not going to work out and it is much better to let the client go than to do the work and have it blow up in your face," he said.

"Sometimes, you have a client that finds someplace else for a lower price, but then they learn what they lose in terms of experience and service," Beachboard said.

In the end, a firm must think like a business and even risk losing the client if a discount is not in its best interest overall, he said.

"Companies have a lot of power right now, and they have not been reluctant to demand discounts," he said. "But at the end of the day, you have to recognize that you are a business and look at the relationship and say, 'Can we provide the legal service they need at the price they are asking?'"

COME OUT OF THE SHADOWS ABOUT ALT BILLING: EXPERTS

By Erin Fuchs

Saul Ewing LLP's broadcast on its Web site that it offers fixed-fee programs has caught the eye of law firm watchers, who believe the move is a first. In a changing legal landscape, though, experts say law firms should bring alternatives to the age-old billable hour out of the shadows and broach the topic with clients — even if they don't advertise those policies on their home pages.

Saul Ewing recently posted to its home page a link to a page outlining a "cost certainty commitment." The firm will now offer fixed fees for due-diligence projects and for certain administrative hearing services related to insurance, it proclaimed.

"You hear a lot of law firms talking about, 'Yeah, we consider fixed-fee arrangements,' or, 'We're open to them.' We wanted to take the next step and say, 'Here it is.' And let everybody have the same rights," said Michael Consedine, a partner with Saul Ewing who created one of the fixed-fee policies.

The topic of alternative fee arrangements is by no means verboten in most law firms, according to several legal industry experts. But law firms rarely alert clients to the possibility of evading the billable hour, let alone post alternative fee policies to Web sites, law firm experts said.

"My experience is that firms are very happy to talk about it. Usually the client raises it first," said Bruce MacEwen, a law firm consultant who created the Web site www.adamsmithesq.com about the economics of law firms.

By raising the issue first, and so openly, Saul Ewing shows that clients don't have to drag the firm "kicking and screaming into the world of alternative billing," MacEwen said. "I think it's smart," he added.

But MacEwen cautioned firms not to pitch their alternative billing as "bargains." He pointed out that Saul Ewing emphasized that its fixed-fee options offer clients certainty — not necessarily the cheapest legal advice in town.

"I think what's most interesting about the Saul Ewing presentation ... is the emphasis on certainty and predictability, which in my experience is more important to clients than absolute total cost," MacEwen said.

"It's not a smart way to begin a relationship with a new client by saying, 'I can do this more cheaply than anybody else.' That's the way the client views you in perpetuity," he added.

Legal recruiter Gary Klein, for his part, questioned whether a firm should post anything at all on its Web site about its billing policies.

"I don't see any down side to posing various billing alternatives ... to the clients. I'm not sure that if I were doing it I would put it on my Web site," said Klein, founder and president of legal recruiting firm Klein, Landau & Romm Inc.

Web sites generally outline firms' areas of expertise — not billing practices, he said.

"In one sense, it's a cutting-edge move by Saul Ewing, and cutting-edge moves by definition will create critics and proponents. I don't think any firm should necessarily be criticized for thinking outside of the box," he said. "However, the box is there for a reason."

Michael B. Rynowecer, president of the BTI Consulting Group Inc., also described Saul Ewing's new Web-posted policies as a move that "breaks the norm."

"Saul Ewing has done a very good job of making the issue front and center," Rynowecer told Law360.

"It's fairly bold. It breaks the norm," he said. "It creates a dialogue with clients, and it controls the topic. It controls the conversation."

Regardless of whether firms proclaim alternative billing policies on their Web sites, Rynowecer urged firms to begin pitching alternative billing to their clients.

His consulting group recently surveyed roughly 35 law firms and 160 clients on the issue of alternative billing policies. The survey found that twice as many clients have brought up the topic of alternative fees than law firms.

He offered one caveat: Before firms begin posing alternative billing, and especially if they post arrangements on their Web sites, they should make sure that the partners are on board with a common set of guidelines to calculate the price of cost-contained assignments.

"This is a generic comment and not about Saul Ewing. There are many firms where certain partners are comfortable talking about alternative fees," he said, "and other partners just want them to go away."

PERSPECTIVES ON COST CUTTING

NOT ALL ATTORNEYS FACE BLEAK TIMES

By Shannon Henson

Though every day seems to bring news of firm layoffs, attorneys in bankruptcy, white collar crime, executive compensation and a few other practice areas should stay busy, and some may even see a spike in work opportunities.

Work is either plentiful or will increase in fields ranging from employment to securities in litigation relating to the economic downturn, as the Obama administration starts to implement its policies. However, consultants cautioned that even partners and associates in busy areas may be greeted with pink slips and compensation cuts.

"If you're not productive or aren't carrying your weight, you're going to potentially be a target of a layoff or, at the very least, compensation cuts, whether you are a partner, an associate, a staff attorney or a legal secretary," said Jack Zaremski, president of Hanover Legal Personnel Services.

However, certain practice areas are busier than they have been in any other period in recent times. Bankruptcy and restructuring work is the big winner as more and more companies find they can't make a go of it.

"Bankruptcy is the consummate countercyclical area," Zaremski said. "Bankruptcy attorneys are unquestionably more valuable than they were before the crisis. It is like being a real estate associate during the real estate boom. Just a year ago real estate and finance attorneys were extremely valuable, and now no one will hire them."

As Joseph Altonji, a co-leader of the strategy practice of the professional services firm Hildebrandt International Inc., said: "No one is terminating bankruptcy attorneys."

While litigation work has been softer than anticipated, consultants said they expect an increase in certain areas, such as employment and securities.

"We have been expecting more employment litigation since there are certainly many employment-related decisions being made," said Altonji. "Although a lot of this has pretty clearly been a reduction-in-force and not targeted at anybody."

He also said he was reasonably confident there would be more litigation concerning the financial losses that people have suffered as a result of the downturn, once "people figure out who to sue."

A recent report by Navigant Consulting said the total number of suits filed over the credit crisis since January 2007 has hit 866. Two new cases have been filed for every one that is dismissed.

Securities actions topped the list of the 576 new subprime suits filed in 2008, accounting for 38 percent of cases, followed by borrower class actions, representing 24 percent, and commercial contract disputes, representing 17 percent, the study found.

White collar criminal work is also expected to stay steady as bank-account busting Ponzi and other fraud schemes come to the fore almost daily. "[Bernard L.] Madoff is the biggest, but there's a half dozen or more others that are creating work too," Altonji said.

Legal observers believe white collar work will be abundant given the "massive fraud in our economy," according to Zarenski. However, he cautioned attorneys who practice in the area not to get too comfortable.

"There's no question that associates and partners in bankruptcy and white collar crime are being reviewed and asked to leave if they aren't producing, even though, by and large, people are expecting those practice areas to carry more than their normal share of the load," Zarenski said.

And in litigation, intellectual property is "always valued" — so clients won't skimp on that work, said Toni Whittier of Whittier Legal Consulting.

Even if a company reduces its litigation, it "cannot afford ... to ignore attacks on its intellectual property," Gary Klein, founder and president of legal recruiting firm Klein Landau & Romm Inc., said.

The recent clamor on Capital Hill over the American International Group Inc. bonuses has proved that executive compensation will also be a busy segment in law firms — at any rate, "the executive compensation people I know have been very busy," Altonji said.

Securitization attorneys may also see an uptick in work in connection with the toxic-asset asset plan recently announced by U.S. Treasury Secretary Timothy Geithner, according to Altonji. "There's no question that when a trillion dollars is going to be spent, that's going to develop some legal fees somewhere," he said.

Legal consultants believe government work, whether it's in the form of asset buyouts or increased regulation, will be a boon for law firms in the coming years.

Klein said law firms anticipate an increase in environmental and energy regulation work, since Obama has named those areas as priorities. Tax reform, among other areas, has also been mentioned as a possible source of increased business for lawyers.

"Over the last eight years, antitrust was essentially like a British soccer game — nil-nil — nothing happened," Klein said. "But everyone believes there will be greater scrutiny by antitrust enforcers with regard to merger activities — assuming there are any more mergers. And clearly this administration doesn't have a stomach for criminal antitrust violations, so if it uncovers them they will be pursued."

He also noted that Obama's promises to reform the health care industry could also create legal work, as could legislative pushes to make the U.S. food supply safer.

Antonji said there "isn't a soul" who thinks Obama won't ramp up regulation of the financial markets, which will create work too.

As of late, legal work has also been generated as clients bid for government contracts that they may not have fought for before the recession hit, according to Klein.

"It is countercyclical in a sense that in the past, large companies weren't going through the hassle of trying to sell to the government, but in times of recession that hassle becomes less important because the government is the largest purchaser of goods and services," Klein said.

However, law firms may not be able to hunker down and wait for a practice area to heat up, according to consultants.

"If a firm is reasonably confident an area will be busy in three months, they will probably hang onto the resources," Altonji said. "If they think it may happen in nine months, they may keep some capability, but they have to be cautious. People are very, very expensive and absent the revenue, firms they have to lay people off."

Additional reporting by Christine Caulfield

RECESSION-DRIVEN PRACTICE AREAS WEAK IN '09: REPORT

By Erin Fuchs

Legal practice areas such as employment and intellectual property law at major U.S. firms that usually see boon times amid economic meltdowns have actually suffered in 2009, according to a new report.

On May 11, consulting firm Hildebrandt released its "Peer Monitor Index," using data for the first quarter of 2009 from 75 of the nation's 200 highest-grossing law firms.

The report found that, even though a couple of countercyclical practice areas have thrived while the rest of the economy has foundered, most practice areas that are typically recession-driven have actually suffered in 2009.

"Generally speaking ... the typically recession-driven practice areas are not following the traditional pattern tracked in prior slowdowns, nor are they showing enough strength to fully compensate for the void left by slowing practice areas," the report stated.

The report found that employment practices performed weakly in 2009 compared to 2008, as did intellectual property law. The report also found that litigation was flat in 2009, possibly due to its growing costs.

The famously recession-driven practice area of bankruptcy, however, hasn't disappointed business restructuring attorneys. Business activity increased 13.2 percent in 2009 compared to a year ago, according to Hildebrandt.

Jack Zaremski, president of Hanover Legal Personnel Services Inc., a Manhattan-based law firm consulting and attorney placement firm, said that while firms were cutting corners on some recession-driven practices, bankruptcy is simply too important not to spend money on.

"The service you're providing basically has to be perceived as essential to the business of the client. Bankruptcy is essential. You wouldn't go to a second-rate doctor for cancer," he said.

"You don't want to mess with something that is going to keep your business alive or to cause it to go under," Zaremski added.

Practice areas such as intellectual property and employment, however, aren't seen by clients as being as crucial as the restructuring of their business, he said.

Employers will still need to defend themselves against intellectual property and employment suits, but they might not turn to the major league legal players that are part of the Hildebrandt index to do so, he said.

Faced with an economic downturn, Zaremski said, clients might end up sending their work to smaller firms outside of New York City, which charge less than the major firms. They also might handle IP and employment cases in-house.

The report found that the demand for legal services on the whole — measured by billable hours — declined in 2009. The demand dropped sharply in January and February but flattened in March, the report said.

"Although this is a promising sign, it remains to be seen whether it is merely a blip in the pattern or a bottoming out of the downward economic trend," the report stated.

Meanwhile, Hildebrandt reported lower fee growth for attorneys, with only a 2.9 percent increase in the first quarter of 2009. During the first quarter in 2008, comparatively, the fee growth was 7.9 percent.

FIRMS WEIGH SLASHES IN PAY, BOOSTS IN TRAINING

By Shannon Henson

In these harsh economic times, some law firms are thinking about seizing the opportunity to significantly lower the salaries of first- and second-year associates and shift to a system of more intensive training.

A move to a system that would be similar to that in the United Kingdom, Canada and other countries would benefit law firms and associates, consultants said. A change would also please clients who are clamoring for lower billing rates amid the downturn.

As it stands now, law school graduates have little to no practical experience and are ill-prepared to serve clients efficiently for the first two years, experts said.

Moving to a more training-intensive model would "break the link that says that when someone walks out of law school with a degree they are fully capable of stepping in and practicing law competently," said James Jones, managing director of legal consulting firm Hildebrandt International. "Almost no one believes that to be true, but it's the model."

In the U.K., Canada and other countries, young lawyers enter clerkship programs after receiving a bachelor's degree. They may receive more education along the way, but the years spent in a classroom pale in comparison to those spent by their U.S. counterparts.

In mid-May 2009, Drinker Biddle & Reath LLP made a move toward that model, cutting first-year associate pay to $105,000 and offering an intensive training program to its first-year class.

The multipronged training program is meant to make associates more valuable to clients and educate young lawyers in traditional legal skills and clients' backgrounds, firm representatives said at the time.

First-years will also be required to observe partners in their daily interactions with clients, adversaries and with the courts, a practice once commonplace at the firm.

While revamping the legal education and training system entirely would be an enormous undertaking, other firms are considering a move similar to that made by Drinker Biddle.

"First-year lawyers now are paid $160,000 to learn how to find their way to the bathroom," said Jerry Kowalski of Kowalski & Associates. "For law firms, there is very, very little benefit. Associates during their first two years do not add profit."

There used to be widespread acceptance that junior lawyers should shadow senior lawyers and that junior lawyers would be in planning and strategy meetings, said Deborah Epstein Henry, founder and president of Flex Time Lawyers.

"But clients said they were no longer willing to pay for two lawyers in the room and law firms didn't want to incur" the costs, she said.

Clients are now facing problematic balance sheets and are demanding competitive prices. "The clients are saying that they want skilled attorneys if they are going to pay these rates," Toni Whittier of Whittier Legal Consulting said.

They aren't taking umbrage with the exceptional lawyer charging $1,000 an hour, Henry said. But "they are upset about the junior and middle associate billing $300 an hour."

Reducing hourly costs as young associates train could "improve client and law firm relations," she said.

Many firms have laid off significant numbers of young associates, and some have also taken the ax to the paychecks of those who still have jobs. Lowering associate compensation in conjunction with more intensive training could allow firms to offer lower billing rates while also preparing the next generation who will one day take the reins, consultants said.

A change in the model would also engender loyalty to the firm while giving associates a better sense of where their strengths lie. Henry said.

"Generation Y wants mentoring and feedback, and this would be an opportunity to give them both of those things," she said.

First- and second-year associates aren't profitable anyway, she said, so why not formalize the training that is required?

But moving to a training-intensive model could have its drawbacks or hurdles. For one, it would put pressure on the law firms to develop an effective program of training and professional development.

"Firms have always provided some training, but in all honesty, they aren't all doing a great job," Jones said.

Firms could consider several avenues to train young attorneys — pairing them with senior attorneys and encouraging networking and business development, among other things, Whittier said.

Lower compensation across the board could also put some pressure on young associates, many of whom incur a good deal of debt attending law school, Henry said.

And while Henry is a supporter of a more training-intensive model, firms also face the risk of investing time developing associates only to see them leave the firm, she said.

Partners may also balk at the change. as they may be too busy to spend much time training young attorneys, Henry said.

While firms are reconsidering every aspect of their business model in these troubled times, consultants said, a widespread move to a training-intensive model would happen only if several large, influential law firms make the leap.

"It's not likely to happen unless several of the leading firms in the AmLaw 50 announced they were going to do this," Kowalski said. "Very, very quickly everyone would follow suit just as they rushed into the $160,000 starting salary like lemmings."

There's also a risk of a handful of firms making the move and not having their competitors follow suit, Jones said. "They will then be at somewhat of a recruiting disadvantage," he said.

Law firms see a deep talent pool given recent layoffs and a lack of available positions. However, consultants warned that firms cannot get complacent about hiring, recruiting or their treatment of young attorneys.

"Firms are in a temporary state of thinking the war over talent is over," Henry said. "That's very shortsighted, because we will still face a generational gap when the market improves and the baby boomers start retiring and there aren't enough Gen Yers to fill their spots."

"Firms need to be thoughtful about grooming the next generation," she said.

Additional reporting by Julie Zeveloff

TECHNOLOGY THREATENS TO DISPLACE ASSOCIATES FURTHER

By Anne Urda

As law firms seek to restructure operations to survive the current recession, legal experts predict that technology will cut into the work previously performed by associates as firms wrestle with dueling pressures of how to keep costs low and clients happy.

While January 2009 proved to be a rough month for the legal industry with nearly 1,300 legal jobs lost, February has been no picnic either as the end of layoffs appears to be nowhere in sight.

Feb. 12 marked the single ugliest day for legal job losses since the economic downturn began, with eight major firms announcing a total of 748 layoffs, comprising 320 lawyers and 428 staff members.

The firms that announced staff cuts were Holland & Knight LLP, DLA Piper, Bryan Cave LLP, Goodwin Procter LLP, Epstein Becker & Green PC, Faegre & Benson LLP, Dechert LLP and Cadwalader Wickersham & Taft LLP.

As firms search for the bottom, Paul Lippe, the founder of Legal OnRamp, made headlines recently after suggesting that there could be as much as a 20 percent drop in legal revenues and a 50 percent drop in billing for associates by 2011.

Lippe contends that better technology will reduce associate work in the coming years as firms respond to client demand for lower costs.

Firms that are used to driving up profitability by employing an army of associates to bill clients for routine work at high rates may be forced to rethink that premise, especially given that technological advances could make some junior associates' jobs obsolete.

Cravath Swaine & Moore LLP managing partner Evan Chesler has already come forward and suggested that law firms do away with the billable hour, which could alter the structure of law firms from here on out.

Jack Zaremski, a law firm consultant and president of New York-based legal recruiting company Hanover Legal Personnel Services Inc., said that the issue is not about leverage or technology as much as it is about the bottom line.

"The issue is being as efficient as possible," he said. "If there are situations where technology can do work that attorneys used to do — whether they were associates, counsel or partners — firms will be much more inclined to use technology."

Right now, firms must not only consider how to cut costs but also how to retain clients in the current buyers' market, Zaremski said.

"When you start out as an associate in law school, you don't really know anything but often firms are billing out first-year associates at $300 an hour and up," said Zaremski. "If I were a client paying for somebody who doesn't know anything, I would think that's exorbitant and a waste of money and it is."

For years, clients have essentially been paying for associates to learn the ropes and get up to speed, but those days may be numbered.

"Clients are much more empowered to make demands that they might not have felt they needed or could make before," he said. "All this time that clients were in effect paying law firms for training their associates ... some of the firms are going to feel more pressure to maybe absorb those costs themselves."

Some of clients' willingness to fork over hundreds of dollars an hour for the work of junior associates may disappear, especially if technology can be used to perform the mundane tasks associates are often forced to do.

"I think some firms may start re-evaluating the billing rates of their associates, and make those rates become more in sync with the real value and associate expertise that they are bringing to the table," said Zaremski.

If firms are able to reduce the costs passed onto their clients by embracing technology and other cost-cutting measures, such a move could in turn make them more competitive in the marketplace, according to Zaremski.

"I certainly see corporate clients working with law firms on how to contain costs and firms actively offering to help," he said. "There is not an infinite amount of money to go around or even that feeling anymore. So firms are going to have to compete for the business there is and for the money that is being spent."

But while the popular perception may be that associates are overrated or expendable, technology can only go so far, some experts contend.

Charles Volkert, the executive director of attorney staffing giant Robert Half Legal, said that while the technology that is now available to firms has grown in leaps and bounds, humans are always going to be a necessary part of the process.

"No matter the technology, lawyers are still needed to go through and figure out what's relevant and what's not," he said.

While a decade ago firms may have been concerned with how to get through hundreds of boxes full of papers, they are now faced with thousands upon thousands of e-mails as they struggle with e-discovery demands.

"From a technology standpoint, what new tools are in development remain unknown," he said. "But within the litigation and discovery area, there is no slowing of attorneys needed to go through that data and make sense of that information."

Volkert does concede, however, that firms may start employing more project attorneys and paralegals to deal with the continuing work demands in a cost-effective manner, especially in hot practice areas like litigation, bankruptcy and intellectual property.

"There is going to be an uptick in project attorneys and paralegals in order to get through these documents," he said. "The reality is there is no slowing of work, though the world has become more digitized."

But the entrance of these players does not necessarily spell doom for associates, with the parties often working in tandem, according to Volkert.

"I think firms are going to be cost-conscious with corporate clients going forward with the utilization of project attorneys," he said. "Those people are very accustomed to going through this type of document, and it frees up time in some instances for associates to handle other work."

Zaremski also believes that some of the work may be shipped elsewhere as firms continue to look for the point of equilibrium between quality and cost.

"My sense is that we are going to see more outsourcing," he said. "If firms believe that they can maintain the quality of work and lower costs, they will seriously consider outsourcing where they might not have before."

Given the unusual economic circumstances firms face, they will not hesitate to employ whatever weapons are at their disposal even if they shied away from doing so in the past, Zaremski said.

"Areas that used to be considered safe and sacrosanct" no longer exist, he said. "Nothing is certain anymore," Zaremski added. "This is much more about pure business and being as competitive as possible in an increasingly difficult marketplace."

Firms can no longer stick to the old, entrenched ways of doing business and associates may ultimately be the ones to pay the price.

"Right now, firms are feeling empowered, in a sense, to make cuts where they otherwise might have felt less compelled or able to do so," he said. "The environment is just so tough that it's not only accepted but expected."

With better technology and outsourcing gaining currency, the associate picture — and billing rate — could look very different in the near future.

"I think the sense is that we do not see the light at the end of the tunnel right now in terms of recovery, and there are hard times ahead for the indefinite future," said Zaremski. "As long as we're in tough economic times, firms will be looking to cut costs wherever they can."

Additional reporting by Ryan Davis

ASSOCIATE LOSSES MAY BE PARALEGALS' GAIN

By Anne Urda

As associates fight for their survival, law firms are looking to paralegals to help them ride out the economic storm at a fraction of the price, some legal experts say.

With law firms determined to cut costs and prepared to let go of associates in order to keep up with client demands, paralegals are among the unlikely beneficiaries of the recession, according to Alan Miles, the founder and principal of California-based legal recruitment firm Alan Miles & Associates.

"Along with the contract attorney arena, you are going to see a boom in the paralegal business," he said. "Everybody is deleveraging and the whole model is upside down. Under the old model, you have three to four associates to every partner. Now because money is so tight, clients don't want to pay for extra people."

Consequently, firms are likely to start hiring back paralegals first or to just expand those ranks rather than bring on more associates, according to Miles.

"Paralegals are going to decimate the junior associate ranks," he said. "The work these associates were doing is going to be replaced by the paralegals. You have the associates earning $170,000 or $180,000 a year and the paralegals making $70,000 or $80,000 a year."

The expense of employing a paralegal is much lower overall when compared to the overhead associated with a junior associate for a firm.

"It is cheaper to keep a paralegal than a lawyer," he said. "With the latter, you have to have word processing, get them secretarial help, etc. — you're probably spending upwards of $200,000. With a paralegal, you are not only cutting salaries but also expenses related to that position."

But the move is not just about the bottom line. Paralegals often bring more to the table than a first- or a second-year associate, according to Miles.

"An experienced paralegal should be worth his or her weight in gold," he said. "A paralegal that has been there for 10 to 15 years knows exactly how things are done. The learning curve for a 10-year paralegal is a lot shorter than for a second-year associate."

Charles Volkert, the executive director of legal staffing agency Robert Half Legal, also says that the challenging economy has created a highly competitive climate where paralegals can thrive.

"I think all firms are trying to figure out how to operate more efficiently, and part of the key to that is infrastructure," he said. "We are seeing a high demand in both law firms and corporate legal departments for paralegals with three-plus years of experience in the hot practice areas like bankruptcy, litigation, and ethics and corporate governance."

Paralegals who are technically savvy and experienced in e-discovery and various litigation matters can command a premium these days, with law firms hotly seeking out candidates with such skills.

"You are seeing higher salaries for those paralegals that understand those tools," he said. "Now more than ever, law firms need to be more prudent and strategic."

While every law firm is built differently and each outfit knows what it needs to handle its case load, Volkert has seen more and more paralegals taking on increased responsibility.

"They are taking a case A through Z in some firms," he said. "A lot of those duties that maybe an associate would also do are now being done by experienced paralegals, and they are having a lot more interaction with clients."

But while they may be able to take care of many of the tasks asked of junior associates, paralegals are still limited in the work they can do, given that they are not barred attorneys, Volkert said.

"Obviously they are not licensed attorneys and are not running down to the courthouse filing motions or conducting depositions or anything like that," he said. "Associates and attorneys are still such a valuable piece of the overall structure."

Gary Klein, founder and president of legal recruiting firm Klein Landau & Romm Inc., expressed skepticism that legal assistants would be in a position to potentially usurp associates' duties in most law firms.

"I would think that a law firm would have to be convinced that even a talented legal assistant was a reasonable substitute for a first- or second-year associate," he said. "Law firm training is quite different. Law school is all about thinking in an analytic way, and I'm not sure legal assistant training is the same."

Klein concedes, though, that paralegals could be more in the mix these days, pointing to changes that have taken place in the intellectual property arena as an example of firms' willingness to cut costs where they can.

"Right now, we are seeing a lot of IP lawyers use patent agents," he said. "They are paid significantly less than associates and work at a very high level in the patent arena. It would seem logical that if you had a very talented legal assistant that could support the case at a significantly lower expense, in these times you would use them."

But Klein warns that firms need to be wary of outsourcing too much, urging them to evaluate the staffing situation on a case-by-case basis.

"I think the employment of legal assistants or contract attorneys very much depends on the project and the specific task that the partner is looking to have fulfilled," he said. "While they are both talented, legal assistants may or may not be a valid substitute. If the project requires sophisticated, analytic legal thinking, firms need to be very careful as to who you assign that task."

Volkert contends, though, that having well-respected paralegals as part of the firm works to everyone's advantage, helping to free up the attorneys to tackle matters that only they can handle.

"It allows lawyers — whether they are associates or partners — to focus much more on the higher level, strategic legal tasks at hand," he said. "At the end of the day, law firms are asking themselves, how can we do things more economically? The use of paralegals in that realm has certainly been an aspect that they are looking at."

Firms will continue to explore ways to restructure operations in the wake of the economic crisis, and paralegals will look more attractive as the days march on, Miles said.

"Firms for the most part are going to adopt a one-to-one leverage," he said. "The rest of the work is going to be picked up by contract attorneys and paralegals. You are not going to see the Latham model anymore where you have three to four associates for every partner. The general counsels don't want to pay for three or four associates to learn on the job."

While the firms' relative austerity may not last forever, Miles predicts that for now paralegals stand to be among the big winners of the recession.

"If the volume of work [returns] that you saw in 2005, 2006, 2007, maybe you will see the firms go back to the Latham model," he said. "But right now, firms are being bare-bones and scrutinizing their bills. Clients are asking for cuts, deferments, different terms — it's a whole new ball game."

CUT HOURS, NOT ASSOCIATES, TO SAVE CASH

By Anne Urda

A California law center is pushing law firms to start reducing hours rather than continuing to engage in the massive layoffs that have marred 2008 and 2009, arguing that cutting back on hours makes more sense economically than letting dozens of associates go.

On March 17, 2009, the Project for Attorney Retention, an initiative of the Center for WorkLife Law at the University of California Hastings College of the Law in San Francisco, released its latest analysis on attorney hiring and firing, maintaining that reducing hours worked will actually save firms more money in the long term than continuing to slash associate jobs.

"In the midst of this unprecedented economic crisis, law firms are struggling to find ways to cut costs while at the same time continuing to provide excellent client service and compete for new business," the report said. "Balanced Hours schedules are a viable business option that may help firms retain their investment in high-performing attorneys, and avoid certain legal risks, when there is not enough work to keep everyone busy."

Firms are currently struggling to cut costs as the legal industry continues to be rocked by the economic crisis.

About 1,045 lawyers worldwide — the bulk of them associates — received pink slips in February 2009, and March appears to be on track with that trend.

As firms weigh their option, PAR is busy promoting the idea of a modified schedule, arguing that firms actually pay a higher price for layoffs in the end, both in terms of strict costs and morale.

To help make its case, PAR examined a law firm practice group with six associates who each make a $200,000 salary.

If the firm lays off one of those associates, it is likely to save around $211,000 once benefits, severance and outplacement assistance are also taken into account.

However, if those six associates agreed to simply cut back both their schedules and compensation by 20 percent, the firms would stand to save around $240,000, according to PAR.

Once or if the work picked up again, the firm could bring the associates back up to a full load and adjust the compensation as well.

This kind of flexibility would also allow firms to avoid the expensive hiring process they would be forced to undertake once business returns and more manpower is needed.

"In addition to these immediate costs, history has shown that when the economic situation improves, a firm will pay dearly to recruit, hire and train replacement attorneys," the report stated.

PAR also rejects the idea that the work that was once handled by laid-off attorneys can simply be switched to those that remain, citing James Sandman, the former managing partner of Arnold & Porter, in the analysis.

"The theory of layoffs is that you align capacity with available work by transferring the billable hours of those lawyers laid off to those who remain, filling up the available time of the survivors," Sandman said. "But not everyone has the same skill set, and a material portion of the billable hours of those laid off never transfers."

According to Sandman and PAR, a laid-off attorney that was billing 1,500 hours annually would probably only have about 1,200 hours that could be converted, resulting in a 20 percent billing loss for the firm.

Layoffs also tend to take an emotional toll, with associates and others becoming demoralized and in turn less productive.

Though associates have frowned upon reduced hours in the past, PAR thinks that firms could make the program successful by working to remove any stigma associated with taking this route.

PAR pointed to companies that have already successfully implemented such programs, including Sigma Group, KPMG Europe and the University of California, as evidence that the model could work for law firms as well.

"Balanced Hours programs allow firms to adapt to economic conditions by encouraging attorneys to work individually tailored, reduced and/or flexible schedules that are aligned with current workloads," the analysis stated. "The programs are accompanied by strong reassurances that reducing one's hours will not result in negative career consequences."

GETTING CREATIVE WITH BUSINESS DEVELOPMENT

WINDOWS FOR BUILDING BUSINESS IN THE DOWNTURN

By Shannon Henson

While attorneys with a stable of clients may enjoy the highest degree of job security in these uncertain times, lawyers who haven't been savvy about building a book of business can still attract new clients, consultants say.

"One thing people are realizing is that they want to be a team player, but at the same time they have to protect number one," said Frank Michael D'Amore, president of legal recruiting and consulting firm Attorney Career Catalysts. "The best way to protect yourself is to make sure you are building up your own client base. If you do that, then no matter what happens, you will be okay."

D'Amore said the importance of developing clients has increased over the years. Decades ago firms had a lot of institutional clients, so it was more important for a lawyer to be able to maintain clients, and to do the job well, than to be talented at client development, he said. That changed when the ranks of in-house lawyers grew and companies started to parcel out work to a greater number of firms.

"For the older generations, one reason they went to law school was that they did not want to have anything to do with sales," D'Amore said. "It was a profession where analytical thinking, speaking and writing would determine how successful they were. Sales was considered a four-letter word."

The importance of developing business has come to seem more important in the economic downturn, but there's no doubt it is the "lifeblood of a firm," said Bob Henderson, owner of Jackson Hole, Wyo.-based RJH Consulting.

"A firm can have the best lawyers in the world, but if they don't have any business they are not going to go anywhere. Right now, because so much business has dried up, the key is people who have the ability to go out and bring in new sources of business," Henderson said. The big challenge for most law firms today is the loss of business because clients are either going out of business or their financial problems are such that they don't have the need for lawyers like they did before."

Some firms are doing what they can to help attorneys develop the skills to drum up new clients. Clifford Jarrett, a managing director with recruiting firm Major, Lindsey & Africa, said law firms have been bringing in consultants for client development training sessions. Lawyers have also been spending more time with their in-house marketing departments.

"Attorneys are also going out on their own to legal marketing folks, consultants and teachers, if you will, to develop their business development skills," he said.

Law schools don't teach attorneys about how to win over clients, and some law firms do better than others when it comes to business training, according to Jarrett. That leaves many attorneys on their own.

"In any economy, it is one of the most important things," Jarrett said. "You need to have a certain level of proficiency and respect in the legal community for what you do as a lawyer, but that will only get you so far."

Part of the problem is that attorneys have a skewed perception of sales — envisioning cold calling or awkward interactions, consultants said. In reality, they can get the attention of clients through selective speaking engagements, among other things.

"Successful rainmakers are often the big personality types," said Tim Corcoran, a senior consultant with Altman Weil Inc. "That sometimes gives the impression that that is what it takes. But really the essence of lawyering is identifying and solving problems and that is exactly the essence of consultative selling — helping a client understand business issues and coming up with solutions."

He suggests that attorneys seek out speaking or writing opportunities in venues that potential clients frequent, such as industry associations. "Many of these groups are thirsty for content," Corcoran said. "Lawyers can offer a free Q&A, whether in a newsletter format or at a monthly meeting or a panel discussion at a conference. Lawyers can demonstrate their skills and do so in an environment that is interactive. It will generate goodwill, name recognition and then new business."

D'Amore said that attorneys often make the mistake of speaking and writing in the wrong forums, such as local bar associations or publications not read by clients. "It is better to speak in a setting that is good for general counsels and corporations so that people can walk out and say, 'I'd like to hire her.'"

Corcoran said that lawyers also commonly make the mistake of talking too much about themselves — and not the needs of the client — in private meetings with potential clients. "The proverbial question for a lawyer to ask is: 'What keeps you up at night?' Too often lawyers talk and don't ask questions."

But the attorney's own comfort level is also vital to the business development process.

"Lawyers should look at themselves and say, 'Where do I perform well?'" Henderson said. "I have seen people who develop tons of business out of a country club membership. I have seen people who develop business by participating in seminars. If it's something that you aren't comfortable with, it's going to be difficult. So you have to find your level of comfort."

EXPERTS SHARE SECRETS TO CROSS-SELLING CLIENTS

By Anne Urda

As law firms look for ways to bring in business during the economic downturn, cross-selling legal services to current clients may seem like an appealing prospect — but attorneys stand to lose big if they don't follow a few key steps, legal experts say.

"My sense is that cross-selling is probably more important now than it is usually," said Charles Green, founder and CEO of consulting firm Trusted Advisor Associates. "When times are down, the competition is higher out there, people are not returning phone calls, you are hitting your Rolodex a lot more, but so is everybody else."

Rather than cold-calling potential clients, lawyers would be wise to rely on their friends to throw more business the firm's way, according to Green.

"It is a lot less expensive to sell a dollar of existing business than a dollar of new client business, and far more profitable," he said.

However, most legal experts agree that attorneys tend to be ineffective when it comes to cross-selling. Here are their tips on what land mines to avoid and what attorneys need to do to put themselves on the path to cross-selling success:

Mistake No. 1: Failing To Take Stock

"Cross-selling is always important but probably a little harder to do now than a year ago," said Jim Hassett, founder of LegalBizDev. "Everybody's understandably jumpy and worried about their own clients. People are always nervous about sharing."

Right now, attorneys need to be focused on defensive marketing and taking stock of their own clients and their needs, according to Hassett.

"Many attorneys assume that clients would want to stay within the firm and use other attorneys but the answer is that clients very often do not want to do that," he said.

Lawyers, like many other professionals, often fail to see the client's perspective on the matter because they are blinded by their own take, Hassett said.

"They think how wonderful it would be for them if the new clients fell in more with the firm, but they don't necessarily see things from the client's perspective," he said. "Maybe they would be saving money, but it's hard to structure a deal that is a genuine benefit."

Easy Fix: Prioritize

"You have to protect your current revenue sources," Hassett said. "Then if it's really under control, you can turn to cross-selling. It's not that cross-selling is not a good idea; it's just that it may not be the best idea."

Attorneys need to think about why the clients would want to go with cross-selling and what the benefit is to them, he said.

Suzanne Rose, global director of operations at Legalbill Inc., insists that staying in tune with the client and the industry is the key.

"In order to maintain the work you have, you have to be aware that as the dynamic of the industry changes, the client will as well," Rose said. "A lawyer in tune with what businesses are doing can be very creative, and tell them or show them other services the firm can provide."

Once attorneys are certain that their current clients are as happy as possible, given the current climate, cross-selling should be the next item of business.

"You shouldn't necessarily be jumping in with both feet," Hassett said. "You need to explore the possibilities with the firm's partners. But when it works, cross-selling is the easiest kind of business to get."

Mistake No. 2: Don't Just Throw Out A Name

Another of the most common mistakes lawyers make when it comes to cross-selling is to suggest another attorney at the firm without knowing enough, according to Green.

"Here's how it's usually done and done wrong," he said. "A lawyer has a client in trusts and estates and a litigation issue comes up. The lawyer then says, 'We have some excellent people in litigation, let me give you his phone number and he'll call you.'"

While well-intentioned, such a move can put everyone involved at risk.

"First of all, you have the client asking what their trust and estates lawyer knows about litigation," Green said. "They will ask, 'How does he know my situation well enough to know this person would be good?'"

The lawyer who is referred may also be taking on some risk in trusting the original attorney's pledge that the client is on the up-and-up, Green said.

Additionally, if anything were to go awry, the initial attorney who put the two in touch could be in danger of losing the original client and business, he said.

"You potentially have a golden client at stake," Green said.

Easy Fix: Take The Time To Gather Facts

Even if the client presses you for a list of names, the right response is to tell the client, before giving names, to take a minute to talk, according to Green.

"The right way to do it is to treat the relationship with care," he said.

By taking a step back, the attorney can learn as much as possible about the situation facing the client.

"You should say, 'Listen, it sounds to me like you have a litigation issue. I am not a litigator, but I want to talk to you and understand the situation so that I can explain the background,'" Green said.

From there, the attorney should approach the litigator they have in mind, provide them with the questions asked and inquire as to whether more information is needed, he said.

"This lowers the risk to both you and the clients and allows you to ask intelligent questions that are respectful," Green said.

Mistake #3: Don't Hand Off The Baton Too Early

Once the initial connection is made, some lawyers may believe that their work is done, but that is the wrong approach, according to Green.

"Don't hand the situation off to the new attorney," he said. "You are in charge of the relationship. What the client cares about most is that there is somebody in there who is representing their interests."

In times such as these, clients really want to believe that above all else, their attorney will stand up for them, Green said.

"The scarce resource these days is not the expertise but the relationship itself," he said.

Easy Fix: Show Up

The best thing the original attorney can do for everyone involved is to be present for any early meetings or introductions, according to Green.

This will help to foster a sense of trust between you and the client by sending the message that you have their best interests at heart.

"In the meeting, you should be there," he said. "This will demonstrate to the client that you really do care ... Then they will also think, 'I know she's not going to recommend somebody bad.'"

Mistake #4: Recommending In-House Attorneys Alone

Do not just rattle off the names of attorneys who are part of the firm in order to gain the business, as clients are likely to pick up on the self-serving nature of that move, Green warned.

"You need to earn the right to do anything, and that means understanding the clients' needs," he said.

Recalling the film "Miracle on 34th Street," when Macy's sent customers to rival Gimble's for their Christmas toy needs, Green stressed that the lawyer will earn the respect of the client by employing such a move.

Easy Fix: Recommend The Right Attorney, Regardless Of Firm

You have to put the client's needs above your own, even if that means going outside the firm, Green said.

By "subordinating your bird in the hand to the longer term interests of the clients," an attorney will earn everyone's respect, thus allowing their good intentions to bleed through.

"You say, 'Much as I would like to refer you in-house, this person at such-and-such a firm is tailor-made for your case,'" he said. "The proof is in the pudding. This builds the ultimate trust."

Mistake #5: Expecting Everything From Partners

"Most lawyers who want to [cross-sell] go to the partners asking, 'What can you do for me?'" Hassett said. "That's a terrible way to start out."

Many attorneys expect the work to fall into their laps, he observed.

"Typically, you have got to give before you can receive," Hassett said. "Attorneys should look for an opportunity to help the partners get work from their existing clients. It may be a longer path, but you will probably get some work back in the end."

Easy Fix: Educate Attorneys

If a firm wants to promote cross-selling, then the first step is to start educating its attorneys on how to do it properly, according to Hassett.

Attorneys will be more likely get out there and cross-sell if they feel they will be rewarded, and firms should be aware of this need to incentivize, he said.

"Communication, compensation, all of that must be on the table," Hassett said.

IN-HOUSE COUNSEL URGE FIRMS TO PUSH SPECIALTIES

By Jesse Greenspan

Law firms would be better off emphasizing their specialties when looking to attract new clients than trying to be all things to all people, according to a survey released May 18, 2009.

The survey, developed by legal staffing agency Robert Half Legal, looked at responses from 150 in-house attorneys from among the largest corporations in the United States and Canada.

Overall, 45 percent of respondents said practice area expertise was the most important factor when deciding to hire outside counsel, whereas previous experience working with the law firm ranked second with 35 percent of responses.

Knowledge of the business/industry garnered 9 percent of the responses, reputation of the firm got 6 percent of the responses, cost or project pricing received 3 percent of the responses, and 2 percent of respondents had other answers.

"What we know is that companies will always look to outside counsel for the specialized legal services, especially for complex litigation," said Charles Volkert, executive director of Robert Half Legal. "While cost is important, still the number one area they're looking at is: Can this firm handle our legal needs to the level we need them handled."

He said, however, that in today's economy in-house attorneys were definitely looking for ways to spend their dollars wisely, and that competition among law firms to get corporate business had intensified.

"Corporations are certainly looking to partner with law firms that are offering both legal solutions as well as business solutions that can assist them in hitting their budget numbers," Volkert said.

In-house legal departments are increasingly looking to manage more of their workload with their own full-time employees, he said. In addition, outside firms are sometimes bringing in paralegals, project attorneys and other temporary staff to do work previously done by associates, he added.

"That's one of the solutions that they're offering to the corporate clients as a way to help corporate clients stay within their budgets," he said.

As part of the survey, in-house lawyers were also asked which matters, if any, their legal departments assigned to outside counsel.

Ninety-two percent of respondents said litigation matters were assigned to outside counsel, followed by intellectual property with 75 percent, mergers and acquisitions with 71 percent, bankruptcy with 60 percent, financial or regulatory with 60 percent, employment with 55 percent, electronic discovery with 53 percent, environmental with 52 percent, corporate transactional with 51 percent and real estate with 45 percent.

Only 3 percent of respondents said their legal departments assigned securities matters to outside counsel, and antitrust and insurance were even lower with 1 percent each.

Volkert said he couldn't speak directly to the drop-off between real estate and securities, but that perhaps it had to do with the size of most in-house departments and the legal backgrounds of their attorneys.

Robert Half Legal, the legal staffing division of Robert Half International, provides law firms and corporate legal departments with attorneys, paralegals and legal support personnel.

SOCIAL NETWORKING SPURS FIRMS TO LOG ON OR LOSE OUT

By Liz McKenzie

With many law firms pushing attorneys to take advantage of social networking sites' potential to increase business contacts, legal industry experts say that firms that don't log on might be left in the dust.

And the business development potential made possible by the millions of users of social networking sites isn't the only reason more firms are logging on. According to Pamela Woldow, a principal at legal consulting firm Altman Weil Inc., firms that fail to capitalize on social networking may appear more 'behind the times' than those that choose to use it to their benefit.

"If a law firm doesn't have an online presence beyond its Web site, it will be at a disadvantage," Woldow said. "It makes a law firm look out of sync because the rest of the business world is online. They just won't be noticed."

Law firms have been slow to embrace social networking in the past, but the economic downturn is now causing many firms to give those Web sites a second look, according to Woldow.

"We're entering a time where many lawyers are being laid off and firms are barely surviving," she said. "The people remaining in the practice of law have to differentiate themselves from the other firms that are hungry for business."

However, the array of social networking opportunities — which includes mainstream networks such as Facebook and Plaxo and more legalcentric Web sites such as JD Supra, LawLink and Legal OnRamp — can make it difficult to determine which sites are appropriate to use for developing business.

Karin Duncker, a business development director at Mintz Levin Cohn Ferris Glovsky and Popeo PC, recently spearheaded a firmwide initiative encouraging its lawyers to use LinkedIn to market themselves.

LinkedIn — by far the most popular business networking site, with more than 36 million members worldwide — attracts a large number of lawyers. It allows users to create profiles detailing their business experience and to link to other members to cultivate business contacts.

"It's the same benefits you'd get through networking through industry associations and trade groups," Duncker said.

Russell Lawson, marketing director at Sands Anderson Marks & Miller PC, has spent considerable time looking into the business development potential of social networks and has encouraged members of his firm to join LinkedIn.

Lawson, who set up a "test group" of 14 attorneys engaged with LinkedIn, encouraged attorneys to join the network both as part of search engine optimization — LinkedIn profiles often rank high in search engine results — and to develop potential business connections, he said.

"Law is based on referrals," he said. "You can't drive people to you; you have to invite them."

Phillip Wilson, vice president and general counsel for LRI Management Services Inc., a labor relations consulting firm, said his presence on LinkedIn had already opened the doors for business opportunities that he would not have had were he not on the site.

"I've probably received a couple of calls from people who want to do work that I was connected to on LinkedIn that I may not have talked with if we hadn't been connected on [the Web site]," Wilson said.

"Being active on LinkedIn will help you professionally, whether that translates to a new client or an invitation to give a talk or other marketing activities," he said.

To familiarize attorneys with LinkedIn, and social networks in general, Mintz Levin broadcast a video conference to its employees detailing how to best use the site and suggesting policies for how attorneys and staff should use social networks in conjunction with the firm.

Attorneys at the firm were advised to think twice about anything they post online, as most content posted on social networks is ushered into the public domain and may appear in search engine results.

"This is your outward facing impression on the world, so consider that when you create what you're highlighting about yourself," Duncker said. "Assume just like anything else that anything you write down as your profile could be cut and pasted and put on the front page of the New York Times."

For now, Duncker is recommending that attorneys at Mintz Levin only use LinkedIn and has cautioned against using personal sites such as Facebook for business purposes.

"It is a great way to communicate, but Facebook is very much a party atmosphere, and I would caution anyone in a personal service provider industry to use Facebook as a means to conduct business," she said. "It's not really the best professional atmosphere."

However, Altman Weil consultant Woldow recommends that firms choose two to three networks, selecting one each from legal-oriented networks, general social networks and business-oriented networks.

"There are firms that have decided to choose one or two and they tell their lawyers to make a huge presence on those networks and that has been hugely effective," Woldow said.

An increasing number of firms and individual attorneys have also latched on to Twitter, which allows users to send brief text updates, known as tweets, to other users instantly.

"There are an awful lot of lawyers and legal consultants on Twitter," Woldow said. "It has an enormous following, and I think it is a potentially useful method for getting your name in front of a host of other people."

Kean Miller Hawthorne D'Armond McCowan & Jarman LLP partner Erich Rapp has more than 800 followers on Twitter and claims his efforts have already led to potential business connections.

"There are a lot of lawyers that interact with each other on that platform," he said. "Inevitably in the practice of law, it comes down to referrals. I don't know that I've gotten a new client, but I feel that I've created some connections that will probably lead there."

While Twitter enables attorneys to send out legal news or links to relevant information to clients and business contacts in seconds, some feel that the service also runs the risk of making oft-tweeting individuals appear as though they are focusing less on work.

"If I was a client and was looking at Twitter, I would be a little concerned if I was seeing my attorney updating their status all the time," Duncker said. "I'd wonder what I was paying them for."

Wilson typically sends about 2 to 3 Twitter updates a week, but he has also questioned attorneys that continually post updates online, he said.

"There are a lot of people I know that tweet at least 10 times a day, and the thought crosses my mind and I wonder, 'Don't they have a day job?'" he said.

JD Supra founder Aviva Cuyler, a former lawyer, created the legal-oriented social networking site so that lawyers could post documents and articles to their online profiles both at JDSupra.com and other networking sites.

"I spent 12 years as a business litigator and saw that the work that lawyers do, whether it's articles or forms, have incredible value, and there really wasn't a place for lawyers to share that and get credit for it," Cuyler said.

The site now has applications that allow attorneys to post legal documents on Facebook, LinkedIn, Twitter and Justia.com, allowing attorneys to reach a much broader audience.

"By putting them on a site that aggregates this content, [their content] ranks much higher than if it was lost on a individual site," Cuyler said. "When people put their content on the site, it also streams out to many areas to reach targeted audiences."

"JD Supra helps people connect with clients as well as colleagues and potential referrals where people discover they are working on similar issues," she said.

However some have expressed concerns that industry-specific networks lessen the pool of potential contacts.

"Specialization is great, but the point of this is to create a large, broad network," Duncker said.

Attorneys may also be resistant to the challenge of learning more intricate legal industry networks, Lawson said.

"Places like Legal OnRamp do have a learning curve," Lawson said. "It's a different interface from LinkedIn, and these don't have much more to offer than findability."

However, before encouraging attorneys to market themselves online, firms are advised to tweak their written policies to include what is acceptable for attorneys to say and do on social networks.

"It makes sense for law firms to review with their lawyers all of the proper ways of communicating, whether it's by telephone, cell phone, e-mail, social networks," she said.

"They need to renew those reminders of how you report yourself in public. Social networking is no different."

"Your employees are going to be using this regardless," Duncker said. "You want to encourage them to use the tools and tech at their fingertips. It's just cautious and smart to draft a standard operating procedure on how it should be used."

In addition, social networking Web sites should not be viewed as a substitute for traditional networking and in-person communication, Woldow said.

"There may be a tendency to use social networks, when other kinds of communication would be better for building relationships," she said. "But there is no substitute for picking up the phone or making an appointment to have lunch with someone."

UPHEAVAL FORCES FIRMS TO RETHINK MARKETING

By Liz McKenzie

Facing a deflated economy and, in most cases, decreased business prospects, law firms must be increasingly savvy in exploring new areas of business development.

Many firms are slashing less-profitable marketing endeavors and shifting their focus to sales and more direct business developments efforts.

With partner profits down by as much as 10 percent in some U.S. firms, they are looking at new areas for business development — ranging from online social networking to creative billing and legal perks — to attract new business and make sure they keep the clients they have.

"Firms are watching their costs more," said consultant Peter Zeughauser of The Zeughauser Group. "They are trying to spend their money more on directly bringing the firm business rather than building the firm profile."

The emphasis is now on immediate results rather than long-term efforts such as branding and advertising, according to Altman Weil Inc. principal Charles Maddock.

"Everybody wants immediate results," Maddock said.

The recession has also signaled a shift back to client outreach, and firms are spending more time than ever making sure they have consistent face time with their clients.

"The focus has shifted more to business development than marketing," Zeughauser said. "Firms are spending more time visiting clients, checking in with them, seeing how their needs are changing and finding out what they can be doing better."

"The first is rule in marketing is always go back to your current clients," said Altman Weil principal Pamela Woldow. "They already know you and trust you."

Foley Hoag LLP Chief Marketing Officer Mark Young said firms need to be "in the world of their clients" and take as many opportunities as possible to have in-person "touch points."

"Law firms are looking for ways to further engage their clients, making sure they are in constant communication with them," Young said. "Smart firms understand that they are in business to advance the interests of the clients."

Mark Thompson, chief marketing officer of Bryan Cave LLP, said his firm was reaching out to reassure clients that the firm is constantly working to solve their problems.

"Our clients are experiencing issues as a result of the downturn, and we need to make sure we are there for them in these troubled times," Thompson said.

The return to client relationship-building is one of the few positive effects of the recession, according some consultants.

"The good news is that this is bringing them back to doing the things they should have been doing in the first place," Maddock said.

The budgetary restraints that many clients are invariably facing because of the downturn have also pushed firms to tailor billing solutions based on their clients' needs.

"Firms that had previously not considered alternative fees are getting educated and reaching out to clients to let them know they would be willing to work on a contingent fee," Woldow said.

Cravath Swaine & Moore LLP announced earlier in 2009 that it was departing from billable hours, attracting a blitz of media attention and simultaneously sparking a debate about how firms should manage billing.

"This is the ultimate hourly billing firm," Woldow said. "It stepped away from the pack, and it has gotten so much play and media coverage."

In a similar move, labor and employment firm Ford & Harrison LLP improvised by first announcing that clients would no longer be billed for first-year associate work

Maddock said one firm he counseled was able to nab a client by agreeing to set up a cap so that its fees would not exceed a certain amount. The firm also threw in a day's worth of training for in-house litigators free of charge.

"The key for 2009 and beyond is for law firms to be able to have predictable fees for their clients," Woldow said. "Their corporate clients have budgets that have been cut, and they need firms that can offer them fee predictability."

Some firms have already begun offering value-added perks such as continuing legal training, education events and even free advice to lure in clients.

One top Silicon Valley firm offered several hours of free legal advice for anyone who participated in one of its online webinars, according Woldow, who did not name the firm.

"The reason that it is so remarkable is that this is a top-tier firm," she said. "A top 10 firm doesn't give anything away for free. The fact that this top firm is giving away hours for free with top counsel is remarkable."

The Internet may well be the new frontier for business development, as a growing number of firms look to social networking Web sites, blogs and other online technology to reach out to potential clients.

Woldow said many lawyers and firms are utilizing social networking Web sites such as LinkedIn, Plaxo, JDSupra, Legal OnRamp and even Facebook, which allow users to quickly disseminate information to clients and keep in touch with other contacts.

"It's different from having those people in your Microsoft Outlook e-mail address book," Woldow said. "For example, on LinkedIn you can search for particular counsel or client and build a mini-network online and distribute information to them. We're seeing an exploration of that."

"It can be a way in which law firms can authentically, in real-time fashion, convey a perspective and point-of-view of its practice teams," Young said.

While some firms may be wary of blogs because of the fear of offering unsanctioned legal advice, others view them as an opportunity to further reach out to current and potential clients.

"If it can be done well, it becomes a very powerful medium," Young said.

"It's the ability to communicate in real time. It's an equitable exchange of information back and forth," he added. "We've launched a number blogs and find them to be a very successful way to communicate."

Philadelphia-based Pepper Hamilton LLP broadcasts podcasts of speeches from conferences and events. Similarly, Dechert LLP keeps its clients in the loop through an online client database system that sends client-specific updates such as regulatory changes or other news as it occurs.

"They are trying to be more 'with-it' but doing it in a way that takes away the fear of giving unsolicited legal advice," Woldow said. "We're going to see law firms more involved with transmitting tech directly to clients."

Responding to requests for proposals is also an important part of firm business development and firms should be selective in what proposals they choose to respond to, given the resources it takes to properly respond to most proposals.

"When there is an economic downturn there may be a tendency to answer more [RFPs] because you want to cast your net wide, but a savvy firm will not respond with a knee-jerk reaction to respond to every RFP that floats in the door," Woldow said.

Zeughauser contends that firms' responses should be based on three factors — the attractiveness of the work, the cost of responding and the likelihood of winning the client — and they should only respond to RFPs that will supplement the firm's client portfolio.

"Don't reply to all of them blindly," he warned. "You have to evaluate each one on a case-by-case basis."

EXPERTS SAY FIRMS SHOULD REFINE ADS, NOT ABANDON THEM

By Anne Urda

With money tight, many law firms are looking to cut back on advertising these days, but legal experts say the key is not to hide but to hone the message and to be discriminating about the medium.

Advertising is the No. 1 area where firms intend to cut back in 2009, according to a recent flash survey on law firms in transition conducted by consulting firm, Altman Weil Inc., with an estimated 39 percent of respondents indicating that they will be spending less on advertising in the coming year.

But some legal experts maintain that scaling back on advertising would be a big mistake as firms continue trying to work their way through the economic mess.

"Now is the best time to advertise, and potentially the single best advertising opportunity we will see in a generation," said Ross Fishman, CEO of Fishman Marketing Inc., a consulting firm that specializes in strategic planning for law and other professional-services firms. "So many firms are cutting back, but all of the studies from previous recessions prove that when competitors go into hiding, those that continue to aggressively advertise leave the recession in a better position than competitors."

Right now, firms have a unique opportunity to build up their brand, with Fishman urging firms not to panic and abandon advertising because of the difficult economy.

"Clearheaded strategic firms recognize the opportunity and are building their brands aggressively," he said. "If you are the only voice out there, you are the one that makes the biggest gain in brand recognition."

Rates are much lower for traditional advertising, and publications are much more flexible and willing to negotiate pricing, he said.

"It is much easier to get noticed now that the 100-page magazine is down to 20 pages," he said. "You have to be strategic in how you spend your money and where you invest your advertising dollars, but if you have some dollars, you get much more bang for your buck today than you have in decades."

The key is for a firm to focus its advertising efforts rather than attempt a general, "let's get our name out there" approach, according to Fishman, a former litigator as well.

"I think you should be seeking market dominance in a more narrowly focused area," he said. "It may not be the best time to market a general service, but you can see significant revenue growth by marketing into a narrow industry trade association magazine."

Suzanne Rose, director of operations at LegalBill Inc. and a former law firm administrator and consultant, contends that a little honing can go a long way for firms when it comes to advertising.

"I think law firms make the mistake of saying the first thing to go will be the marketing and advertising dollars because it's difficult to understand and measure the return on the investment," she said. "You have to be able and willing to do your research on where the audience gets information and focus your dollars on those sources of information. Do not just stab in the dark and hope this one lands over here or there."

Whether print advertising or online, the medium for firms is not nearly as crucial as the delivery method, with some firms proving more successful than others, Fishman said.

"Advertising is an expensive line item that when done too broadly or ineffectively, it is easy to blame the medium, instead of the firm's execution," he said. "It is easier to say advertising doesn't work than it is to say our mediocre advertising hasn't worked."

So don't expect to just put your firm on Twitter or Facebook and start seeing results, Fishman warned.

"Marketing a general service, full-service practice to a general, infinite audience isn't successful anywhere online or otherwise," he said. "Web sites are more effective when targeting a narrow audience where you can really stand out."

But Charles A. Maddock, a longtime consultant with Altman Weil who spent 12 years in the advertising business, expressed doubt over the results that law firm advertising can bring even in the best of times.

This past February, he conducted a meeting in London in conjunction with Lawyer magazine where he presented the group of attorneys and others present with a list of 15 different marketing ideas for firms.

"We ranked them in the order of things that are most successful in terms of return on investment, and advertising was 15th out of 15 in terms of return on investment," he said. "There is a widespread perception that advertising does little besides a branding function or a reminder function."

Part of it is the somewhat immeasurable nature of advertising itself, according to Maddock.

"It is hard to point to this sale being a direct result of advertising," he said. "Other than just as a mix of what the firm is doing, it is a difficult sale within most firms anymore."

Maddock pointed to the ever-dwindling circulation of the New York Times magazine and the Washington Post magazine as evidence that print advertisements for a lot of businesses are quickly becoming a thing of the past.

"Go back about 15 years when Howrey LLP — then Howrey & Simon — chose to advertise in the Wall Street Journal," he said. "That was a real breakthrough from the trend of not advertising. Just by advertising itself, that alone was newsworthy."

During the boon times three or four years ago, all law firms were advertising due to enormous marketing budgets, but by then the messages had become watered down, according to Maddock.

"They did not care what the ads said as long as they had the ad," he said. "Most law firm ads don't say anything at all. How many law firm vendor ads talk about getting your ducks in a row and then have a picture of the toy ducks? People are just going through the motions."

Whether the problem is one of branding or the inability to say something unique about the firm, firms need to take a step back and figure out what message they want to put forth, Maddock said.

"They need to ask, 'What is it you are selling? What is it that makes your firm unique? Why should we choose the firm? What is it that would compel me to do more with your firm?'" he said.

Maddock also contends that firms would be well advised to tap into a place like Legal OnRamp, the legal industry's answer to Craigslist or eBay, for their advertising needs right now.

Firms need a model like this where advertising is inexpensive, the purchasing agents are there, it's easily tailored and it appears innovative, Maddock said.

Fishman contends, however, that firms should not be so quick to abandon traditional advertising altogether but rather should work to avoid the gavels, globes, skylines and other cliches of the past.

"That never worked and today with fewer dollars to spend, it's doing you harm," he said. "When you have plenty of money, you can afford to be wasteful without doing significant damage. Now is the time to be more focused."

While the advertising budget may have shrunk, the need to promote the firm has not, a fact that firms would be wise to remember, according to Ann Lee Gibson, founder of Ann Lee Gibson Consulting.

"People go back to the organizations that they trust in hard times like this," she said. "You have to keep your image up and your chin up and your face out there in the difficult times."

Fishman maintains that if a firm can develop a strong, differentiated method and can convey it in a visually powerful way, that firm will see a significant, tangible return on the investment.

"I think people say advertising is immeasurable when they are not sure if it is working," he said. "It should be fairly obvious if it's working, and it's not just with print advertising. It's your Web site, it's your brochure — print advertising is just one more available tool."

But firms do need to be mindful of how they promote themselves right now, with clients easily turned off these days, according to Gibson.

"In this day and age, it is all about the tone," she said. "There might be clients out there saying my goodness you are wasting money we are paying you on advertising. You have to be really careful about the tone and placement, and I don't think it's a time to be glitzy."

If done right, however, advertising can be a crucial tool in helping firms not only survive the downturn but thrive in the aftermath, according to Fishman.

"Advertising works if you do it right, and it's a huge waste of money if you do it badly," he said. "If you don't have the courage or the strategy, don't do it. But if you know how to use it well, it can be your most powerful awareness tool."

IN-HOUSE COUNSEL SEEK VALUE THROUGH RFPS

by Jocelyn Allison

When the litigation portfolio at FMC Technologies Inc. changed in 2008, the company put out a call for law firms interested in competing for a spot on its preferred list of outside counsel. The response was less than overwhelming.

The Houston-based provider of technology for the oil and natural gas industry received about 50 responses to its request for proposals, including just 22 from the 200 largest U.S. law firms, general counsel Jeffrey Carr said.

"Not bad," Carr said, "but a little disappointing."

Formal requests for proposals are among the tools corporate law departments use to manage outside legal costs, but they can be a thorn in the side of some law firms — and in-house departments — if they're not carried out well, some in-house attorneys said.

"I do think the way RFP processes have been run by many law departments are very onerous, and I think they ask for a lot of information that a lot of people never use and never go into the actual decision-making process," Carr said.

"I think it's a perfectly legitimate tool to select counsel in an area where either you're dissatisfied with your incumbents or you're going into a new area, or if you want to check pricing," he said. "It's a perfectly reasonable tool, but you shouldn't bid out every matter."

Some law firms may resist the RFP process because they suspect it is a strategy for renegotiating rates with existing counsel or because they believe they offer a highly customized service that does not fit into a cookie-cutter screening process.

Law departments that bid out every matter risk eroding their relationships with outside counsel, and some matters are too sophisticated to be reduced to an RFP, but the process can be useful when it comes to certain types of routine legal work — litigation included — or to shake up your go-to list for outside firms, some in-house attorneys said.

"At the margin, all lawyers think they're different," Carr said. "They all think that every case is different, but in fact that's not true. For normal litigation, any competent firm can handle your litigation, so what you're really looking for is value and fit."

DaVita Inc., an El Segundo, Calif., provider of dialysis services, invited about 100 firms to participate in an RFP it conducted in 2007 to cut down the number of firms the company was using and reduce its outside legal spending, corporate counsel Kalim Chandler said.

"Some firms were increasing rates every year, and it became more difficult to justify these increases when we looked at our budget needs," Chandler said. "We decided to ask firms, 'Would you be willing to freeze rates?' and some of the firms declined, so we were unable to add them to our panel."

As part of the process, the company invited the finalists to participate in a daylong training aimed at educating outside attorneys on the nature of DaVita's business, the needs of its in-house legal department and the company's culture and corporate structure.

In addition to presentations on labor and employment and regulatory and compliance issues, the company had the lawyers experience a simulation of what patients at one of DaVita's dialysis centers encounter, with nurses taping catheters to their arms and showing them medications.

"It was great to bring the firms up to speed on a variety of matters in a very short period of time so you avoid the ramp-up costs that might be charged to you in the future," Chandler said. "I think in general the RFP can be a very good thing to do, but you need to be very specific about what you're looking for and make sure it's the right time for your department to take on this effort."

Later, in a separate exercise with outside counsel, DaVita had four of its preferred law firms participate in mock trials in which the attorneys argued opposite sides of a legal issue. It was an eye-opening experience that the legal department could consider incorporating into future RFPs, Chandler said.

DaVita's 2007 RFP was about 10 pages, and many of the responses exceeded 50 pages. The company ended up sending additional requests for summaries to certain firms after it became clear that many of the materials were going to take a long time to review.

"If we did do it again, it would probably be more limited and we would follow some of the lessons we learned, one of which is to ask specific questions that will allow you to narrow your search," Chandler said. "When you send out a request, don't ask about everything the firm does because you're going to get everything."

Sending out an overly detailed RFP can be a burden to both law firms and in-house departments who are tasked with reviewing the information.

At FMC, the first phase of the RFP is a two-page questionnaire, one with a series of "yes" or "no" questions and a second blank page for written comments from the firm.

Although RFPs can be a useful tool to obtain discounts or set up an alternative billing structure, it's important to give proper weight to factors beyond price, in-house attorneys said.

The law firm's experience in a particular type of matter or jurisdiction should be top considerations, said Justice Pierce, head of trademarks and brand protection at Sony Ericcson.

"Those should be huge factors in their favor even if that particular attorney or firm does come in to be more expensive than others who are competing at the RFP level with them," Pierce said.

Pierce has used the RFP process for Sony Ericcson's trademark prosecution work, but he generally uses a more customized approach for high-stakes deals and litigation. He said his experience with the RFP process had been mixed.

"The sense I get from RFPs is that there is a huge tendency to go for the lowest bidder, and a lot of times that choice does not reflect the best option from a qualitative perspective," Pierce said.

At Cisco Systems Inc., where the use of RFPs is essentially mandatory, the winning bid often is not the lowest, general counsel Mark Chandler said.

The RFP forces firms to compete not just on price, but on talent and the best way to approach the case, he said.

He uses the RFP process because of the competition it creates, as well as because it offers the company fresh perspectives on a matter and allows the law department to structure an arrangement that aligns incentives between inside and outside counsel, he said.

For example, when dealing with outside counsel who claim they can bring an early resolution to a patent case, Cisco might ask the firm to handle the matter at a steeply discounted hourly rate but with a large early resolution bonus. In the end, the firm can earn more than its hourly rate if it can deliver on its promise.

"We view this as a win-win opportunity," Mark Chandler said. "We're not trying to lower the profitability of the firms who work for us; we are trying to drive efficiency."

A successful RFP should be efficient and fair, and it should build trust between the lawyer and the client, he said. That means making sure the RFP process is consistent and transparent and that there is a good flow of information to the participants.

"For me to be successful, the firms need to be happy," Mark Chandler said. "There is absolutely no way for me to do my job and have two-thirds of the money I spend go to people who aren't happy working with me."

"We spend more than $100 million a year with law firms, and if they don't feel good about that, I'm doing something wrong," he said.

STUDY FINDS FIRMS SHOULD WEIGH COSTS OF RFPS

by Liz McKenzie

With law firm profits down almost across the board, one consulting firm has recommended that firms re-evaluate whether the high costs of responding to prospective clients' requests for proposals, which can consume up to 200 partner hours, are worth the financial gamble.

Consulting firm Altman Weil recently determined that the cost of responding to an RFP ranges from $35,000 to $65,000 and can expend roughly 100 to 200 partner hours at most firms.

"Now that business is down, especially at some of the nation's most profitable firms, many partners and marketing directors are taking a long, hard look at how the firm spends its time and money responding to prospective client requests for proposals," Altman Weil principal Charles Maddock said.

Although the chances of landing the client can be quite slim, many firms exhaust their finances responding to many proposals that they never have a shot at a getting. More than 70 percent of RFPs are rejected by clients, according to the consulting firm.

However, simply winning a client may not always lead to financial rewards.

"Winning typically means being placed on a list of approved counsel with no guarantee of additional work." Maddock said. "Most of the wins produce no income whatsoever, let alone personal contact with the firm."

Maddock says that even with business down, firms should only take on RFPs that they are qualified for.

"Many firms are way behind their projections and will respond to just about anything, regardless of qualifications," Maddock said.

He recommends that firms take on clients that will supplement a firm's business portfolio not just in terms of revenue but in prestige, associate training, additional business from other clients and other perks.

Firms should decide whether the client is a "strategic target" or a "one-shot opportunity" and assess their chances of winning the client, Maddock said. They should also look at whether the client fits within its cost structure and whether the firm has the capacity and leadership to handle the work well, he said.

Peter Zeughauser of the Zeughauser Group, a legal consulting firm, says firms should evaluate RFPs based on three factors: the attractiveness of the work, the cost of responding and the likelihood of winning the client.

"You have to evaluate each one on a case-by-case basis," Zeughauser said. "Some can be done cheaply and effectively and others require a tremendous amount of work."

"It's a question of how attractive is the work and how much does it take to respond," he added.

Zeughauser says that if a certain proposal doesn't seem as profitable as something the firm would normally take on, it's usually best to pass.

"If it doesn't seem profitable, the reasons [for taking on the offer] better be good," he said.