

Competing in a Changing Marketplace

In a shifting legal market, non-lawyers, technology, and online services challenge the way attorneys practice and how law firms make decisions

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What we typically view as competition is someone bigger, stronger and better than ourselves. Whether it is in athletics or work, we are always looking over our shoulder at what may be gaining on us.

What we don't see coming is that smaller, scrappier competitor. In law firms, that's the non-lawyer competitors, online service providers, and other law firms which are paying more attention to technology and giving clients access to documents and attorneys that clients want, while the rest of us are still stubbornly insisting we don't have time to learn new technology.

Recent legal surveys also indicate that the way law firms are structured is creating problems for many firms. Partners are often saddled with far too much work – or not enough. The non-equity partner ranks can be bloated with underperforming lawyers. Lateral hires are the quick and easy way to boost a firm's profitability.

All of this means that while we've feared a bigger law firm buying up smaller firms and competing against us, that's not the threat we should be watching. In fact, that's not playing out in Kentucky at all. Law firm mergers and acquisitions hit a new record in 2015 nationally, with 91 announced during the course of the year.¹ One would assume that this national trend would have impacted Kentucky. To the contrary, not one Kentucky firm was gobbled up by a larger competitor.

The threats in Kentucky, and really throughout the law industry, aren't necessarily from other law firms and other lawyers. Instead, they're from web sites, non-lawyers, in-house counsel and our own inability to innovate. We are our own worst enemy when it comes to advancing our firms and keeping in step with what clients want and need, and changing the structure of our firms so that we can compete.

We are truly in a change or die scenario. The sooner law firms in Kentucky realize this, the better prepared law firms will be to thrive. After all, a law firm is no different from any other kind of business. If we're not serving our clients in the ways they need, they'll look elsewhere. While there are some limitations on how far and wide clients can search, it's not as limited as you might think – and clients are probably more frustrated than you realize.

Recent Surveys

Two recent surveys released within the past few months show that law firms are recognizing the issues at hand. Altman Weil's *Law Firms in Transition Survey – 2015* documents how the business of law is changing and identifies emerging forces that will move the legal market forward. Likewise, the Managing Partner Forum with the assistance of Citi Bank Private and Hildebrandt Consulting released its *2016 Client Advisory*². Both of these studies looked at 2015 law firm profitability and future trends and predictions.

Consider this “Top 10” list from these studies:

1. In over half of all law firms responding to the survey, partners were not sufficiently busy in 2015.

In firms with 250 or more lawyers, the number of partners who did not have enough work jumped even higher, according to their firm leaders. Not surprisingly, 61% of firms say overcapacity was diluting firm profitability, and that's the case in 74% of firms with 250 or more lawyers.³

2. Non-equity partners continued to present a particular dilemma for law firms.

Although most firms have a non-owner partnership tier and see its potential value, in many law firms a non-equity tier has become a warehouse for underperforming lawyers. Forty-three percent of all firms, and 67% of firms with 250 or more lawyers, say they have too many non-equity partners.⁴

3. Larger law firms tend to report larger challenges.

They have a much bigger problem with overcapacity in their partner ranks. Demand has been slower to return in larger firms overall. And larger firms are losing more business to non-traditional competitors than smaller firms.⁵

4. Eighty-three percent of law firm leaders say they believe competition from non-traditional service providers is a permanent change in the legal market.

Those competitors are already taking business from law firms, according to the survey. The biggest bite being taken is by clients themselves, through their own innovation and hiring in-house counsel.⁶

5. Sixty-seven percent of law firms say they are currently losing business to corporate law departments that are in-sourcing legal work, and another 24% of firms see this as a potential threat going forward. Clients may not be *asking* for change – but they are *showing* law firms that they can and will take alternative measures themselves to achieve greater efficiency and economy. In other words, if clients can't buy it from law firms, they'll build it themselves.⁷

6. The second largest ‘non-traditional’ threat to law firm business is clients’ use of technology tools that reduce the need for lawyers and paralegals.

Twenty-four percent of law firms are currently losing work to client technology solutions and another 42% see this as a potential threat to their firms' business.⁸

7. Partners’ resistance to change is an ongoing theme of the Altman Weil survey and is also a persistent threat to law firm success.

Forty-four percent of firm leaders cite partner resistance as one of the reasons their firm is not doing more to change.⁹

8. Seventy-seven percent of law firms that changed their strategic approach to lawyer staffing reported an increase in profit per partner from 2013 to 2014, compared to 56% of firms that had not made such a change – a 21-point difference.

Seventy-six percent of firms that have changed their strategic approach to efficiency increased profits per equity partner from 2013 to 2014, outperforming firms that had not by 15 percentage points. Those firms that have done more in the areas of pricing, staffing and efficiency are outperforming those that have done less.¹⁰

9. Looking at the results by revenue size, the Am Law 51-100 outpaced the other Am Law segments in revenue, demand and billing rate growth.

Smaller/niche firms also had strong revenue growth.¹¹

10. As a means of achieving “instant” revenue growth, lateral hiring remains much more likely than a merger or acquisition, particularly among larger firms.

Law firms are aggressively pursuing laterals in targeted geographic or practice areas, either to fill gaps or provide deeper bench strength. In fact, we are increasingly seeing “lateral lift outs” of larger groups of lawyers.¹²

Gretta Rusanow, head of the advisory services for Citi Private Bank’s Law Firm Group, was interviewed by *The National Law Journal* regarding the Managing Partner Forum study.¹³ In her *National Law Journal* interview, she pointed out that “clients are changing the way they purchase legal services.” “There is a lot of focus around price, and it’s around value,” Rusanow says. “A huge part of that is the staffing model.” According to Rusanow, firms are hiring fewer non-equity partners and senior counsel and instead are focusing on contract lawyers and non-partnership staff associates.

Here’s what we can derive from Rusanow’s comments and these findings and the relevancy to the topic of law firm mergers:

- If firms have too many partners or partners who are not busy, why would these firms want to take on any new partners and additional debt?
- Likewise, if you are in a smaller or mid-size firm who would be the target of a possible acquisition, why would you want to become part of a firm facing increased competition and lawyers looking for work?
- It is clear that we continue to operate in a buyer’s market. Consumers of legal services have more options than ever before. When lawyers are not busy, there is a tendency to underprice their services.
- Times are changing and law firms who fail to innovate will get left further and further behind.

Unregulated Legal Services Providers Are Here

Since mergers aren't the biggest external threat to Kentucky lawyers, what exactly is? The American Bar Association recognized the changing nature of legal service providers in 2014 when it established the Commission on the Future of Law Services. The commission's job is to study how legal services are delivered in the U.S. and how the public's access to such services can be improved. The commission divided the classes of legal service providers into two groups: regulated and judicially approved, and unregulated.

Cost and easy access are the two primary forces driving the creation of unregulated legal service providers, the commission's report indicates. Online legal services have proliferated at an alarming rate. Ten years ago, the ABA report notes, these services didn't exist. Now, online legal services are valued at approximately \$4.1 billion.¹⁴ Compare that to the other data in the report that noted since 1988, law office employment had actually shrunk while all other legal services have grown 8.5% annually and 140% over the whole period.¹⁵ This is quite alarming.

What's frustrating for many of us is the lack of regulations surrounding these legal services providers. As we all know, every bar association, the ABA, courts and Congress have weighed in on how we can practice law and what it means to do so, but these providers have escaped such scrutiny. The ABA is asking for feedback on regulating such providers, but don't look for that to be a solution any time soon. Such regulations take time and energy, and each state will likely have its own take on this.

Competition from In-house Counsel

John Mitchell is the Chair-Elect of the ABA Law Practice Division. He serves executive coach at KM Advisors, LLC located in Chicago, and specializes in working with lawyers and law firms throughout the nation in an effort to grow their practices. According to Mitchell, "a fundamental flaw in most law firm leader's thinking is that they can convince their clients to continue to use the firm rather than bringing certain types of work in-house. The reality is that if a company has sufficient volumes of a particular type of work, it will likely look to bring some or all of that work in-house. They can typically produce the work at the same or higher levels of quality while also reducing their cost by up to 50%. Companies hire firms for a variety of reasons. However, the most common reasons include work that is episodic and complex, work that requires large numbers of attorneys to service it, unexpected work that overwhelms the legal department's existing capacity, work that requires an external focus (internal investigations, etc.) and work that is not part of the company's core business. While there are exceptions in the marketplace, these reasons are key drivers in company's selecting law firms to do their work. The further work gets from these basic drivers, the less likely a firm is to keep the work over the long term."¹⁶

Mitchell is also quick to point out that corporations regularly pick up relevant technology and are not afraid to use non-lawyer to do work typically done by law firms. "Sophisticated corporate clients have learned that some work, like discovery services, can often be accomplished faster, at a higher quality and for less money when performed by alternative providers."¹⁷

How Should Law Firms Change?

The real question I want to answer here is what should law firms do? For starters, stop behaving so much like law firms, and start acting more like any other business. While we do have unusual restrictions on our business, including how we market our services and garner new firm equity, we shouldn't use those restrictions as our excuse to refuse to look at our business with new eyes.

At a 2015 meeting of the American Bar Association's Law Practice Division held in Walt Disney World Resort in Orlando, we decided to apply imagineering to the practice of law. "Imagineering" is a combination of "imagination" and "engineering" and invites you to stretch your mind to examine the possibilities in your business, your field and your life. The program looked at the keys to improving law firm efficiency and what would entail The Future Law Office.

The keynote speaker was Joe Tankersley, who frequently speaks on imagineering and the future of business. We invited some of the best minds in law to join us to discuss where they see law going in the future, including Richard Granat of the *eLawyering Blog*, Joan Bullock of The Reformed Law ProfSM, Omaha, Nebraska-based attorney Mary Vandennack, Florida-based attorney Kimberly Leach Johnson, Dan Lear of Avvo, personal branding expert Katy Goshtasbi and Tom Grella, an Asheville, North Carolina-based attorney.

Here are the key takeaways.

Communication.

The future is changed more by communication of opportunities than anything else. The panelists advised connecting with the world beyond the courthouse pillars to determine how to improve efficiency in your office. This is a must if you want your firm to stay relevant and profitable.

Competition.

Look at how non-lawyers are doing legal work quicker and cheaper. LegalZoom is the nation's leading provider of online legal services and since its inception almost 15 years ago, has served over two million customers. Since 2014, it has available to it new capital worth almost \$450 million.¹⁸

Avvo is the newest online legal service provider. Avvo's primary focus is aimed at helping people find lawyers online. However, Avvo, like LegalZoom, has now availed itself to providing fixed-fee legal services when it launched Avvo Legal Services. Avvo calculates prices and defines the services, such as reviewing a consulting or prenuptial agreement (\$149), starting a single-member LLC (\$595), or filing an uncontested divorce (\$995).¹⁹ In 2015, they raised \$71.5 million in new funding.²⁰

If LegalZoom and Avvo through technology and efficiencies can figure out a way to fix fee the preparation of simple legal documents, then why can't we figure out a way to do it as local law firms and attorneys? If we don't it, this staple block of business will disappear.

Also, we as lawyers need to brand ourselves as something much more than someone who just creates documents. If you are "just a lawyer" you are seen as a commodity. Clients are looking for your expertise, consultation and advice.

Workforce.

By 2020 there will be five generations in the workforce,²¹ and about half of all workers will be Millennials.²² The key to preparing for this change is to implement up-and-down mentoring: older workers will still mentor younger ones, but younger workers will also mentor older people in their areas of expertise.

Also, by 2020, 50 percent of the workforce will be contingent workers, freelancers and other independent workers creating their own jobs and workplaces.²³ The trend is toward co-working spaces and smaller individual offices, which encourages collaboration. Imagine how this could change the world of law.

Most lawyers have long-standing habits that hamper productivity. It's important to look at what you, and others around you, are doing and how to do it better. Pull data to improve performance and income. The key is to manage the opportunities and risks by tracking and using data. I am often amazed how many firms collect data but never use it to improve their efficiency and profitability.

Transparency.

Organizational transparency is the new green. New generations expect access to information and want to know what everyone is doing. This may seem intrusive for firms not accustomed to sharing information, but it can bring great energy and suggestions. Expect, too, that those on the outside will want to know about your firm and how it operates. The new trend is to empower your client. Law firms are setting up client portals to give their clients more power. It gives them the ability to stay up to date on their case, review, change and upload documents and a venue to communicate with their attorney. Online bill pay and allowing the client to complete the intake information before they even arrive at your office are other growing trends to empower the client. Happy clients refer you business. Use technology to make this happen.

Antiperfectionism.

Lawyers love to review, review and review before we send out a document to a client. There is nothing wrong to making sure the work product is perfect. However, John Mitchell suggests not to overshoot what clients want and need. "It is also important to understand what the client values and the point at which that value starts to diminish," Mitchell says. "Most clients don't want perfection. They don't have the time and money for that. They don't get it from their business units and they don't want it from their law firms. If the client wants a firm to build a Mercedes do so. However, if it wants a Buick don't build a Rolls Royce. That doesn't impress your client – it proves to them that you don't understand their business."²⁴

Also, the way you prepare your work product is much different than the perfectionism that is required to run a business in modern times. Run your business like an app developer. Get it to market fast and make it better, but don't wait until you make it perfect because someone will beat you to it. Learn to fail forward as it relates to new and innovative ways to make you firm better.

The role of non-lawyers.

Non-lawyers may be the most promising innovators in a law office—and need to be valued. Encourage them to contribute more by giving them opportunities to show their skill sets and invest them into the firm’s practice. Consider having non-lawyers run your practice groups as they don’t think like lawyers.

Fixed-price legal services.

Consumers want fixed pricing and transparency. Legal project management and effective data evaluation are key to being able to give clients what they want without damaging the firm financially. Quarles and Brady managing partner Kimberly Leach Johnson says 18 percent of the firm’s fees are fixed. The firm approaches clients aggressively about agreeing and partnering in it. If you don’t know how to quote a fixed fee, then you don’t know how to read your data. Look at realization rates for all work to see what is profitable and what is not. It will make you become more efficient.

Management versus leadership.

There is a big difference in law firm leadership and law firm management. Management should be left to a firm administrator to set rules and make sure those are followed. The role of law firm leadership is to envision and implement the bigger picture.

What’s Next for Law in Kentucky?

You can expect that if you aren’t feeling the pressure to innovate now, you will, and soon. Lawyers that are willing to innovate will positively influence their firms, practices and their partners. Millennials looking to prosper and innovate will look for like-minded colleagues who are willing to share their vision of the law firm of the future. Do you want your firm to be the next Apple or be remembered like Blockbuster Video? Remember, your firm is a business, so treat it like one!

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⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

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