

## FOREWORD

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Of all the changes that have impacted the legal market in the 40 years that I have been a member of the bar, none has been more profound than the evolution of the modern American law firm. Although similarities persist, the law firm of today is remarkably different from its counterpart of four decades ago.

First, of course, there is simply the matter of size. When I graduated from law school in 1970, I well remember agonizing over whether I wanted to join a “very large” law firm where I would be the 63<sup>rd</sup> lawyer or associate with a more “normal” sized firm. While it seems amusing today, it was a serious question at the time, since there were only a couple of firms in the entire country with more than 100 lawyers. Indeed, the prevailing wisdom of the day was that firms could not possibly grow larger than 200 lawyers or so because of the inherent limitations of the conflict of interest rules. By 2008, the *average* size of one of the 250 largest firms in the U.S. was 535 lawyers, and the *average* size of one of the 20 largest firms was 1,860.<sup>1</sup> Plainly, we were all wrong about the limiting power of conflict considerations!

The growth in firm size was also reflected, of course, in the growth of revenues and profits. Whereas a law firm with annual revenues of \$50 million was barely imaginable in 1970, during 2009, the *average* Am Law 100 firm had revenues of some \$648 million with profits per equity partner of \$1.26 million.<sup>2</sup> Clearly, over the past 40 years, many U.S. law firms have become very large businesses, and that growth has been accompanied by increased centralization of management functions and more corporate-like practice structures and governance models.

A second—and perhaps related—major change in U.S. law firms in recent decades has been the dramatic increase in lawyer mobility. In 1970, when I began practicing law, lawyers and their law firms typically “mated for life.” A young lawyer would join a firm out of law school with the expectation of remaining there throughout his or her entire career, and that was typically the case. With the exception of occasional departures to teach or go in-house or into a government position, lawyers grew up together in firms and remained

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1. Leigh Jones, *So long, farewell*, THE NAT'L L.J., Nov. 9, 2009, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202435251608>; Hildebrandt Baker Robbins Research (on file with author).

2. Aric Press & Greg Mulligan, *Lessons of The Am Law 100*, AM. LAW., May 2010, at 93, available at <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202448340864>.

together throughout their professional lives. Lateral movement of lawyers (especially partners) from one firm to another was rare and regarded as slightly scandalous when it occurred. Today, laterals make up a significant percentage of the partnership ranks of most firms, and in many firms the laterals even outnumber the “natives.”

Fueled no doubt by increasing information in the trade press concerning comparative compensation levels in competing firms, during the seven year period prior to the start of the current economic downturn (2000 through 2006), the number of lateral partner moves within Am Law 200 firms *averaged* 2,231 per year, ranging from a low of 1,859 in 2000 to a high of 2,497 in 2003.<sup>3</sup> According to data compiled by *Citi Private Bank Law Watch*, during the same period, among the firms covered by the *Citi* survey,<sup>4</sup> the average percentage of new equity partners in each firm who were “homegrown”—*i.e.*, promoted up from the associate ranks—as opposed to those who came through lateral moves, was 52%. In other words, 48% of *all* equity partners were, on average, laterals.

This growth in the percentage of lateral partners in today’s typical law firm suggests a third major change in recent years: the significant number of law firm mergers that now occur on a yearly basis. In 1970, when I began practice, it is safe to say that law firm mergers were virtually nonexistent. In recent years, however, they have become commonplace. During the ten-year period from 2000 through 2009, there were 581 completed law firm mergers in the U.S., 57 of them in 2009 alone.<sup>5</sup> Plainly, lawyer mobility has become a significant competitive factor in the legal market.

While many of these changes have been salutary in terms of expanding the capacity of law firms to serve the burgeoning needs of their clients, they have also resulted (perhaps inevitably) in a decline in the loyalty or commitment that lawyers traditionally felt for their firms. When I began practice, there was almost a mystique about law firm “partnership.” Lawyers typically joined firms for life, were intensely loyal to their firms, and were respectful of the relationships that other lawyers had with their own firms. The notion that a lawyer might actually sue his or her own firm was more or less unthinkable, and initiating an action against another firm—though it happened occasionally—was a very serious matter that was never taken lightly. Unfortunately, the sweeping changes that have impacted the legal market over the past couple of decades have also swept away the restraints that lawyers historically felt about asserting claims against their own firms or others. And the problem has been exacerbated over the past three years, as firms have struggled to maintain

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3. Derived from *ALM Lateral Reports*, published in Feb. 2003-2007.

4. *Citi’s Annual Survey of Law Firm Financial Performance* includes 247 firms broadly representative of the industry.

5. Source: HBR Merger Watch, as reported in Hildebrandt Baker Robbins and Citi Private Bank joint *2010 Client Advisory*. HBR Merger Watch tracks all mergers of law firms in the U.S. involving firms of more than five lawyers. To be counted as a “merger” for these purposes, however, there must be a full combination of both firms involved. Thus, the movement of a practice group (even a large one) from one firm to another would *not* be regarded as a merger.

profitability in the midst of a significant economic downturn by laying off associates, deferring new hires, and “de-equitizing” partners.<sup>6</sup>

This issue of the *Texas Tech Law Review* addresses the new challenges that lawyers and law firms face in this rapidly changing risk environment. As such, it is both timely and unfortunately quite relevant for law firm leaders, general counsels, risk management and loss prevention partners, and others concerned about dealing with the growing phenomenon of claims against law firms. However unthinkable such claims may have been 40 years ago, they are now a part of the environment in which we all work. Unfortunately, it’s a bell that can’t be unrung.

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6. THE NATIONAL LAW JOURNAL reports that the NLJ 250 firms laid off 5,259 lawyers in 2009—a decline of 4% in total lawyer population; associate ranks were hit the hardest, with a reduction of 8.7% in that category across the 250 firms. See Jones, *supra* note 1.