MPF FEATURED ARTICLE

WHAT’S HOT, WHAT’S NOT
WISCONSIN PRACTICE TRENDS 2016

by
Dianne Molvig
The Wisconsin Lawyer

June 2, 2016
What's Hot, What's Not

Wisconsin Practice Trends 2016

BY DIANNE MOLVIG
Borrowing a page from Robert Denney's global look at trends in the legal profession, Wisconsin and regional attorneys and practice management experts weigh in on practice and marketing trends in the Dairy State.

These days, lawyers have every right to feel a bit befuddled, says Robert Denney of Robert Denney Associates, a management, marketing, and strategic planning consulting firm in Wayne, Pa.

"Befuddled is a good word to use," he explains. "If you're a large firm, you're dealing with more pressures than ever for billable time and collections and all that. And if you're a solo or small firm, you're wondering what you'll have to do to survive."

To help lawyers prepare for what's ahead, Denney provides a wide-angle view of what's likely to happen in law practice over the next year in his annual report, "What's Hot and What's Not in the Legal Profession," found on page 10 in this issue.

To craft the report, Denney and his team rely on information gleaned throughout the year from the company's clients, additional law firms, surveys, corporate counsel, and providers of legal services and support to law firms and their clients.

The latest of these reports, issued in December 2015, was the most difficult to write in the 27 years he's been doing this, Denney says, in light of the dramatic changes surrounding the legal profession. Attorneys face growing challenges as they strive to adapt to our technology-driven, fast-paced, increasingly ethnically diverse, and aging society.

New threats to the legal profession have sprung up, and more surely will emerge in the years ahead. But, as Denney outlines in his report, new opportunities also abound — if lawyers prepare to seize them.

We asked a few Wisconsin attorneys and others in the legal field to weigh in with their perspectives on the trends and issues highlighted in Denney's report.

Practice Areas to Watch

Some of the practice areas in which Denney expects high levels of activity in the coming year include the following.

Cyber Security

Denney lists this as the top "red hot" law practice area, and Milwaukee attorney Jennifer Rathburn of Quarles & Brady LLP couldn't agree more. She helped found the Midwest Cyber Security Alliance, a multidisciplinary group comprised of technology experts, risk managers, attorneys, and others concerned with this issue.

In the past, an organization's information technology staff was expected to build a fortress to stop cyber attacks, Rathburn points out. Now everyone has come to realize you can't stop attacks entirely; instead you...
any credit for cooperating with the government in cases of alleged misconduct. "I think companies are concerned that the enforcement priorities of the U.S. Department of Justice may have shifted a bit," Wilson explains, "with a renewed emphasis on prosecuting individual wrongdoers."

Thus, companies will need to take a hard look at how they disclose information about potential wrongdoing to the government. It's crucial to have an objective party involved in deciding on a course of action. "It's fair to say that the decision regarding whether to disclose potential misconduct to the government is now as difficult as it's ever been," Wilson says, "and that companies increasingly will be looking to outside counsel for assistance with that decision."

Labor and Employment Law
Several developments will generate high activity in labor and employment law in the coming year, says José Olivieri of Michael Best & Friedrich LLP in Milwaukee.

Final federal regulations regarding classification for employee exemptions from overtime will emerge sometime in the second half of 2016. Employers, in both for-profits and nonprofits, will need to look closely at their workforce classifications, Olivieri says. "The wage-and-hour issue affects so many employers," he says. "That's one of the biggest employment law issues in 2016 -- if not the biggest."

In another area, the U.S. Department of Labor has scheduled release of what's known as the Persuader Rule, which will affect labor law attorneys. "The rule regulates closely the relationship between attorneys and clients with regard to union organization," Olivieri explains. The rule's aim is to make information public about who is supporting employers' attempts to prevent unionization. Attorneys are concerned the rule may affect attorney-client privilege.

Other upcoming developments revolve around the Occupational Safety and Health Administration (OSHA). This year could bring increases in OSHA penalties of 40 percent or more, Olivieri says.

Also, on-the-job injury reports for companies with 250 or more employees will have to be filed quarterly, rather than annually, and will be made public. "Some call it a shaming strategy," Olivieri notes, "while others say it's an attempt to better inform the public about allegations."

Elder Law
This is a practice area that "continues to grow," according to Denney's report. Attorney Gregory Dowling in Bloomer says a chief reason for this growth, besides an aging population, is a greater awareness that planning can and should be done. "When a client comes in to talk about a will," Dowling says, "we no longer just talk about the will, but also about the advance directives for health and finances. It's a package deal now."

Increased awareness of the need for estate planning stems from various sources. Dowling says, for instance, organizations such as AARP advocate for it. And when patients get admitted to a hospital, they're asked if they have a health directive. Federal law requires
Gregory Dowling, Dowling & Dowling, Bloomer: Elder law continues to grow because, in addition to an aging population, there is a greater awareness that planning can and should be done. When a client comes in, we no longer just talk about the will, but also about the advance directives for health and finances. It's a package deal now.

"Word is getting out about the need for estate planning," Dowling says, "and we're happy that's happening so we can help folks."

Contributing further to the growth in elder law practice is the fact that laws and policies related to Medicaid change frequently. Wisconsin expanded its estate-recovery provisions in 2014, adding new complexities to estate planning. The upshot, Dowling says, "is that people go to see their attorneys to ask, 'What can I do?'

Health Care Law
Health care is another field in which legal issues overlap, points out Quarles & Brady's Rathburn. She cites cyber security as a top concern in health care these days, noting that the Ponemon Institute reports a 125 percent increase in cyber attacks against health care organizations over the past five years.

"The U.S. Office for Civil Rights (OCR) is going after health care organizations that have failed to implement security measures or conduct risk analysis," Rathburn says. "There will be new OCR audits in this coming year."

The OCR is the agency that enforces the Health Insurance Portability and Accountability Act (HIPAA). Health care organizations and health plans of all sizes, plus their business partners, will be under scrutiny and may need legal help.

In another trend, some employers are establishing their own employee wellness programs and health clinics, Rathburn reports. Here again there are legal issues. "These programs must be structured to comply with benefits, tax, and health care laws," she says. "Plus we do a lot of work to help employers and health care providers negotiate contracts to operate the company clinics."

Immigration Law
Denney's report predicts that immigration law, already hot, "could get red hot even before the election" next fall. Agreeing wholeheartedly with that assessment is Maryam Ghayyad, an attorney with Murphy Desmond S.C. in Madison.

Maryam Ghayyad, Murphy Desmond S.C., Madison: Immigration law can change quickly. There is increased demand for legal services based on those changes. Experienced immigration attorneys are in high demand to help people understand the eligibility requirements and procedures.

"Immigration law can change quickly," she says. "There is increased demand for legal services based on those changes."

In 2014, President Obama issued executive orders regarding immigration, including an expansion of Deferred Action for Childhood Arrivals (DACA) and creation of Deferred Action for Parent Accountability (DAPA). The orders sought to provide temporary exemption from removal from the United States and authorization to hold jobs — for qualified applicants.

Several states, including Wisconsin, sued to stop these executive orders, resulting in an injunction. The federal government has appealed, and the U.S. Supreme Court may rule on this matter sometime in 2016.

"We've seen a significant number of people who want to consult with us about the options they will have if the executive actions move forward," Ghayyad says. She notes that these measures could affect some 5 million people already living in this country.

"Experienced immigration attorneys are in high demand," she says, "to help people understand the eligibility requirements and procedures."

Pro Bono
Listed in Denney's category of "getting hot" law practice areas is pro bono. Firms' clients sometimes don't want to pay for associates' time, Denney observes, so pro bono work provides an alternative way for new lawyers to gain experience and confidence in their lawyering skills.

Odalo Ohiku, Law Office of Odalo Ohiku, Milwaukee: Pro bono services clearly benefit the outside community while providing an excellent training ground for a firm's new hires.
This arrangement has benefits all around, notes Odalo Ohiiku, a Milwaukee attorney who's operated a solo practice for 12 years. Pro bono legal services clearly benefit the outside community, he points out, while providing an excellent training ground for a firm's new hires.

"Usually they're working with a more experienced attorney who can show them the ropes," Ohiiku says. "Pro bono allows lawyers to connect in a mentor/mentee relationship."

Ohiiku himself serves as a mentor through the Milwaukee Bar Association's mentoring program. He's also active in providing pro bono legal services in the community. Doing pro bono "makes me feel I'm part of the solution," he says, "not just complaining about what's wrong in society."

**Trends in Marketing and Business Development**

**Pricing Directors**

More large firms are hiring pricing directors, Denney says, while mid-size firms may allocate this responsibility to the chief operating officer.

Michael Moore of Milwaukee-based Moore's Law, a law consulting firm, says most of his clients do not have pricing directors. Still, paying attention to such issues as price versus value and clients' appreciation for value is critical, he says.

"Marketing is the stuff you can buy - your brand, your logo, your advertising," Remsen says. "Business development is the time you invest in relationships. The evidence is clear that clients hire lawyers, not law firms. They hire lawyers they know, like, and trust."

Building relationships relies on personal contact — all the more important today when it's too easy to "hide behind social media," Remsen says. Reaching out with personal contact is easier for some lawyers — "the naturals," as Remsen describes them.

"Some firms are starting to figure out that they should work with their naturals," he says, "and maybe get more of the billable hours off those lawyers' backs so they can spend more time and energy going out to wave the flag and bring in work."

As for new lawyers, Remsen points to the American Bar Association's "model diet" for associates: 2,300 work hours per year, 1,900 of which are billable. The remaining hours ought to go toward service to the firm and the profession, continuing education, pro bono, and business development.

Remsen advises firms to train and guide young lawyers to exercise their business development skills early on. "Those habits will be sustained over the course of a career," he says.

**Business Development Training and Coaching**

In his report, Denney points to the value of business development training and coaching, particularly for young lawyers. Still, many lawyers, at all levels of experience, do not grasp the difference between marketing and business development, contends John Remsen of TheRemsenGroup, an Atlanta-based law consulting firm.

Below are a few additional trends and issues cited in the Denney report.

**New Practice Area Subspecialties**

A "small but growing" number of firms are dealing with legal matters related to 3-D printing, drones, biometric recognition technology, social media defamation, and more, says the Denney report.

Brent Smith, an attorney with Johns, Flaherty & Collins S.C., in La Crosse, says none of these matters have crossed his desk, and he emphasizes he's no expert on any of them. But he did write a blog some months ago about...
drone technology has the makings for a perfect storm in the American legal system."

In December 2015, the Federal Aviation Administration (FAA) issued new rules requiring online registration of certain drones. The FAA reports that more than 20 states approved drone laws in 2015, as have many cities. Many of these regulations place tough restrictions on where drones can be flown. (Wisconsin has a drone privacy law pertaining to law enforcement use.)

The FAA is concerned that creating a “patchwork quilt” of regulations around the nation will make skies more dangerous. Local and state governments counter that they must take steps to protect privacy and safety. And drone enthusiasts view regulations as an unnecessary burden.

“In the coming years, I think we’ll see litigation,” Smith says, “as we as a society try to balance the freedom to use new technologies against our individual rights to privacy and safety.”

Organizing by Industry Groups
Law firms are shifting, albeit slowly, toward organizing by industry groups rather than practice areas, which in turn affects how they shape their marketing initiatives. Denney sees this type of restructuring as "a good move for a lot of law firms."

For instance, he knows of firms that focus on serving the various legal needs of automobile dealerships, which face issues related to leasing, real estate, franchises, employment, and so on.

Remsen, too, is a strong advocate for organizing by industry groups. A firm can have a team of lawyers, from various practice areas, focused on a particular target client audience. Thus, your firm comes to be recognized "as a go-to firm among decision-makers in that industry," Remsen says.

He cites several other advantages to this approach. It encourages teamwork, sharing of information, and cross-selling of legal services. "A lot of firms stumble with cross-selling," Remsen says, "but that should be the low-hanging fruit — that is, expanding relationships with current clients. Industry practice groups help get you there."

But what about the small or solo firm that doesn’t have a team of lawyers to handle diverse areas of the law for a client? The industry-focused approach still can work, Remsen contends, by targeting a subset within an industry group. For instance, in health care, "you could do employment law for physicians' groups," he says, "you could become known in your community as the lawyer who does that work."

The Accountants Are Coming!
Accountants can’t practice law in this country, "but they certainly can sneak up next to it," Denney says. The line between the legal and accounting professions is blurring, he adds, and it makes lawyers nervous — as it should.

What’s more, competition is emerging not just from the accountants, Remsen points out. Added to the list are what he calls "the disruptors shaking up the legal world," including online entities such as LegalZoom, Rocket Lawyer, and Avvo.

"The disruptors are coming at you big time," Remsen says, "but so many lawyers have their heads buried in the sand and don’t want to change."

Moore witnesses the same resistance, and yet, he says, "it doesn’t matter if you’re a solo, or a firm with 10 lawyers or 100. The changes are happening."

Odalo Ohiku, a solo practitioner, offers a prognosis that aptly sums up the situation for any lawyer these days. To meet today’s and tomorrow’s challenges, "you have to find new ways to provide legal services, to get your name out, and to build trust," he says. "You have to keep reinventing yourself."