

In This Issue

Here are the practice groups and trends that are looking hot for 2023, from bankruptcy and AI to a likely resurgence of middle-market law firms Page 1

Boston’s Anderson Kreiger has launched an innovative marketing plan to support its innovative practice groups, including municipal and airport law Page 3

Patrick McKenna talks about skills-building at law firms and the competitive need for at least an incremental approach to this essential task Page 5

Lisa Smith and Kristin Stark identify four areas in which high-performing law firms can effectively differentiate themselves..... Page 8

Ross Fishman provides a cornucopia of tips and best practices to strengthen marketing networks and build on existing client relationships Page 11

McDermott Will CIO Michael Shea is spearheading a Legal Tech Fund, focused on providing clients and GCs with enhanced systems and platforms..... Back Page

What’s Hot in 2023 ...

A Projection of Emerging and/or Growing Practices and Trends

As noted in these pages in late 2021, the astute law firm consultant and classy, considerate gentleman Robert “Bob” Denney died in October of that year at the age of 89. A dear friend of countless people across the legal profession, including those of us at Of Counsel, Bob distributed his knowledge on many topics and in many ways, not the least of which was through his annual reports and mid-year updates entitled, “What’s Hot and What’s Not in the Legal Profession.”

In honor of those “communiqués,” as Bob often called his savvy written observations, we offer this take-off of his signature reports

(but we’re only looking at what’s hot). While no one could do this as well or as insightful as Bob, here’s our more condensed version of what’s trending.

Litigation. Bankruptcy. Mergers and Acquisitions—of a certain type. These three practice areas were identified by our sources

Continued on page 2

as those that will likely become more active in 2023. And, prudent law firms have been preparing for the increased demand in these practices. The less-than-prudent ones will either be scrambling for the capacity to meet this demand or finding themselves having to turn down work in these areas and, subsequently, missing out on the boost in revenues they'd bring.

Litigation specialty firms and those full-service partnerships with strong litigation groups suffered the most when the

pandemic-triggered closures of courthouses and other legal dispute venues, along with other disruptions, caused a profession-wide litigation slowdown. But that has changed in the last year and half or so as litigators got busier. What's more, this year will see the recent uptick surge even higher as transactional practices, which had picked up over the last three years, slow down.

Across the service-area spectrum, "litigation was definitely affected more than other practices by the pandemic closures and became a much lower priority in 2020 and 2021, primarily because [of COVID] as well as a greater focus on transactional practices," says Lisa Smith, a consultant with Fairfax & Associates, based in the Washington, DC area. "But litigation is seeing a renewed emphasis and that will grow in 2023. One reason for this is that it's a recession hedge, to some extent."

When asked if she has seen her clients and other law firms doing all they can to hire more litigators in anticipation of the growth in litigation, Smith doesn't hesitate, saying "absolutely," and adding that general-practice firms are also eager to balance out their platform of practices. "Part of the hiring increase is, of course, demand but another part is the desire to have diversification and not wanting to have too many eggs in the transaction basket."

Another national consultant says that about this time last year he essentially pleaded with one of his New York-based law firm clients to invest in bolstering their litigation ranks—but to no avail. "I did all I could to convince leadership that they needed to bring in several more lateral litigators but they didn't want to open up their wallets to make those hires," he says, on journalistic background. "They're seeing – but not acknowledging – that I was right. I'm tempted to say 'I told you so.' But for diplomacy's sake, I won't."

Continued on page 17



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2023 Trends

Continued from page 2

Busy Bankruptcy Practices

It's no surprise that bankruptcy and restructuring lawyers are starting to work long hours these days and will likely see their workloads increase even more over the next year or so. And, many partnerships planned accordingly. "A lot of firms have invested in rebuilding their bankruptcy practices over the last year," Smith says. "I think it will pay off for them [this year]."

On the M&A front, many have speculated about what the near future will hold, with some insiders saying deals will fall off and others predicting that transactional work will remain steady or even grow this year.

"Everyone is left to wonder what the M&A forecast for 2023 will look like," says Louis Lehot, a partner with the 1000-plus-attorney, Milwaukee-based Foley & Lardner. "One area where there could be a spike in 2023 is mergers among private tech companies. This could be particularly true for those startups that had to alter their IPO plans. These companies are likely exploring alternative exit strategies and decreased valuations and will make mergers in this space more attractive."

Lehot adds that the fintech industry could experience a hike in M&A activity this year as well. "This has been an area that has seen steep drops in valuations and a roller coaster [in 2022]," he says. "These factors could make it a prime area for mergers and some large transactions."

Lawyers operating in the digital and other data-related areas will also see their in-boxes full in 2023. "Across all sectors the drive towards digital centricity will continue," says

Richard McMorris, the head of the digital rights & assets group at London-based Bird & Bird. "Rapid, massive, un-harmonized regulatory change in major economies, especially around data, AI and tokens, will be a major driver of clients' professional services needs. Successful lawyers will really need to double down on bringing genuine understanding of the technologies, real sector insight and, of course, first-class technical legal knowledge."

McMorris's partners at Two Birds say their legal area will experience regulation-fueled change as well, which is driving their practices. "We expect to see substantially more regulatory pressure on businesses to comply with business-to-consumer (B2C) rules," write Robert Turner and Roelien van Neck, co-heads of the firm's international business-to-consumer group, in a statement submitted to *Of Counsel*. "Whereas 2022 was the year where new legislation was brought in across the EU and UK, it is expected that 2023 will be the year where regulators will flex their muscles and start enforcing these new rules."

Workforce Changes Coming

Two related trends that seem certain to manifest this year will be in both recruiting and workforce management. In a nutshell, law firm leaders will be cutting back hiring and even laying off attorneys, as well as clamping down on office operations.

"The hiring frenzy is over and will soon be replaced with large-scale terminations, right-sizing, and some stealth layoffs as firms get back to their normal pre-pandemic size," says Ross Fishman, a Chicago-based consultant. "And it'll get worse if the economy slows, as some are predicting. So, I'm advising firms on how to strategically reduce their workforce with integrity and humanity, without taking a big public relations hit for it."

Law firm leaders will also recover the leverage they lost during the pandemic as

associates set down demands and partnerships met them, as was widely reported in these pages and others.

“[Law firm partners] were held hostage by demands for fewer hours, more pay, and without question the insistence on working from home,” says Micah Buchdahl, president of New Jersey-base HTMLawyers, a law marketing company. “Many law firms felt they had no choice but to capitulate.”

The law firm culture recently began to return to their pre-pandemic workplaces and conditions. “While the in-office environment may have changed because of COVID, the ‘return to office’ and shift in the power dynamic back to the partnership is happening faster than most had imagined,” Buchdahl adds. “If indeed we are heading into a recession, the shift back will be even more pronounced. And we are already seeing that those showing up in the office daily are in a better position than those in a remote or hybrid position.”

Additionally, the era of remote client communication is closing, at least in part. Yes, video calls will continue but face-to-face meetings will dramatically increase in 2023, according to several sources, including Jordan Goodman, a senior partner at Chicago’s Horwood Marcus & Berk.

“My prediction is that lawyers are going to have to get back on the horse and start setting up in-person meetings, dinners and other social events,” Goodman says. “There has been a large uptick in clients reaching out to me to go grab a meal, coffee, or attend

an event. This was standard course pre-pandemic and I think it’s coming back in a big way. [It’s] time to reach out and meet in person again.”

ESG & Diversity/Inclusion

Finally, Elizabeth Lampert, who leads her own Bay Area-based PR and strategic communications consultancy that advises organizations internationally, offers these forecasts for the new year. “Environmental, social, and governance will continue to grow in importance for clients and recruits,” she says. “There is unprecedented pressure on law firms to set ESG policies. Consequently, a company’s ESG commitment is linked to its reputation, and public relations and communications have a vital role in guiding law firms to ensure they appropriately communicate ESG successes to the appropriate audiences.”

Lampert also says that 2023 will see even more efforts by law firms to make significant positive changes to their diversity and inclusion programs and meet their D&I goals. “Law firms that want to keep and attract lawyers, especially Gen Z attorneys, must double their efforts on diversity and inclusion initiatives,” she adds. “When it comes to the media, attempts by law firms to use their diversity and inclusion policies merely as PR fodder will backfire. You must demonstrate real effort and showcase the implementation of meaningful programming and results.” ■

—Steven T. Taylor