BigLaw's New Bosses Will Have Skills To Pay The Bills

By Andrew Strickler

Law360, *New York (February 19, 2013, 8:26 PM ET)* -- The American law firm business model will bend, or it will break.

That's the growing consensus of legal industry thinkers who say the fragile bonds of the firm partnership model have already begun to snap, even as the legal business evolves in a more Darwinian environment in which firms will have to mimic stronger species, or expire.

In place of partners and committees, firm leadership roles will fall to "C-suite" executives with titles like "Chief Innovation Officer," who will evaluate 10- and 20-year technology and cultural trends. CFOs and COOs will plan yearly capital investments and make day-to-day operational calls.

If all goes well, the thinking goes, the coming generations of lawyers will practice law, and benefit long-term from the company's stability and executive leadership.

In the process, experts say, firms will shed the inherent weaknesses of legal partnerships — slow, incremental committee decision-making, often thin management experience, easy dissolution, short-term planning — and replace it with a truly corporatized American law firm.

"One has to seriously question how sustainable that [firm partnership] model is for the majority of firms," said Andy Daws, North America vice president for UK-based Riverview Law, a flat-fee corporate firm led by an executive team which includes non-lawyers. "For some firms, those ivory towers are starting to look more like prisons, in which they're entrapped both structurally and financially by an operating model that's just not flexible enough to adapt to the emerging paradigm."

The Corporate Makeover

Many firms have in recent years modified parts of their business to better mimic other professional service businesses, such as implementing fixed fees, hiring non-lawyer CEOs, and outsourcing. Others are moving more aggressively to a corporate hierarchy they argue is better adapted for the overall survival of the business, rather than propped up by tradition to appease individual partners.

Few expect that change to happen gracefully, or believe BigLaw firms will lead the charge.

"I think a lot of firms will blow up, and some of that trauma will force people to realize that what they were doing no longer works," said Mitchell Kowalski, a lawyer and speaker, and author of "Avoiding Extinction: Reimagining Legal Services for the 21st Century." "I think trauma is going to be a big part of this change."

The problem, of course, is the lawyers. Every industry faces competitive challenges, and the economic downturn was global. But in the U.S. legal industry, which is bound by tradition, regulation and the golden handcuffs, putting people trained in finance and management in charge of billion dollar firms is still considered a potentially suicidal move.

Kowalski and others say that's changing: Many managing partners have had time since 2008 to realize that downward profit trends and changing attitudes about the value of legal services necessitate a stricter business discipline, and how more top-down control can help make it happen.

A corporate model, they argue, would bring business experience into firms, speed innovation and increase firm savings. The structure would also allow leadership changes to occur without disruption to client services because the overall firm, rather than individual partners, would be client "owners."

But hamstrung by a system that encourages client hoarding and allows successful attorneys to cash out with a lateral move at the slightest threat, taking their book with them, they wait.

"The fear is that if they instigate change, those four key partners will walk across the street with those four key clients, and the firm will be unsustainable," Kowalski said. "Nobody wants to be captain of the Titanic."

Building From The Bottom Up

For now, some are trying to avoid the industry's bad habits by building from the ground up, with like-minded attorneys and a release from the billable hour.

A case in point: Washington, D.C.-based Clearspire, which consists of a law practice that drew attorneys primarily from Am Law 200 firms (they're now working on salary, mostly from home), and a legally distinct, CEO-led business management company for the firm. Clearspire launched in 2010, and says it saw 85 percent revenue growth in 2012; it's planning to expand this year to the New York City, Los Angeles, and San Francisco areas, with between 50 and 200 attorney hires in each of the next five years.

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Christopher Marston, CEO of Boston-based Exemplar Companies Inc., argues that the corporate structure helps remedy a stubborn industry problem: partners gauging firm finances through the lens of their own paychecks, year to year.

In the corporate model, finances can be separated from the service side of the business, and allow dispassionate decision-making based on the company's overall finances.

In the traditional law firm, "there is a tremendous amount of self-accommodation. If you have a compensation committee, you can bet that the biggest swinging you-know-whats are on it, and you can bet the policies are set to favor them," he said. "I haven't found [a firm] yet that retains earnings as a corporate practice. It's just nuts."

Exemplar Law LL, part of the company Marston founded in 2004, is led by a suite of corporate executives (Marston holds the lone law degree), and services mid-market corporate clients, all with a fixed price structure. Compensation for the firm's 22 lawyers (there is no associate-partner structure) is calculated through a "value index" of tasks and responsibilities, not hours, a model mirrored in the Exemplar umbrella company's business consulting and finance entities. Attorneys can earn shares, but they don't come with a boardroom vote on salaries or strategy.

Marston argues that external market pressures to make firms more financially stable multiply as more and more BigLaw attorneys, distrustful of the legal business model but not interested in working for executives, set up mid-market shops, hoping to differentiate themselves on price. That in turn will drive down legal service prices, and further establish the growing impression that corporate American has in recent decades vastly overpaid for legal services.

"There will be more corporatization, but it's going to happen more out of necessity to survive than as a true entrepreneurial spirit," he said. "For the really big firms, they'll dissolve before they make that change."

The MBA In Charge

The trend toward executive-led firms has picked up in the last two years, most notably with the 2012 hire of Harvard business school grad and accountant Scott Green as CEO ofPepper Hamilton LLP. Blane Prescott, named CEO of Denver-based Brownstein Hyatt Farber Schreck LLP in 2010, is another of the new breed of non-lawyer firm managers, albeit one with long experience as a legal consultant.

Prescott describes his role as a kind of "Chief Cajoler," who spends his time focused on markets, profit and growth strategies, and coaching attorneys about growing their books. He says he works closely with managing partner Bruce James, who previously held the CEO title, and he had the benefit of credibility among partners when he took the job after years of consulting for the firm.

"The truth is, there is an awful lot of people you're never going to change, but take the partner who already has a $10 million book of business." Prescott said. "Talking to them and helping them get that to $11 million, that's something I can do."

Prescott holds an "ex officio" chair on the firm's executive committee, and says its current size of about 300 attorneys and other professionals doesn't necessitate more corporate managers.

Prescott agreed the industry will continue to evolve toward corporate leadership and philosophies in the coming decades, although he predicted a more gradual change as firms make faltering steps, such as installing executives with a strict command-and-control style who hit a stubborn wall of resistance among older lawyers.

Other executives working in hybrid corporate-partnership system won't be given sufficient power to motivate reluctant partners, a problem Prescott says he doesn't face.

"Most people in my position don't set partner compensation," he said. "I do."

In addition to the benefits of stability and cost controls, Andy Daws of Riverview Law argues that flat-fee pricing and a de-emphasis of individual partners makes the firm's business more understandable and appealing to clients who themselves work within a corporate structure.

"There's been a shroud of mystery around legal services, but look underneath it and you find it's not the dark art many would have us believe," he said. "Law is a business, as well as a profession, although some lawyers struggle to acknowledge that."

This story is part of Law360's continuing series envisioning the future of the legal industry.