- Feb. 09, 2010

Defections From Large to Small Firms Expected To Continue

By Rebecca U. Cho

Daily Journal Staff Writer

As client discontent with billing rates reached new heights during the economic downturn, some big-firm lawyers responded in recent months by jumping ship to start their own practices or to join smaller shops.

Although the lure of more autonomy in their work lives and flexibility in rates have driven big-firm lawyers to small firms in the past, the downturn has created opportunities for attorneys who can promise stellar work for lower rates.

And the trend of big-firm attorneys deciding they can have a vibrant practice without the overhead in a downsized setting is set to continue in 2010, legal observers said.

"We'll see a lot more moves this year that are rate-driven," said John Jameson, with partner placement firm The Jameson Group, based in Beverly Hills. "The rate issue continues to be more important this year. You have to get to a rate structure where you can generate your own clients."

California lawyers have been using the bleak economic outlook in the past year as an opportunity to leave some of the region's most prominent firms to flex their entrepreneurial muscles. A group from Los Angeles-based Jeffer Mangels Butler & Marmaro started up their own firm at the start of the year. Offshoots formed in 2009 from Quinn Emanuel Urquhart Oliver & Hedges, Irell & Manella and Keker & Van Nest. In addition, some big-firm veterans took off on their own to join smaller entities or to go solo from firms such as Latham & Watkins and Wilson Sonsini Goodrich & Rosati.

Kenneth Fitzgerald, an intellectual property litigator who left Latham & Watkins last month, became a name partner at what is now Chapin Fitzgerald Sullivan, a six-attorney litigation shop in San Diego. Fitzgerald said he left his firm of 20 years, where he was a partner, in order to have more control over his rate structure. He now charges 20 to 25 percent less per hour than he did at Latham and his clients are happy, he said.

"I really just wanted to practice law and try cases in a different environment, a smaller firm with more flexibility on rates," Sullivan said.

The rise in alternative billing arrangements in the down economy, and the headache of making such agreements in a big-firm setting, may also be contributing to big-firm departures. At Latham, Fitzgerald said, an executive committee approved the alternative fee arrangements. The process was careful and thoughtful, but as a result added up to a lot of time spent on making a case for the arrangement, he said.

"I wanted to have more freedom to structure fee agreements as my two partners saw fit rather than going through a rather elaborate process internally at a large firm to get approval for alternative fee arrangements," Fitzgerald said.

Last month, patent litigator James Otteson left Wilson Sonsini Goodrich & Rosati in Palo Alto after 20 years to strike out on his own.

Richard Kendall, an entertainment litigator formerly with Irell & Manella, said he left because his clients wanted to pay lower rates. He formed Kendall Brill & Klieger in May with two other partners from the Los Angeles-based firm after practicing there for 12 years.

"Clients are saying to lawyers, 'We'd love to use you even more, but you're in such an expensive rate structure,'" Kendall said. "'If you could go out on your own and lower overhead, you can pass on the savings to us and we'd be able to give you even more of our work.'"

In the more profitable past, general counsel continued to funnel work to large law firms despite the high costs in part to give themselves the cover of having used a well-known law firm in the instance that something goes wrong. And while a market for those bet-the-company matters still exists and general counsel will continue to hire the big names, the state of the economy in the past year has caused in-house counsel to increasingly look elsewhere for high caliber work at a lower rate, according to several law firm lawyers interviewed for this article.

Clients are more receptive now than they have ever been to working with small firms, Kendall said.

"For partners in larger law firms who might have had a dream to start a law firm, it's the perfect time because clients are so receptive to lawyers who are able to deliver the highest level quality at a price point that is a little more flexible than big firms," Kendall said.

For attorneys at big firms with a practice and client base that does not require the resources of a large international firm, looking to move into smaller firms may be a good strategy right now, said Larry Watanabe, a legal recruiter with Watanabe Nason Schwartz & Lippman.

"If you're a partner at a DLA [Piper] or a White & Case, unless you utilize the international network, your overhead is contributing to cost," Watanabe said. "It may not be necessary to have that overhead and you're pricing yourself out of the market in terms of billing rates."

Perhaps the most dramatic recent evidence of the entrepreneurial allure leading lawyers to shed the overhead in L.A. occurred when a group of six partners from Jeffer Mangels gave notice of its departure the day before New Year's Eve. The group, led by real estate partner Keith Elkins, opened Elkins Kalt Weintraub Reuben Gartside in Century City at the beginning of January. About the same time, in a separate move, real estate and business partner Andrew R. Hunter, citing a desire for more flexible billing rates, jumped from Jeffer Mangels to Lapidus & Lapidus, a seven-attorney shop in Beverly Hills.

Last year, a spinoff from San Francisco-based Keker & Van Nest formed after intellectual property litigators Daralyn Durie, Mark Lemley, Michael Page, and Ragesh Tangri departed. The firm, Durie Tangri, opened shop in February.

A few months later, in July, another new firm cropped up after two senior associates from Quinn Emanuel Urquhart Oliver & Hedges teamed up. Tom Wallerstein, who with fellow intellectual property litigator Doug Colt formed Colt Wallerstein, said the economy has created a significant shift in the market for legal services toward firms that could provide elite services while keeping costs down. He said as clients became increasingly cost sensitive, he sensed a backlash to big-firm pricing practices. For example, he said, clients started complaining about the photocopying, which can cost about 25 cents a page at big firms, or questioning the need for five lawyers, all billing by the hour, sitting in on a conference call.

"Clients were really, in our experience, rejecting not just the rates of big firms, but the billing practices," Colt said.

At Colt Wallerstein, the pair does not generally charge for photocopying and charge under $400 per hour for legal services, about a 50 percent drop from the pair's rates at Quinn Emanuel, Wallerstein said.

Advances in technology further have enabled attorneys at small firms to operate with the speed and quality of a big firm without the overhead. At Colt Wallerstein, the firm uses an Adobe Acrobat program that electronically Bates stamps, or adds an identifying number to documents, freeing the firm from the need for administrative staff that would have physically numbered each page.

So far, Colt said, as an attorney who made the leap in the downturn to the small-firm life, he is feeling no regrets.

"We're happier and we're making more money," Wallerstein said. "We're so excited about it."

rebecca_cho@dailyjournal.com

****