

Optimism for the Legal Profession

THERE IS REASON to be optimistic about the future of the legal profession. Being optimistic about the future does not mean that lawyers should ignore reality. As Walt Disney said, “I always like to look

on the optimistic side of life, but I am realistic enough to know that life is a complex matter.” The realities of the legal market are more than complex—they are sobering. *The New York Times* reported this past July that “[o]nly 55 percent of 43,735 graduates in 2011 had a law-related job nine months after graduation.”¹ NALP statistics recently revealed that the “median starting salary for new law school graduates from the Class of 2011 fell 5% from that for 2010 and has fallen nearly 17% just since 2009.”² According to a U.S. News and World Report survey, law students regularly graduate with more than \$100,000 in debt.³

It is true that some of the doors to the practice of law have closed. Yet, in the words of Alexander Graham Bell: “When one door closes another door opens, but we so often look so long and so regretfully upon the closed door, that we do not see the ones which open for us.” New doors will open as the legal market adapts to economic realities. Here are a few reasons to be optimistic about federal practice.

Practice Areas Will Evolve and Create New Opportunities to Help Clients.

Legal practice areas are evolving and will provide opportunities for growth. According to one legal industry report, intellectual property, along with banking, health care, and energy law are “red hot” practice areas for 2012.⁴ Intellectual property, for example, will continue to be “hot” because of the enactment of the America Invents Act (AIA) and the overhaul of the U.S. patent system. Sweeping changes include:

- Patents will be granted based on a first-to-file system;
- New commercial use defenses will change intellectual property strategies and expand litigation defenses;
- Best mode will no longer be a basis for invalidity or inequitable conduct in litigation;
- Failure to obtain advice of counsel will not be evidence of willfulness; and
- Accusing the same products is not sufficient to join multiple defendants.

In addition, new trial proceedings will be available in the U.S. Patent Office. Rules governing these procedures will begin in 2012. The proceedings involve pretrial and trial practices familiar to federal patent litigators. Therefore, intellectual property lawyers knowledgeable about the AIA and experienced in patent litigation will be equipped to guide clients through the maze of available strategies and ambiguities.

Other practice areas will also likely be in demand, including labor and employment, antitrust, bankruptcy, energy, financial, criminal, and health care. The FBA’s practice area sections serve all of these high demand areas. Every issue of *The Federal Lawyer* includes columns and articles of interest and importance in these practice areas.

Innovation in Billing Practices Can Align You with Clients.

Lawyers who embrace innovative billing practices will better adapt. Until recently, the legal profession was lagging behind the business world. While the business world was innovating, changing, expanding (and contracting) in response to economic times, law firms clung to the traditional billable hour model. That traditional model is declining in favor of alternative fee arrangements. Today, clients are doing more with less and lawyers are being appropriately asked to do the same. Fee arrangements, such as flat fee, blended rate, and capped amounts are some of the most popular alternatives. Still, there is need for improvement and this need creates opportunities for lawyers to deliver their legal services to clients in the most efficient way possible.

Experienced and Inexperienced Lawyers Can Bring More to the Table—Together.

There is great potential in the new generation of lawyers. For example, they bring valuable knowledge about the latest technology, such as social media, to the legal profession. Newer practitioners also have an edge—they will spot issues and opportunities related to technology. Technically savvy lawyers are likely to appreciate how the Internet and social media should be tapped for marketing, consistent with the rules of professional responsibility. Junior lawyers can provide cost savings while taking lead roles in conducting electronic discovery. Along these lines, lawyers who can identify and develop innovative electronic discovery and pretrial strategies to do more for less without compromise to a client’s best interests will fare well in the future. Concepts of proportionality

consistent with Federal Rule of Civil Procedure 26(g), if addressed and applied early in litigation, can save clients significant costs and business disruption.

Seasoned lawyers—if open to change—can learn a lot from the new generation. Younger lawyers are unlikely to take a client relationship for granted and the experienced lawyer's practice can be rejuvenated by collaborating with a lawyer eager for experience and success.

It May Be Tougher to Find Opportunities—But They Are There.

Lawyers may have to look harder and in different places for the best opportunities. Sheryl Sandberg, of Facebook, offered this advice in her 2012 commencement speech at Harvard Business School: “Look for opportunities, look for growth, look for impact, look for mission. Move sideways, move down, move on, move off. Build your skills, not your resume. Evaluate what you can do, not the title they're going to give you. Do real work.”

Until the number of graduating law students is consistent with demand, the job market will be rough. For the newer lawyer, internships, temporary assignments, contracts, and non-partnership track positions can help build skills and experience. Alternative positions may also provide flexible options. Hard work and success in any position will likely lead to something else. In the long run, career paths with more twists and turns might lead to more satisfying and rewarding work.

We Can Still Be Proud of the Legal Profession.

The practice of law in the federal courts is genuinely rewarding. It is a privilege to serve clients in Federal Court. If you are reading this magazine, you are already part of the federal family and appreciate the collegiality of federal practice and the Federal Bar Association. Federal Court judges, such as those profiled in *The Federal Lawyer*, have dedicated their careers to our justice system. FBA membership rosters include the best and the brightest in federal practice. Despite the difficult economic times, lawyers continue to devote time to pro bono clients and other volunteer work. The FBA's annual awards, including the Sarah T. Hughes Civil Rights Award, Ilene and Michael Shaw Public Service Award, and Elaine R. “Boots” Fisher Award, reflect the bench and bar's focus on service beyond the billable hour. Individual FBA chapters, including Minnesota, Pennsylvania, and Washington, collaborate on and support pro bono and pro se litigant programs.⁵

Conclusion

These are just some of the reasons for optimism. Talented, creative lawyers who can put themselves in the client's shoes will find ways to open new doors and be in demand. And, if you don't believe it, then consider one final reason to be optimistic: research has shown that optimism may increase your life span, reduce the risk of depression, and increase your resistance to the common cold.⁶ **TFL**

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Endnotes

¹Lincoln Caplan, Editorial, *An Existential Crisis for Law Schools*, N.Y. TIMES (July 14, 2012), at SR10.

²Median Private Practice Starting Salaries for the Class of 2011 Plunge as Private Practice Jobs Continue to Erode, NALP (July 12, 2012), www.nalp.org/classof2011_salpressrel.

³See Ryan Lytle, *10 Law Schools That Lead to the Most Debt*, U.S. NEWS AND WORLD REPORT (Mar. 22, 2012), www.usnews.com/education/best-graduate-schools/the-short-list-grad-school/articles/2012/03/22/10-law-schools-that-lead-to-the-most-debt.

⁴See Robert Denney, *Midyear Update: What's Hot and What's Not in the Legal Profession*, Legal Communique, Robert Denney Associates, Inc. (June 27, 2012), www.robertdenney.com/pdf/comm-legal-hot_not_2012.pdf.

⁵See *Chapter Initiatives*, Federal Bar Association Minnesota Chapter, www.fedbar.org/Chapters/Minnesota-Chapter/Chapter-Initiatives.aspx (last visited July 23, 2012) (Minnesota); *Middle District of Pennsylvania Pro Bono Attorney Program*, U.S. District Court for the Middle District of Pennsylvania, www.pamd.uscourts.gov/docs/probone.htm (last visited July 23, 2012) (Pennsylvania); *About our Organization: Our History*, Federal Bar Association Western District of Washington, www.fba-wdwwash.org/history.php (last visited July 23, 2012) (Washington).

⁶See *Positive Thinking: Reduce Stress by Eliminating Negative Self-Talk*, Mayo Clinic (May 28, 2011), www.mayoclinic.com/health/positive-thinking/SR00009.

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divisions. We get three for the price of one! Let us all insure we are watching our basics and we will grow. After all, “If it is to be, it is up to me.” **TFL**

