

## Overall Growth Within the Nation's Firms Nearly Flat-Lines, But Mid-Sized Firms on the Rise

This may not come as hear-ye-hear-ye-read-all-about-it breaking news, but here it is: Not since the recessionary times of the early 1990s has the legal profession seen such minuscule growth in the number of attorneys at law firms nationwide.

This, on the other hand, may come as a surprise to some readers: Mid-sized firms, which were only a few years ago thought of as endangered species, are by and large adding attorneys to their ranks. As Thomas Fahey, managing partner of Chicago's mid-sized partnership Ungaretti & Harris, wryly puts it, "It's interesting to see that firms of our size are a bit more in vogue right now."

The ubiquitous growth of these firms—by a dozen attorneys here at firm X and a half-dozen there at firm Y—seems to have balanced out the well-publicized layoffs at larger partnerships that were, of course, triggered by the collapse of the economy.

According to results from the *2009-2010 Of Counsel 700 Survey of the Nation's Largest Law Firms*, the number of lawyers in the United States has increased from 164,175 last year to 164,412 this year, an upward tick of 237 attorneys, which translates into a 0.14 percentage increase (or 0.1443581, to be exact). You can't get much flatter growth than that. In fact, not since the profession reported some shrinkage to its collective ranks when George Bush the Elder was president has the profession's growth pattern been so meager.

The drop-to-a-crawl pace of growth has some in the profession speculating that law has become a "mature industry." These observers point to the ever-increasing law school enrollment and the already overabundance of young attorneys combined with the apparent decrease in the demand for lawyers. They may be right, but we're not willing to go that far.

What we can do is offer this article: A relatively brief analysis of the legal industry based

on interviews with managing partners, other law firm leaders, and consultants and on the results from the *OC 700 Survey*, which is the profession's most extensive study of growth, or shrinkage, and other aspects of the nation's top partnerships. It also ranks firms by size and serves as a reference compendium for the profession.

An important note: When examining the survey, keep in mind that some firms are basing their numbers on their ranks as of January 1, 2009, even though the survey's reporting deadline runs to April 1. Sometimes they use January numbers because it's simply a matter of convenience in terms of the firms' bookkeeping. Or, on the other hand, it may be intentional duplicity on the part of some firms. As we know, many layoffs took place between January and April of this year. Consequently, there may be variance of the true and current number of attorneys based on firms' reporting proclivities.

### Yes, There Was Blood

As mentioned, the emergence in popularity and, as a result, the growth of mid-sized firms is perhaps the most significant profession-wide pattern that can be gleaned from the *Of Counsel 700 Survey*. This article explores this trend, one that many would call a positive phenomenon.

But first, let's quickly address the more sobering news: the shrinkage. Partnerships in all size categories have experienced this, but most notably the large national firms have seen their attorney ranks decrease. Consider these numbers from partnerships headquartered in some major US markets.

New York's Cadwalader, Wickersham & Taft reported having 653 attorneys in the 2008-2009 survey and 508 in this year's; Los Angeles-based

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## The National Picture

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Manatt, Phelps & Phillips shrank in size from 382 last year to 371 this year; Washington's Akin Gump Strauss Hauer & Feld dropped in lawyer population by 147 lawyers, from 990 to 843 this year.

But perhaps large Chicago firms show the most fall off, or at least they are some of the firms that most accurately reported their numbers. Hinshaw & Culbertson reported a net loss of 31 attorneys down this year to 457 from last year's number of 488. Jenner & Block's count slipped from 481 in 2008 to 454 this year. Katten Muchin Rosenman is down from 649 to 612, and Schiff Hardin's attorney census decreased from 391 to 355.

Now, several large firms did continue to grow in size, and the survey reflects that.

### Those "In Vogue" Mid-Sizers

One of the mid-sized firms that grew relatively significantly is Minneapolis-based Gray, Plant, Mooty, Mooty & Bennett, which added 10 attorneys and now has 170 in total. In essence, the firm's management team made a conscious effort to seize the opening the economy had created.

"We continue to be optimistic during this economic downturn, that it makes sense to make those strategic hires," says the firm's chair, Tamara Hjelle Olsen. "We think this slump we're in is temporary, and when we come out of it we'll be better because we added those lawyers."

Olsen says that contrary to what some might say—that in this environment lawyers should not try to move around and should simply be happy to be employed—she and her senior partners believe that some attorneys are willing to change firms, if the fit is right. "We found that this is a time when lawyers are pausing to think about where they are and whether it's the place that they want to be," she says. "We've been pleased

that on several occasions these excellent lawyers with great clients have decided that our firm is a better match for them."

Of course, many clients are doing something similar: examining their law firms to see if they, too, should make a change, especially given the cheaper rates that mid-sized firms often charge. "Many are realizing that big isn't best in this market," Olsen adds.

Gray, Plant's assertive approach is a sagacious one, according to profession insiders. "I think mid-sized firms are creating more attention for themselves," says consultant Alan Colman, managing director of The Closers Group in Torrance, CA. "The smaller and mid-sized firms that have recognized that they have a unique opportunity right now are actively pushing to get themselves out there, generate new clients, and hire new talent."

Colman says that for years corporations wanted the big-name, top-shelf law firms for their own protection, just in case a legal matter turned horribly wrong and corporate leaders had to face their boards of directors and shareholders. "The CEOs or general counsel wanted a name firm because, if something blew up, they could say, 'Hey, we got the best, the biggest name. What else could we do?'" he says. "It was a safety net."

Yet, many of those same in-house lawyers and C-Suite executives also knew that many of these mid-sized firms had attorneys that were just as talented as the Jones Days and Skadden Arpses of the world. Now that the budget pressure is really on the corporations, these mid-sized firms are being held in higher regard and, more importantly, are being retained. "[The corporate leaders] are saying," Colman says, "We always knew that X firm is just as good if not better than the big Y firm and, the mid-sized X firm isn't going to throw 10 associates at the matter. And, we'll get a more value-oriented project from those attorneys, so let's start using them."

### Growing Smartly

At Miami's Wicker, Smith, O'Hara, McCoy & Ford, the partnership grew by eight attorneys, pushing its ranks up to 118. That's modest growth, but some say that, for a firm of this

size, much more hiring in a single year might be risky.

“Most mid-sized firms can’t afford nor should they grow by more than eight or nine attorneys because then they’re growing too fast,” says an East Coast attorney who works with many megafirms and asked for anonymity. “So this is very intelligent growth, more intelligent than a lot of large firms that I could name. They’re taking advantage of all the factors in the economy.”

Wicker, Smith’s “intelligent” growth has been fueled by a broader client base. “In the last two and a half years, we’ve gotten work from a variety of places, including from big companies that, in the past, might have retained large firms that charge \$800 an hour,” says managing partner Nicholas Christin, who adds that he expects to see the firm step up its hiring pattern.

“We expect to grow more in the next year, probably at about 15-20 percent growth,” he says. “We’ve hired four or five really strong litigation attorneys with significant experience but without business from [mostly smaller] firms that are cutting back. They were either fearful that they’re salaries were in jeopardy or that their firms aren’t doing well. The word on the street is that we are hiring and that we’re stable.”

In Atlanta, Constangy, Brooks & Smith experienced a net growth of seven attorneys and now has a total of 117. And, the firm has expanded in the past few years to Los Angeles and Milwaukee and this year to Boston. All of the moves were essentially client-driven.

“We decided to create more of a national footprint,” says Neil Wasser, Constangy’s chair. “We reaffirmed our decision to remain a labor and employment boutique, but we wanted to be sure that we offered all the practice areas that an L&E boutique could offer. And our clients said, ‘If you were in other cities, we’d be using you there.’ [The growth and expansion] were also defensive moves because there are so many national labor firms. Not being in these other cities felt like we were at risk of losing some business. So the strategy was both offensive and defensive.”

As mentioned, many of Chicago’s big firms decreased in size, some considerably. But mid-sized

Ungaretti & Harris made modest gains, growing from 106 lawyers last year to 115 this year. Again, the growth comes to meet the increased demand from clients who are increasingly retaining the firm to save money, particularly in a couple of key practice areas.

“Our rates are lower than the big firms,” managing partner Thomas Fahey says, “and I think that clients who otherwise might not have any reason to look at anything other than a big firm are shopping more. We’re finding that, particularly in our litigation and regulatory practices, people are paying attention to that rate difference.”

Of course, when firms grow, sometimes profits-per-partner thin. But that didn’t stop Ungaretti from hiring more attorneys, and the partners agreed that they certainly didn’t want to follow the lead of many other firms and lay off attorneys.

“Our culture is very loathe to terminate good people,” Fahey says. “We’ve suffered an overall drop in average billable hours because we’ve not taken the approach of some firms that have wanted to keep their profits-per-partner at a certain level. We don’t play that game, if you will. We realize that we’re in an historic lull right now. We do very well in the good years and feel that we don’t have to have great years every year.”

## Denver’s S&H Adds 30

While many mid-sized firms grew modestly over the past year or so, Denver’s Sherman & Howard boosted its number of attorneys very significantly. In 2008, the firm reported that it had 160 attorneys, and this year the partners added 30 more to clock in at 190.

“Firms our size aren’t immune to the economic realities out there, but we have certain advantages that allow us to grow in this kind of environment,” says senior partner Mike Sanchez, who adds that the firm’s culture attracts talent. “What some of the smaller firms and groups of lawyers that are joining us are looking for is a place where they can have a broad platform but not be burdened with a real heavy dose of overhead or heavy-laden bureaucratic management style. We base our economic and cultural model

on freeing lawyers to practice law and give a lot of delegation of authority to non-lawyer staff to run the firm.”

Finally, another segment of the profession that added attorneys over the past year-plus is in the intellectual property arena. At Knobbe Martens Olson & Bear in Irvine, CA, the IP firm grew by 39 attorneys to bring its total to 240.

Managing partner Steven Nataupsky says that two important factors help attract good talent to Knobbe Martens. “We have a very short partnership track; associates are considered for partner by their sixth year,” he says. “So you know that you’ve made partner and have the option to spend your entire career here. Most of our lawyers have spent their entire careers with our firm

and only our firm. This gives our associates a sense of ownership. The second thing is that our billing requirements are much lower than our competitors. On average, associates bill 1,620 to 1,640 hours a year.”

Another notable IP firm, Washington’s Finnegan, Henderson, Farabow, Garrett & Dunner, also dramatically increased its size, from 354 attorneys last year to 391 this year. Chair Thomas Jenkins says that the firm needed to grow to meet demand by companies that essentially say, “Damn the recession. Full speed ahead.” He sums it up concisely, “There wasn’t the same meltdown in the IP field that there was in the corporate sector.”

—Steven T. Taylor

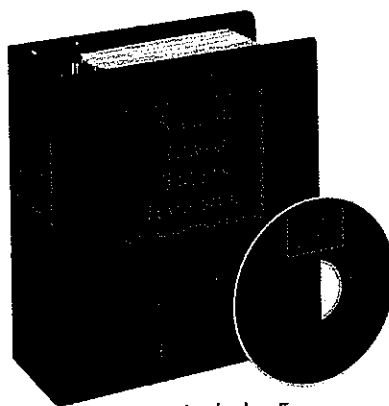
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