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5 top trends impacting the legal profession now

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Blane Prescott, a management consultant and CEO of MesaFive LLC with more than 30 years of experience working with the legal profession, says he's often asked, "when do law firms change?" He says his answer, jokingly, is always the same – never.

"Law firms, like most organizations, only change when they have to," says Prescott, whose company is based in San Francisco. "It's easy to ignore change when your profits are up. But most changes in the profession coincide with downturns or recessions that go way back to the 1960 recession, which prompted firms to move to monthly billing from the then-standard yearly billing. Almost every recession has coincided with some significant change in the profession."

To further prove his point, Prescott points to the Great Recession of 2008, which he says has prompted a number of new trends, some of which were discussed on a recent OnDemand CLE webinar titled "How Law Firms Can Successfully Navigate the Rapidly Evolving Legal Landscape." The program was presented by the ABA Section of Litigation and ABACLE.

Even though 2018 was the strongest year for law firms since the Great Recession, Prescott says many lawyers sense the profession is undergoing important fundamental changes and are increasingly worried about the future of their firms. Some of those trends are in growth, leverage, pricing and evolving client demands.

Prescott says law firms tend to only make changes when a crisis happens. "The more progressive firms," he says, "tend to make these changes all the time. Their biggest challenge is trying to filter out the difference between things that are fads and things that are real trends."

Here are five significant trends Prescott says are impacting the legal profession:

1 Productivity is up: For one year running

Prescott says 2018 was an anomaly in that it was the first year in 10 that productivity was up. He defines productivity as hours billed per lawyer. Firms are being profitable, he says, not because of changes they're making but simply by raising billing rates. He describes five economic levers:

• Rates
• Hours
• Costs
• Leverage (the number of people who produce fees vs. the number of people who take home the profits)
• Realization (net effect of write-downs and write-offs)

"Unfortunately, firms are making more money each year basically by pulling on one lever and that is raising billing rates," Prescott says. "The most successful firms — and not just the largest firms — tend to be worried about all five of these economic factors and they tend to be pushing on all of them all of the time."

2 Growth: The rise of nonlaw firm competitors

Nonlaw firm providers are gradually taking work away from law firms, Prescott says, noting the three primary competitors are accounting firms, consultants and contracted lawyer services. "They tend to impact the middle and lower market the most," he says. Advantages nonlaw providers have over traditional law firms are:

• They are better leveraged (many more levels of employees and none will ever become owners)
• They are priced differently, which makes them more cost-effective
• They tend to concentrate more on technology integration with clients

"The net effect is law firms are seeing this slow bleed away from their work," Prescott says. At the average law firm, about 5% of their budgets is now being spent on nonlaw firm competitors and it's growing at a level of almost 50% a year."

3 Segmentation: There are distinct tiers, except in decisions about salaries

Segmentation is increasing in the profession, and Prescott says the top of the profession looks nothing like the middle or bottom. They hire differently, they run their firms differently, they're different in practice and they're different in location. But no matter the size of the firm, Prescott says they all amazingly tend to make decisions about salary "sort of in the dark." The reason this happens, he says, is because "too many middle market firms tell themselves that they are just as good as the big New York firms and so they chase their salaries, yet their economics are much closer to the commodity sectors of the market." Prescott cautions that just because you hear about a trend about how law firms are operating, take it with a grain of salt. "Be very careful and make sure that it actually applies to your firm," he says. "So many firms often end up changing their structure when it's not necessary."

4 Technology: A double-edged sword

The fastest growing cost category in law firms today is technology. Prescott says too many firms under-invest in technology until it's too late. Security issues plaguing the profession today are enormous. "Firms tend not to make the investment until they are hacked and once you lose data, it's almost too late," he says. "The biggest reason that happens is partner autonomy overrules client interests, firm priorities and profits." Prescott says he's seeing some displacement of lawyers by technology but that it's more of a trickle than a flood. He says more companies are investing in software that will create the first draft of a contract, draft a patent application or create an outline for completing a merger.

5 Growth: Bigger is easy, but what about better

There were a record 106 law firm mergers and acquisitions in 2018 in the United States. Too often, Prescott says, merged firms are bigger but not necessarily better, not more integrated, not complementary, not symbiotic. "Mergers work best when they cross-fertilize with better clients/better work," he says. "Mergers should create partner-initiated cross-selling to access new market segments." Prescott says most firms give themselves poor grades for cross-selling and admit that most of it is client-initiated, not partner-initiated. "Mergers can be an incredible way for law firms to grow but law firms tend not to do great due diligence on mergers," Prescott says.

Prescott concludes by saying that the single most common success factor for law firms today is great leadership. However, he says most firms are not adept at recognizing great leaders, developing or recruiting them. "Developing doesn't mean creating – it means recognizing great leadership and fostering it," Prescott explains. "Firms get confused or intimidated and only make rainmakers into leaders." He estimates that the percentage of the U.S. population that are great leaders is maybe 4% or 5%. Among lawyers, he says maybe it's a percentage less. "But the hardest part about this is that if you ask the average lawyer whether they are a great leader, about 70% of lawyers think they are great leaders."

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