

INSIDE



20 ADVISER:
AFTER-HOURS
WORK CAN
CAUSE TROUBLE.

LEGAL AFFAIRS

rain•mak•ing (rān-mā-kiŋ) n. the practice of attracting new business or clients.

FALLING ON HARD TIMES

Lawyers charged with bringing in business to their firms search for new ways to generate client leads

By **ARIELLE KASS**
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Rainmaking lawyers — those who bring in big business for their firms — don't typically have to resort to Native American dances to get clients pouring in.

But with a profession that has been assailed in the troubled economy, many attorneys are doing some fancy footwork to ensure they keep business flowing.

"In a recession, it's harder to make rain, no question about it," said Carolyn Buller, a Squire, Sanders & Dempsey partner and coordinator of the firm's worldwide industry groups. "I also think the business model is changing."

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Legal aid society staffs bombarded with requests

By **ARIELLE KASS**
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As the economy continues to batter the region, the legal needs of the poor have skyrocketed, according to those working at Northeast Ohio's legal aid societies.

But the organizations only can do so much, so they're turning to the region's lawyers for help. They're getting it — but they always could use more.

"We shut down our in-house bankruptcy (practice) for a month to catch our breath," said Ann McGowan Porath, managing attorney of the Volunteer Lawyers Program and the intake unit at the Legal Aid Society of Cleveland. "We needed to take a step back, to catch up with everything."

Legal aid groups, like the Legal Aid Society of Cleveland, are nonprofits that represent indigent clients. The organizations rely on volunteer attorneys to help handle caseloads that often stretch beyond the work capacity of paid staff members.

The biggest increase in need seen by the Legal Aid Society of Cleveland, Ms. Porath said, has been in foreclosure cases. But employment law, bankruptcy and other areas also have seen steady increases in calls and requests for help.

Sara Strattan, executive director of Community Legal Aid Services Inc. in Akron, said the agency started 1,644 foreclosure cases through October 2009, compared with 976 in all of 2008 and 26 in 2007. Consumer cases — including bankruptcy — were up 25% through 2008 from

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PHOTO PROVIDED

Laura McBride, a volunteer attorney from Calfee Halter & Griswold, works with a Legal Aid Society of Cleveland client at the Fatima Family Center in Cleveland's Hough neighborhood.

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Aid: Volunteer numbers grow, more needed

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2007 and remain up, and employment cases rose 83% over the same period, and remain up 36% above that point.

More than 1,200 cases of all types have been closed by volunteer lawyers through Oct. 8, Ms. Strattan said, a number that rivals 2008 figures for the entire year and more than doubles the 518 cases closed in 2006. Community Legal Aid counts cases the year they are closed, not the year they are opened.

"If I had more people to answer the phone, I would have had many more," Ms. Strattan said of the cases. "We're continuing at an increased rate."

Staff resources are significantly smaller than the number of requests that come in, Ms. Strattan said. Even though the number of volunteers increases annually, it's not enough.

"I think lawyers are wonderful," she said. "But no, the volunteer responses are not meeting the needs. The needs are huge and the staff resources are small."

Supply vs. demand

David Kutik, president of the Legal Aid Society of Cleveland and a partner at Jones Day, said the organization is on track this year to break records both in the number of calls received and the number of people helped. In 2008, he said, 90,000 people requested assistance — though not all of them were eligible for help through Legal Aid — and 9,300 people received it. Those figures were more than the



PHOTO PROVIDED

Lisa Gates (right), a volunteer attorney from Jones Day, works with an individual at a Legal Aid clinic in East Cleveland, while Andrea Kutik (left), a law student from New York University, observes client interviewing skills.

80,000 phone calls and about 8,000 people assisted in 2007.

Legal Aid in Cleveland has increased its number of advice clinics, where people can come to ask questions about legal issues they may be having, and Ms. Porath said a recent session on employment and unemployment issues had 71 people stop in during the two-hour event. The society considers 30 participants to be a good turnout.

The response of the Cleveland legal community has been "wonderful," Ms. Porath said, but there always is the need for more help.

The gap between the need and what Legal Aid is able to provide is so wide, Mr. Kutik said, that adding money to the problem is not nearly as useful a solution as is getting lawyers to volunteer. He said Cleveland's program has been referred to as a "best practice" in the nation, but there still is more to do.

Mr. Kutik said one of the most frequent topics for help still is fore-

closures and that while the first wave often was the result of malfeasance, the second wave has been coming as unemployment benefits run out and people are running out of ways to pay their mortgages.

Mr. Kutik said about 1,500 lawyers have volunteered the past year for clinics or to take over cases, compared to 800 two years ago. He thinks the number of volunteers is continuing to pick up.

Ms. Strattan said Community Legal Aid Services — which serves Summit and surrounding counties — had 1,067 lawyers who said they were willing to take a case this year, though not all of them have done so.

In 2008, Community Legal Aid had 26,438 applications from potential clients for service, up nearly 5,000 applications from 2007. Through the first half of 2009, 13,193 applications were made.

"Northeast Ohio lawyers are responding well," she said. "At the same time, the need is huge." ■

Weighing trial cost, some local firms settle on alternative

Uncertainty may discourage business litigation

By KATHY AMES CARR
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These days, it's hard to dispute the economy's negative impact on companies' budgets and bottom lines.

Businesses more than ever are scrutinizing every dollar spent, and in some cases, that means carefully evaluating whether it pays to sue.

As such, some local legal practitioners say uncertainty and associated costs have discouraged a number of local companies from pursuing business litigation, and some are more inclined to settle a case or reach another type of compromise to avoid a trial.

"There's an array of reasons why companies are encouraged to solve matters if they want to avoid full-blown litigation, but the biggest is cost," said Michael Ungar, president-elect of the Cleveland Metropolitan Bar Association. "There are the hard costs — the money spent on outside legal counsel — and the soft costs — the diversion of management's attention."

Business litigation can include disputes over intellectual property, trade secret protection or breach of contract.

There's a caveat to these observations, however: While business litigation activity filings appear to be down some in Northeast Ohio, it does not necessarily mean local law firms are processing fewer cases, said Mr. Ungar.

Local attorneys increasingly are being called to work on cases out of town because big cities like Chicago and New York are looking for affordable, yet quality, legal expertise.

"We've been busier than ever in business litigation," said John Parker, a business litigator at Cleveland-based Baker Hostetler LLP. "The Bernie Madoff litigation makes us busy because of the number of people absorbed in that case, but we're all busy. We're doing a lot of work outside of the Cleveland market."

Here's the case

According to the U.S. District Court Northern District of Ohio, civil case filings in antitrust, contract, patent tax and unfair competition are projected to be down overall this year compared with last.

Antitrust filings are expected to be down 90% in 2009 compared with last year, to two from 19, although 2008 logged an unusually high number of case filings, according to the court. And while contract law filings are expected to be up 8.5%, filings in both tax and unfair competition categories are estimated to be down 30%. Patent filings are projected to be flat.

The U.S. District Court Northern District of Ohio handles filings in the federal jurisdiction from the 40 northern-most Ohio counties.

While the number of commercial litigation filings since 1996 has

increased overall, the short-term decline in filings suggests businesses' unease in spending money, time and energy on litigation, according to those in the legal industry.

"There are more businesses resolving their matters rather than testing them in trial," said chief Judge James G. Carr of the U.S. District Court Northern District of Ohio.

Companies more than ever are settling disputes before they file a lawsuit or are reaching a compromise before the case goes to court.

"The volume of disputes is not going away, but the number of filings has because there are more cost-effective methods available to businesses," Mr. Ungar said.

In these negotiations, which are called alternative dispute resolutions and include mediation, arbitration or negotiation, the parties reach an agreement through a third party.

"The receptivity to negotiate is at an all-time high," Mr. Ungar said.

Bill Jacobs, leader of business litigation practice group at Thompson Hine LLP, said it's hard to quantify whether the volume of business litigation filings at the Cleveland-based law firm is up, down or flat, but he cautioned against premature decisions to settle.

"There may be short-term cost savings, but there are long-term costs, whether it's protecting intellectual property or trade secrets, if businesses avoid litigation," Mr. Jacobs said.

While Roetzel & Andress LPA has experienced a decline this year in business litigation activity, the Cleveland law firm still is busy handling disputes in labor and employment, debt collection and patent and trademark infringement, said Don Scherzer, partner and practice group manager of the firm's business litigation department.

"Filings are down, but knock on wood, we're still busy," he said.

Money matters

To help clients tackle legal expenses, some firms say they are overcoming cost barriers by offering more alternative fee arrangements such as a flat fee, fee caps, contingency fee or blended rate.

"Most law firms over the past few decades have charged businesses an hourly rate," said Mark Wallach, co-chair of Cleveland-based Calfee, Halter & Griswold LLP's litigation group. "But because of the economy, more firms are implementing alternative fee arrangements to accommodate clients with fixed budgets," including his firm, he said.

Alternative fee arrangements in some cases place more risk on law firms. Under a contingency fee, for example, law firms don't make money until, or if, their client wins.

"It removes the uncertainty of estimating how much it will cost a firm by charging them as you go," Mr. Wallach said. "It's easier for the client's budget." ■

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