

# LAW WEEK COLORADO



## Changing Expectations

Our 2<sup>nd</sup> Quarter Managing Partner Roundtable explores how law firms are handling client expectations, employee expectations and expectations of the changing economy. Pictured from left to right: Bruce Kugler, Randy Miller, Daniel Wake, Kevin O'Brien and Dean Heizer.

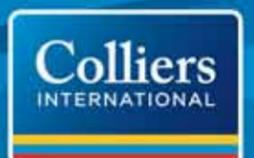
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# Clients, Lawyers' Needs Evolve With Economy



Clockwise, starting at far left: Bruce Kugler, Sheridan Ross; Marchelle Hartwig, Hunter + Geist; Kevin O'Brien, Hall & Evans; Dean Heizer, Heizer Paul Grueskin; Don Knox, Law Week; facing away, Randy Miller, Holme Roberts & Owen; Daniel F. Wake, Sander Ingebretsen & Wake | LAW WEEK PHOTOS MATTHEW MEIER

AS THE ECONOMY continues its circuitous path on the road to recovery, law firms are working to manage expectations: client expectations, employee expectations and business expectations. Our 2<sup>nd</sup> quarter roundtable focused on the changing expectations in the legal marketplace. Our participants, from both large and smaller firms, were hesitantly optimistic about each of the topics. They shared their thoughts on everything from the changing face of partnership to the continuing need for litigation.

Our roundtable panelists were law firm leaders **Bruce A. Kugler**, Sheridan Ross; **Daniel F. Wake**, Sander Ingebretsen & Wake; **Randall H. Miller**, Holme Roberts & Owen; **Dean C. Heizer**, Heizer Paul Grueskin; and **Kevin E. O'Brien**, Hall & Evans.

**Marchelle Hartwig**, a registered professional court reporter, for Hunter + Geist, recorded the session, which was conducted at the Warwick Denver Hotel at 1776 Grant St.

**Don Knox**, the editor of Law Week Colorado, moderated the session.

LAW WEEK: The topic today is expectations. The first one I want to start with is client expectations. Are the clients the same as they were five years ago with the same problems, or is it different today?

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They used to say that litigation was countercyclical. I'm not sure that's really true anymore.”

— Daniel Wake

HEIZER: The clients are the same in large measure. The problems are different. We had growing pains five years ago, and now we're doing business divorces and partnership divorces. We have a relatively big stable of nonprofit clients designated by what's happened in the donor community. In 2007, it probably wasn't a good market. The issues were kind of managing stuff on the transactional side and now it's a lot of managing stuff and trying to solve problems without any knock-down, drag-out fights.

LAW WEEK: Kevin, what about clients of Hall & Evans?

O'BRIEN: As a litigation firm, our clients are lawyers, for the most part, and we find that they are working now in a much more demanding environment. I think a lot more is on their plate. They are looking for more from outside counsel, perhaps, than ever before. It puts a new emphasis on what we have to do.

For example, predictability. We have

never heard more of, 'Don't surprise us.' It used to be, 'Don't surprise us with the results.' Now almost as much it's, 'Don't surprise us with the cost. We want to know what it's going to cost. We want some predictability in that.'

In fact, that may be almost more important than what the overall cost is. 'Don't come in over budget.' We find in the last five years we spend much more time for our corporate clients and insurance clients preparing budgets, because they want to

know, 'What is this litigation going to cost?' They want to know at the front end, 'Is it worth it? Should we be mediating this next week? Should we be digging in our heels and going forward?'

I find that to meet the increased demands that they have, the best way we can do is to come up with a common strategy early on. If you're all on the same page, you have that predictability. And the client, when it's said and done, will be satisfied.

LAW WEEK: Bruce, have you seen the same focus on money and budget on the clients?

KUGLER: We represent mainly high tech companies, and when the economy goes

soft, they feel the pressure as well. But first and foremost, our clients want results, and their intellectual property portfolios would be the last thing that they would give up. What they want is predictability when it comes to cost. They don't mind paying for it, but they clearly don't want a surprise at the end of the day.

**LAW WEEK:** Do you think this is entirely recession-related and this will pass, or is this a forever change?

**KUGLER:** I think it will pass as the economy gets better. The thing about companies invested in IP, they realize their patents and trademarks give them a competitive advantage, so it's one of the last things they're willing to give up. The other thing is because we have actions that come from the patent office two or three years later, there is a bit of overlap between getting new work and still sustaining the work from before. I'll say in the last 12 to 18 months, there has been some optimism with our clients spending more money, filing more applications, which is a positive sign.

**LAW WEEK:** What about your business, Dan?

**WAKE:** We do almost entirely business litigation. They used to say that litigation was countercyclical. I'm not sure that's really true anymore. Over the last few years we have seen that business clients are more inclined to have a business approach to a dispute: 'How do we get to the result most economically?'

And in a way, that's true if you're a boutique firm as we are. We try to claim that we have less overhead and we can afford to give a little more personal attention and lower rates, but I think across the board, whether you're a small firm or you're a big firm, there is that sense amongst sophisticated clients that a lawsuit in the business arena is another business proposition, and we try to get to the best net result. I think that can change with time. At the present, we certainly see interest in being as practical as possible.

**LAW WEEK:** They compromise.



KEVIN O'BRIEN, HALL & EVANS; DEAN HEIZER, HEIZER PAUL GRUESKIN

**WAKE:** I think good litigators will encourage compromise where compromise is important. I think lately clients are a little bit more interested in listening to that than they may have been in flush days where they can afford to fight, whether on the plaintiff side or the defense side.

**LAW WEEK:** Randy, what do you see from your clients?

**MILLER:** I think I would agree with parts of what everybody has said so far.

One of the trends we have seen in litigation is clients who ironically can't afford to settle, and they would rather continue to pay for litigation, because the stakes are simply too important to them as an ongoing enterprise. Some still settle, but the idea of cutting a big check has its own bad taste, and they would rather cut a series of smaller checks indefinitely. It's been an interesting and, frankly, an unexpected phenomenon.

I think the increased focus on getting

more service for less money is a product of the recession, but at least in part, it's here to stay. We view it as sort of a recession meets technology meets market pressure based on a variety of factors, including globalization and sheer size and the desire to increase profits in a well-publicized world. So that's pushed a lot of firms to try and in-

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The analogy I like to make is a sign that says — one side, 'Need more work.' The other side says, 'Need more people.'

— Bruce Kugler

novate to stay ahead.

So some of it's been rate issues where being a large firm in Denver, it's been very much to our advantage to seek an opportunity nationally, because we are incredibly

competitive on that stage, and a lot of the clients there would say something to the effect of, 'I can't go to my board of directors and tell them I saved \$10 an hour but I lost the company.'

On the other end of the spectrum, we have a fierce group of competitors in Denver where being one of the larger firms in town, we feel our own rate pressure competing with smaller, more entrepreneurial firms, so we have to innovate as well.

We have seen a good deal of clients being much more cautious in where they spend their money and how quickly they'll go through an LOI to a deal, and financing commitments up front are much more important. We're seeing a lot of cost competition, including big national firms who are willing to be loss leaders on some work that they were not interested in four years ago.

**LAW WEEK:** Are rates holding up? Is anybody increasing hourly rates or are we just happy to keep them where they are?



BRUCE KUGLER, SHERIDAN ROSS



DEAN HEIZER, HEIZER PAUL GRUESKIN

HEIZER: I think that the smaller firms, because they have smaller overhead burdens for partners have a lot more flexibility with respect to what they can do with rates. We actually have had a client very recently who has been using a lot of attorneys out of Boston. We went out for drinks about four weeks ago and they said, across the table, 'You need to increase your rates,' and actually told us what our rate ought to be for his company.

LAW WEEK: Why would he tell you that?

HEIZER: Because he valued our advice and he wanted us to be perceived inside his company as an exceptional value, but he did not want us to be perceived as Kmart. So there is a really interesting balance, where if you're charging rates that are perceived to be substantially below market, there is an inherent quality bias that goes with that even if the quality is perfectly the same.

LAW WEEK: Anyone else's rates too low?

KUGLER: We have seen the same phenomenon over the last two years in terms of an advantage for our firm because we do have a lower cost structure. We have picked up numerous big-named clients on the East and West Coast, because firms have realized that you don't have to be in Washington, D.C. or Boston or the Silicon Valley to provide good patent counsel. They are much more willing to pay a rate that's one-third less as long as they can be assured that they get competent service.

WAKE: Legal competition is becoming national. It used to be local. All of us in Denver always wondered if our clients would pay the rates that the people in New York or Chicago or L.A., when they get that counsel in Denver for a lot less.

With technology making legal practice so national, we can compete against lawyers in other states. They compete with us for Denver clients too. It does start to make us look pretty attractive when we compare Denver rates to the Coasts. I'm not saying that we're out there raising rates a lot. It is a function of being a boutique firm where you like to try to stress your value proposition. But I've certainly seen occasions where clients from out of state feel real good about what they are paying for a Denver lawyer.

LAW WEEK: You're all charging the same rate?

O'BRIEN: You know, we've been

experimenting with alternative fees, and that's an interesting area. We've been doing it for a number of years in different types of context, but we had an experience about a year and a half ago that I think was telling about that whole concept.

We had agreed to accept certain cases at a flat fee and had expectations of what

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Whether they're fourth-, fifth-, sixth- or seventh-year associates right now are just damn lucky and are really happy to have a job.”

— Dean Heizer

the case looked like, how far it was going to go, and then it became much bigger than it should have been. It ended up going to trial. The client was very happy with the result. They had no obligation to do it, but they converted to hourly after that success, and that really, going forward, puts you in the same boat with a client, your shared success.

It felt like, 'Well, let's work together.' The difference between the flat fee and the hourly was multiple, many multiples, and I think they were thinking ahead, thinking about going forward as partners.

LAW WEEK: There are fewer new partners

in the last three years than has been the case historically in Denver and nationally. I want to ask you about the expectations among your five-, six-, seven-year associates and if the expectation is they're going to be made a partner or if it's going to be a longer run.

HEIZER: My impression is that most associates, whether they're fourth-year, fifth-year, sixth-year or seventh-year associates right now are just damn lucky to have a job and are really happy to have a job. We're not hearing a lot of noise about whether or not they're going to make partner. That's generally speaking. There are law schools all over the country that provide quality legal education that are graduating a lot more graduates than can find jobs right now. You've got a lot of people that are hungry and are willing to work hard, and they are willing to work hard for a buck, because they need the buck.

And we're seeing that in our business

now. Our model is to recruit highly qualified contract associates for just an as-needed basis. We bring them in at substantially lower rates than you would pay an on-board associate fully benefited. You use them for as long as you need to use them. If you treat them very well, they're looking to you as first choice when additional works come up. I think we're going to see that expand for the next three or four years.

I don't know what that's going to mean to partnerships, but I think what you're going to find is people who are bought into this concept of kind of a true partnership where the partnership is more about being colleagues and friends than it is necessarily about the nickel.

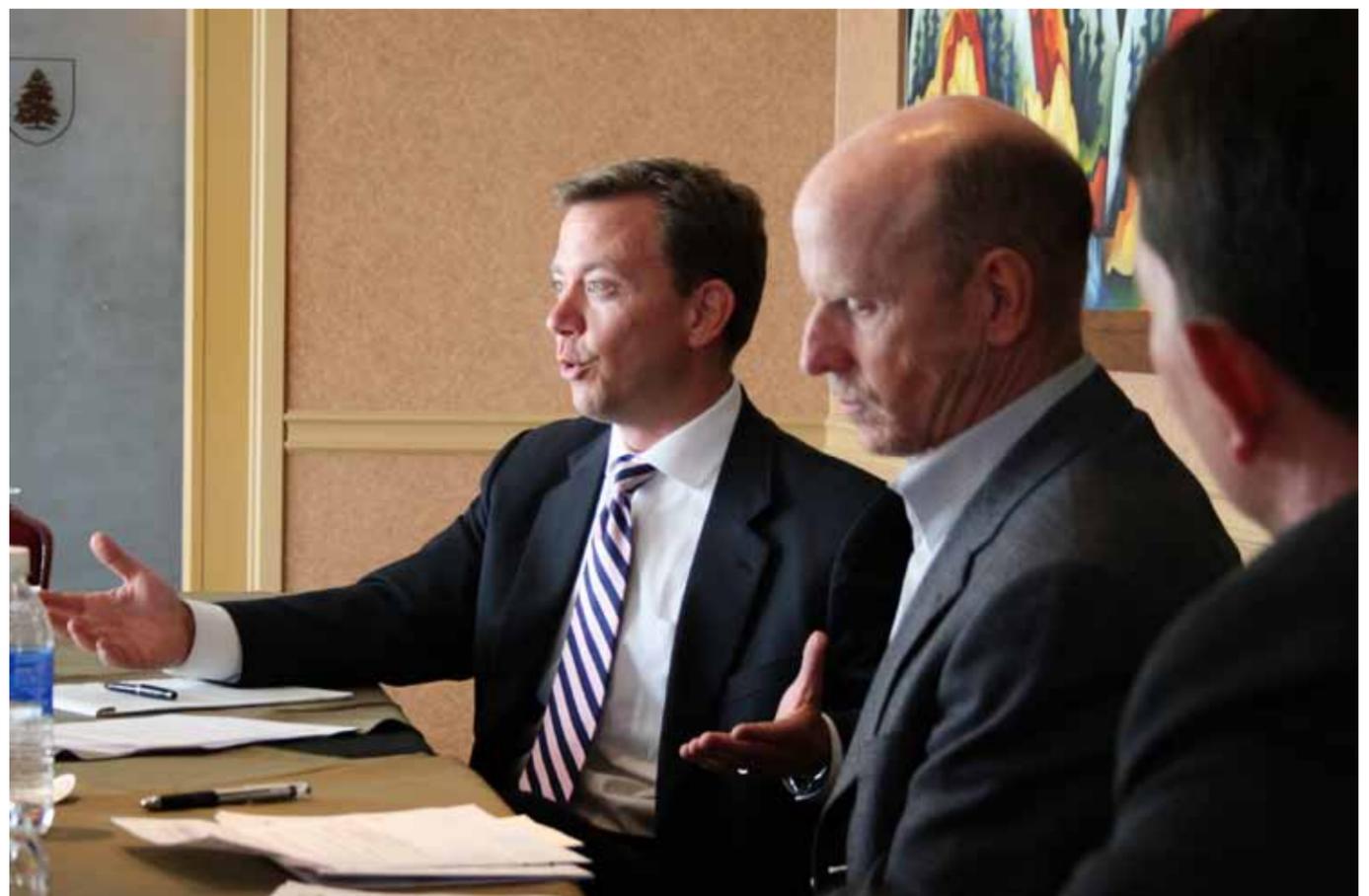
MILLER: I agree with a lot of what Dean is saying, but as it applies to our firm, I've actually seen a creation of several paths. I think what we're seeing is a number of people, incredibly motivated, talented lawyers, who are choosing different lanes for their own reasons, and we're seeing, particularly in some of the generation that's coming up now, people going to more public service, more alternative. If we're losing people, rarely is it to other law firms. It's usually to a public service and competitors that are completely out of the law firm industry.

But there are others who wish to stay, they want to be a contract lawyer, they enjoy the intellectual challenge, they enjoy being part of the organization, but they don't want to have to worry about clients. They just want to do good work.

Clients are demanding a greater degree of business acumen from the partners who do make it down the line, and that's just not everybody's cup of tea, and that's okay. You just have to make sure that they know that there is a good and comfortable place and that you've designed a system for them to thrive.

WAKE: In a smaller firm there aren't as many avenues. It is more of the entrepreneurial business generation and having a relationship with clients than it may have to be in a larger organization. And it's also compatible with the availability of the contract work, good contract work.

So if you're going to have a partner, particularly in a boutique firm, it's got to be someone who can both have confidence from a business perspective and who you feel very good about from a personality and a character perspective. Someone who you want to have be your partner in a small environment, because you can't hide. You want to have someone in the firm who you don't want to hide from.



RANDY MILLER, HOLME ROBERTS & OWEN; DANIEL WAKE, SANDER INGEBRETSEN & WAKE

LAW WEEK: Bruce, do you see people wanting to be on the partner track at Sheridan Ross?

KUGLER: They definitely do. I agree with Randy that there clearly is a distinction between different paths that you can take. And our firm went to an equity/nonequity track about five years ago, and there are just certain individuals that don't necessarily want the liability of being an owner of the firm. They are still very valuable employees, but they are not necessarily going to be an owner of the business.

The standard used to be you needed to be a competent attorney, you needed to be an attorney with a good work ethic who can generate the hours. Now if you want to be an equity partner, you also have to be able to go out and generate clients and spend the time and commitment to do that.

LAW WEEK: What about at Hall & Evans?

O'BRIEN: I don't think it's changed all that much in our firm, because of the different paths that some folks are on. When I started, it was understood that every associate wanted to be a partner someday.

That's not true today. We would be losing some terrific talent if we weren't flexible. We would lose top talent otherwise.

I was one of the first nonequity partners in 1985, and at that time it was sort of a proving ground for a year and then it became maybe two years and it slowly evolved into something that some folks who didn't want to be bothered with some of the extras that go with clients wanted to just focus on.

LAW WEEK: I've talked to some of those nonequity partners, and they tell me they want to be equity. Is that not true?

O'BRIEN: I don't think it's universally true. It may be true in some instances. I think in our firm there are probably both, but I think there are more who are very happy where they are.

LAW WEEK: The last question is business expectations. Is the business that you are going to have going to be bigger than last year or the year before?

HEIZER: Generally speaking, we see our economy, our business growing steadily, not ramping up exponentially. My expectation is a little bit more activity on the business side and a little bit more activity on the nonprofit side.

The one place we are growing is with local government clients that are finding themselves in situations where they're involved in litigation that's the equivalent of company litigation that they've never experienced before, either because developers are stressed or because of other factors that are causing cities and counties and towns that were making decisions, you know, five years ago very differently and settling cases where they're not willing to settle cases now.

That's not necessarily because their economic situation is better than it was five years ago, I'm not exactly sure what the dynamic is, but we are seeing that same dynamic where the municipalities are a little bit more willing to fight a little bit longer, either because they perceive a little bit more leverage in doing that or because politically it's very, very difficult to tell a taxpayer, come election time, I knuckled under and wrote a check.

LAW WEEK: Randy, when is the business going to come back and where is the growth opportunity?

MILLER: We're going to continue to see strength in the energy and national resources markets for a fairly substantial



DANIEL WAKE, SANDER INGEBRETSEN & WAKE

period of time. I think IP will continue. I think litigation will continue.

In all of these areas, in particular natural resources litigation has been very strong throughout the last couple of years, and that will continue. So if the question is where growth is going to come, we're seeing a pretty big uptake in corporate work already.

We have seen a pretty good uptake both in the private and the public corporate work in the M&A, in the securities side, and I think by percentage of growth, I think we're going to continue to see that.

Real estate has licked its wounds pretty well, and I think between the workout in some of the lending and refinance work, that we have seen a pretty good volume of that continue. I don't know if that's ready to explode back on-scene to pre-recession.

LAW WEEK: Dan, what do you think?

WAKE: Well, we started with a narrower perspective since all we do is business litigation. The question is where do we think business litigation will expand?

There are all kinds of lenders out there sitting on money. There are companies that are sitting on money, not doing anything, but they will eventually start putting their money to work. That's good for the transactional people, but also it means that some of those transactions fall apart and go sideways and there are disputes to be resolved. So I think while that's not industry-specific, eventually people are going to start having to do things with all that cash.

Also, just look at the headlines. We read a lot about information technology, including privacy of data security. You read about the payment card industry and other industries. There is a lot to be worked out in that world about who's responsible when things go wrong.

LAW WEEK: Kevin, you're a litigation firm, too, do you see the same?

O'BRIEN: You know, in our experience, we have been very fortunate from the business standpoint that there are a lot of people out there that want to use the courthouse. That doesn't seem to have diminished in the recession, so the type of cases and casualty cases, employment cases, haven't dropped off. They've increased.

We have actually hired people in the last several years. We went from about 50 lawyers six or seven years ago to 65 lawyers now, and we're still looking for talent, because

there seems to be a constant flow in that area. We look at some of the other firms — and it's frustrating at times, because a good client will want someone in our shop to handle some transaction, and we really don't do that. But on the other hand, by being a regional litigation firm, it's pretty constant.

LAW WEEK: The cases are constant and they are settling?

O'BRIEN: I can't say I've experienced a case that's kept running because they don't want to settle it. It seems as though most civil litigation settles. But because of the nature of our practice and of the governmental entities, a lot of those go to trial. We actually have 20 or 30 trials a year with our lawyers, and that's very unusual. It really is across the board.

LAW WEEK: How about you, Bruce?

KUGLER: Well, it's interesting to see even on a national level with respect to intellectual property, the current administration has really made a push for innovation, because they realize that that type of innovation with small businesses really does fuel the economy. And we have seen that locally.

We're quite optimistic that over the last 12 to 18 months we have seen additional spending from a lot of our clients. We have actually hired a few people, and we'll wait to see to the end of the year if we're going to hire more.

The analogy I like to make is a sign I've seen on a desk and it says — one side, "Need more work." The other side says, "Need more people." And that's the constant challenge of trying to get more work and yet have the staff to accomplish getting it done for your client. That's a challenge, but I think things look much better than they did 24 months ago. •

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