

# Industry Focus: Attorneys

September 1, 2017 By Nevada Business Mag Comments



**Left to Right:** Ellen Schulhofer, *Brownstein Hyatt Farber Schreck*; Michael Feder, *Dickinson Wright*; Robert Bolick, *Durham Jones & Pinegar*; Jeff Silvestri, *McDonald Carano*; William Urga, *Jolley Urga Woodbury Holthus & Rose*; Terry Coffing, *Marquis Aurbach Coffing*; Frank Flansburg, *Schwartz Flansburg*; Connie Brennan, *Nevada Business Magazine*; Bruce Ford, *City National Bank*; Mark Hawkins, *Fennemore Craig*; Constance Akridge, *Holland & Hart*; Rosa Solis-Rainey, *Morris Law Group*; Howard Russell, *Weinberg Wheeler Hudgins Gunn & Dial*; Debra Spinelli, *Pisanelli Bice*

As the economy improves, Nevada's law offices are seeing increased growth and competition across the Silver State. Although technology presents new challenges, leaders in the industry expect improvements to continue across the board. Attorneys, leading many of the state's top law firms, recently met at the Las Vegas office of *City National Bank* to discuss industry health and issues affecting their practice.

Connie Brennan, CEO and publisher of *Nevada Business Magazine*, served as moderator for the event. These monthly meetings are designed to bring leaders together to discuss issues relevant to their industries. Following is a condensed version of the roundtable discussion.

## How healthy is the industry?

**FRANK FLANSBURG:** Overall, the industry seems to be healthy. I think that it follows the economy. When people are making a little bit more money, they're putting more deals together because they're being bullish on the economy. Also, when they have more money they're willing to fight over money and fight over deals rather than just abandon them. I think we follow the same trend. You find what your clients need. That's the nice thing about our profession. We provide a service that adapts and helps counsel clients in their situation no matter what their situation may be.

**JEFF SILVESTRI:** [The industry] is stronger. It's not gangbusters better, but it's demonstrably better. More people are putting deals together. The corporate side is a lot better. The tax side is better. I think the litigation side is a little bit slow. I don't think people are fighting with each other as much and that's because in-house counsel is taking care of it.

**MARK HAWKINS:** I think most of us here are probably looking [to hire] candidates. Even with in-house departments growing, we're still looking for qualified candidates. I think most of the people in the room would agree that's indicative of the amount of work that's still out there that we're trying to capture.

## What is the public perception of attorneys?

**WILLIAM URGA:** I don't think [the public's perception of attorneys] has improved much over the last several decades, until they need you. Then all of a sudden it's a different story. The same thing that's true today was true 45 or 50 years ago when I started. Nobody really liked attorneys, but when they have a problem, that's the first person they call.

**SILVESTRI:** They like their attorney, but they don't like attorneys.

**MICHAEL FEDER:** A lot of clients know they need us and they'll call us when they do, but from a general perspective or perception, I agree. I think it hasn't changed. What I've been seeing in the last six months is more people willing to say "no" when they should have said "yes", or said "yes" when they should have said "no". I'm sitting there thinking we just had a completely different discussion a week ago and now you're doing a complete 180 because there's other people around. They just don't act ethically. I see that more often than I want to say.

## How big of an Issue is professionalism?

**CONSTANCE AKRIDGE:** We've done some work at the State Bar regarding professionalism and how to encourage attorneys to be more professional. What we found is that usually the behavior is not to the point where it's sanctionable by the State Bar. You can't get disciplinary committees to really sanction it unless there's a judge that calls out the attorney and says that attorney should be sanctioned. Because our judges are elected, there may be some hesitancy there in certain cases to call certain attorneys out. But I know there have been judges who have sanctioned lawyers for bad behavior.

**FLANSBURG:** I think largely it's an experience issue. I call it the "traffic theory" for me. When I'm in traffic and that car in front of me is going slow, I hate him. But if they're standing next to me in the grocery I say, "Hey! How're you doing?" One of my first cases was a litigation case and I was going to teach this attorney a lesson. I was going to show him how good I was. I remember the next case I had, it was the same attorney on the other side. [I thought,] "Oops, this is uncomfortable." I think that's the experience of working with one another and going out to lunch and getting to know one another. Yes, we do our jobs and yes, we want to win. Yes, we want to be good at what we do, but it doesn't mean we need to take it personally and we don't need to hold it against that one person.

**TERRY COFFING:** That's a good point. When I came here, I was told the town is small and memories are long. That's a difficult lesson to learn if you're a new attorney trying to prove your worth. If someone calls you up and says they need three days on this and you say, "let me check with my client" or "no", that kind of conduct just tends to escalate.

**ROBERT BOLICK:** Las Vegas is still a very small community. What I've seen with some of the newer attorneys is they've got their ego involved. They want to be the biggest and the baddest and show how nasty they are as opposed to working together. I like the setting where it was more friendly and about working together, because you are going to see the other person again. Sooner or later you'll come across them and you want to treat other people in a professional manner.

**FEDER:** I think the younger attorneys don't always know how they should act. That's part of the training, understanding what it means to be ethical. We need to do the best we can for our clients, but our ethics are still there. We need to teach our younger associates with respect to that. It's sometimes some of the more senior people that are doing it as well.

**HOWARD RUSSELL:** Part of it is a matter of time management. For example, I dealt with this recently where I had a more senior attorney and an associate part-time. [The associate] came to me and said, "I'm not really getting any cooperation from him." I called him and he said, "Okay, no problem." He didn't want to have to take the time. It was just easy for him to say no because it's just a young associate working on the case. [He thought,] "I don't need to pay too much attention. I'm just going to say no and move

on with my day.” We all should be paying more attention because it’s just easier to move on than it is to actually stop and think about how’s this going to affect me on the next case?

## Are there concerns with the next generation of attorneys?

**URGA:** What raises concern for me is the bar results are going down tremendously. In the last few years they’ve gone from eighty-something percent down to around 60 percent. I’m worried [law students] are not getting the training they should because they do so many classes pass/fail now.

**ELLEN SCHULHOFER:** I think that’s more a factor of the [Nevada State] bar.

**AKRIDGE:** I think there’s also a concern because, after 2008 when things went south with the economy, a lot of the legal jobs dried up. A lot of people were going to go to law school but decided it didn’t look like the profession for them. I think you saw a lot of falloff in admissions to law schools. So some of this may be the result of maybe not getting as many high-quality candidates because of those decisions people made.

**FEDER:** Law schools have gone away from the core curriculum too. They don’t have to take the classes that you’re going to be tested on in the bar exam. Some people are going in on just certain topics. They’re going in cold. They haven’t gotten the training. They’re reading the bar books to learn it. Sometimes they’re not getting the right training in school with respect to certain topics, ethics being one that some people sometimes don’t take anymore.

**SCHULHOFER:** [Nevada] has the lowest passage rate in the country because we haven’t modernized our bar like pretty much every other state in the country, so I would take some of that with a grain of salt.

## What issues have come up with recruitment?

**DEBRA SPINELLI:** We only do litigations, so my thought process about what’s the most challenging thing for the legal industry is focused on litigation in Nevada. The [challenge] for us is recruitment and efforts in a small community with lots of competition.

**SCHULHOFER:** What comes to my mind is not so much recruitment, but retention. With in-house departments, there’s that attraction for millennials. It seems to be a lifestyle decision to not work the kind of hours all of us worked to get to where we are. You have

to offer them more than just training to stick it out. You invest in them, you train them, you get them to the point where they're ready to maybe make partner or shareholder.

**COFFING:** Also I think it depends on the practice itself. We lost a generation of transactional attorneys because you had a period of time when there were no deals being done. That new attorney's coming out and not being trained on complex transactions because they simply don't exist, and the ones that are there are being handled by the remaining upper echelon types. From a recruiting perspective, that's been the challenge. Finding qualified transactional attorneys has been our challenge.

## How does technology affect the industry?

**ROSA SOLIS-RAINEY:** I think technology is definitely an issue. It's affecting everything from the way we manage our backups to discovery to e-filing and learning all new systems. So far, that's the biggest challenge I see.

**FLANSBURG:** What I find myself doing is, wherever I am, whatever I'm doing, whatever time it is, whoever's around me, I have that device close to me because I don't want to miss that call. I don't want to miss that existing client that's important to me. I don't want to miss that new case that might be coming to me. It's really impacted my life balance.

**SILVESTRI:** Our clients are all connected. They're all on their phones all day. They're answering texts and emails immediately and they expect the same out of you.

**RUSSELL:** Because you have that, you have to set client expectations early on in your relationship with a client. If it's a new client, they don't know you or they haven't worked with you for a long time, so that seems to be the default. They want immediate responses. As you develop your practice with a client and you built a relationship, they now understand. They know if you don't answer in 10 minutes, you were doing something else. You weren't ignoring them and you don't think of them as less important than another client. You're busy and dedicated to all of your clients and you will get to them as soon as you can. It does take time to build that.

## How are cost and fee structures changing?

**BOLICK:** Clients are more consumer-oriented these days. It used to be more of a relationship sort of a thing. We went to so-and-so because they have a good reputation. Now it's, "we'll just let our fingers do the walking." I've had more people on a flat rate say, "Are you sure? What about this? Can I get a discount for such-and-such?"

**HAWKINS:** They view it as a commodity. The relationship is really still the important part of our practice.

**FLANSBURG:** Cost is a real issue. Being a smaller, boutique firm, we can do some blended litigation rates. I can reduce rates with maybe a contingency kicker in the end. There's a little bit of a hybrid relationship where it cuts down the cost and I have some skin in the game. Those things can be dangerous, but having those flexible arrangements can help clients sometimes because they feel like they have some ownership in that case as well.

**AKRIDGE:** I think our clients say they want alternative billing arrangements, so just flat fees, and they want us to take the risk, but they still want to micromanage us. It's trying to find the right balance between giving them a project rate, because that's how they're used to working, and taking part of the risk, but do it in a way that's basically in the interest of the law firm as well. I don't think they're completely there to wanting alternative rates that they say they are. We're kind of in transition.

**RUSSELL:** I think you're going to start to actually see a reverse. This is going to go for another couple years, this alternative fee arrangement. It's a temporary thing. Newer clients come in and I'll quote them our rates and the response tends to be, "Well, it's higher than we sometimes pay for this type of work." My response is, "I appreciate that, but that's our rate structure and that's what we do." Then their response is, "I respect that you're doing that. Where we went to two weeks ago cut their rates for us but on our first bill, they over-billed on everything." We're going to see a reversal in the next few years because the alternative agreements are not working out as well as the clients thought they would.

## How competitive is the industry?

**COFFING:** It depends. I don't feel like my firm competes with Brownstein, but I do feel like we compete with McDonald Carano because we're local and our rates are generally going to be lower. Maybe our bench is a little shorter as far as what we can do than a regional or national firm. So, yes, I think we compete but we compete at different levels.

**SCHULHOFER:** At the same time, I do see [competition] more and more on certain types of deals, especially like local counsel, we used to undercut the national firms. Now we're getting undercut by the smaller, local firms.

**URGA:** I think we're very competitive. Our firms, no matter what size they are, can compete with regional and national firms from my experience. Maybe they can throw 10 attorneys at something versus somebody else, but just on a quality basis, I think we're as competitive. I've seen work done by the big firms out of state and you wonder how did this get by? This would never fly in front of any of the firms here. We would have

caught those errors probably almost immediately. I think from that standpoint, it is very competitive.

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