

Playing Hard to Get

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Despite their eligibility, some firms would rather stay single

Ask law firm leaders or consultants for a Northern California merger wish list and some of the same names pop up.

Hildebrandt International's Blane Prescott includes Kecker & Van Nest, Farella Braun & Martel, and Steefel, Levitt & Weiss.

"There is not a two-week period where some firm in another part of the country does not say to us, 'We want to merge with one of those firms,'" the consultant says. "If any of those firms said they wanted to merge, we could have 20 national firms who would be out here in a day to begin those discussions."

Firm leaders also name Howard, Rice, Nemerovski, Canady, Falk & Rabkin; Folger Levin & Kahn; and Shartsis, Friese & Ginsburg among the dream candidates.

But 15 years after merger mania started, and despite the invasion of out-of-towners now crowding the Bay Area, these and other firms remain independent — sometimes fiercely so.

"This is a market where the firms that were here got big or they dissolved or they've already merged," adds Prescott. "What's left are highly, highly successful firms that don't have much interest in merging."

The level of resolve may vary.

"Not over my dead body," says John Kecker, the former Vietnam platoon leader and co-founder of Kecker & Van Nest. Dewey Ballantine's Morton Pierce says he wouldn't even bother approaching Kecker.

Farella's William Schlinkert responds politely, "We're always willing to have a cup of coffee and listen."

And Steefel's Barry Lee resorts to the old adage, "I learned a long time ago that you never say never."

Their reasons vary, but not much.

Robert Van Nest touts control. He recalls a large firm that had its bank account frozen, saying he couldn't imagine the actions of a partner he didn't know impacting him so personally.

For Robert Friese of Shartsis, Friese & Ginsburg, it's about trust.

"One of the concerns is you have a wonderful relationship with a core group of people," says Friese. "When you move on, the next group has no relationship with you and you are another profit center."

And Friese, like many other firm leaders, just wouldn't want to compromise the closeness he feels with other partners.

"It's a place where we don't make a fetish of seniority or deference to elders," he says of Shartsis' 51-lawyer office in San Francisco. "There's a certain irreverence that permeates the joint."

He recalls the example of a third-year associate who once called Friese out on what he considered to be his tasteful gray slacks and tweed jacket. "This guy said to me, 'What did you do — dress in the dark?'" Friese remembers. The associate, Adam Elsesser, went on to make partner and later became CEO of Smart Therapeutics Inc. (since purchased by Boston Scientific Corp.). Some Shartsis partners are investors in his latest venture.

But some firms have found mergers make more sense than staying independent.

Before Oakland's Crosby, Heafey, Roach & May agreed to merge with Pittsburgh's Reed Smith four years ago, it

had lost 13 partners in an 18-month stretch. Profits were weak.

"The economics weren't great, but within that firm was a gem," says Gregory Jordan, Reed Smith's chair.

At some firms, the economics are fine — for now. "I think it's a challenge for law firm managing partners to figure out when something isn't broken, when do you explore and pursue something," says Jordan.

Profits at smaller firms aren't always smaller. Howard, Rice ranked 188 on the AmLaw 200 in 2004 with per-partner profits of \$865,000. And it did it despite a 1:1 ratio of partners to associates — a feature firm leaders say is particularly attractive to would-be associates.

"When the AmLaw 200 came out, people were surprised to see that a number of the second hundred were more profitable than the first," notes Ralph Baxter Jr., chairman of Orrick, Herrington & Sutcliffe. "If you could see the AmLaw 400, you would see that many small firms [are] too."

It helps to specialize.

"The thing you can pull off most readily is to show you are very special at one industry sector, one specialty area, one segment of the marketplace," says Baxter.

Still, Baxter says it is possible to do very well with a number of practice areas, and Steefel's Barry Lee says varied specialties have helped the firm weather peaks and valleys in the economy.

"You can offer different services and still be our size with quality lawyers in practice areas that complement each other," says Howard, Rice's Stuart Lipton.

"Our attorneys are not so narrowly focused in their practice areas," he adds. "And we believe the advantage is that we bring a greater degree of experience and judgment than somebody who is more narrowly focused."

The model is fine until firms start losing talent.

Robert Ruyak, managing partner at Howrey Simon Arnold & White — which swiped Howard, Rice's Orange County office some years back — says mid-sized firms with small practice groups are vulnerable to poaching.

"Just having one person in one discipline won't impress clients," he says. "That drives people like that to join larger litigation practices. It is a lot more attractive a platform to do your work."

Cherry picking is a problem. Farella recently lost Bruce Deming, chair of the firm's business transaction group, to Covington & Burling. Three years ago, the co-chair of Farella's employment practice, Baldwin Lee, left to become a senior associate at Paul, Hastings, Janofsky & Walker.

But these losses were considered an anomaly at the firm.

"Most of the people who are at those [mid-sized firms] have had the opportunity to move to larger multi-office firms," says Charles Fanning Jr., a recruiter with Major, Hagen & Africa. "The fact that they have not made that move would indicate a level of contentment."

Howard, Rice sees more partners come than go. Friese says his firm, known for its profitable hedge fund practice, hasn't lost a partner to another firm in 14 years.

There are also cultural reasons that lawyers tend to stay at small firms.

Franklin "Brock" Gowdy, a litigator who manages the San Francisco office of Morgan, Lewis & Bockius, says top trial lawyers don't tend to reside in large national firms.

He says he doesn't try to recruit them away from smaller firms because they would be "too independent" for a big firm.

Friese remembers meeting for informal merger talks at a San Francisco restaurant a few years back.

"The partner from the New York firm said, 'We're not just another New York sweatshop. We have lives,'" Friese recalls. "And I said, 'You should know, if you aren't at work on Saturday, don't bother coming in on Sunday.'"

Friese says it was a good five seconds before the partner started laughing.