

Recession Proofing - An Update

In late February 2018, I released a column titled "Recession Proofing - Why Now? Perhaps the Better Response is Why Not?" It struck a nerve with the legal industry. So much so, I thought it worth an update on the likelihood of the recession and the single best strategy for law firms to embrace in order to not only survive but actually prosper in a recession.



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An inverted yield curve, which has correctly predicted the last seven recessions going back to the late 1960's, occurs when short-term interest rates yield more than longer-term rates.¹ That's when yields on one-month, six-month, or one-year Treasury bills are higher than yields on 10-year or 30-year Treasury bonds. During healthy economic growth, the yield on a 30-year bond will be three points higher than a three-month bill.

The strategists predicted the 10-year treasury yield would be at 2.70% by the end of 2018, versus 2.85% currently, and 2.50% by mid-2019, resulting in an inverted curve.

US Treasury yield forecasts: Base, bull, and bear cases

	Quarter	2y	5y	10y	30y
	3-Jul	2.53	2.73	2.84	2.96
Base	4Q18	2.55	2.65	2.75	2.80
	2Q19	2.60	2.55	2.50	2.50
Bull	4Q18	2.05	2.20	2.30	2.40
	2Q19	1.70	1.85	2.00	2.20
Bear	1Q19	3.30	3.35	3.20	3.05
	2Q19	3.55	3.50	3.30	3.05

Source: Morgan Stanley Research

Another potential cause of recession would be policy mistakes. The current potential trade wars have business economists feeling jittery - recently, two-thirds of the members of a panel of National Association for Business Economists predicted a recession in 2020 and blamed trade wars as the primary culprit.

While not an economist, these two indicators would seem sufficiently reliable enough not to make me question that we are headed towards a recession but rather my only uncertainty would be of its timing.

As with most successful strategies, the strategy I would propose law firms embrace in order to prosper before, during and after any recession is simple but will be a challenge to execute.

This strategy will work regardless of the size of your firm!
In fact, the strategy may even be easier to execute for smaller firms.

You need to become the low-cost producer. To be clear, I am not proposing you reduce or discount the fixed fees or hourly rates you currently charge. While there is a real possibility in the face of any recession, clients will seek

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fee reductions, however, many will be satisfied with no fee increases.

In either case, the only way to maintain and grow your firm's prosperity during this time is to be able to manage your client costs.

To be clear, I am also not proposing the typical cost-cutting exercise firms tend to embrace whenever there is fee pressure. Rather, I am proposing firms focus on the following three operational aspects of "client costs":

1. Project Management;
2. Legal Technology; and
3. Legal Process Improvement.

Project Management

Understanding the concept and having the technology that makes it easy to execute and builds a history at the same time is critical.

Legal project management is the application of the concepts of project management to the control and management of legal cases or matters.²

It is important to understand legal-project management applies to the mechanics and business of providing legal services rather than to the substantive legal work itself.

Regardless of the size, increasingly cases require management of scope, schedule, risk, and cost in a more rigorous and measured manner than firms have practiced in the past. The ability to become effective in this aspect of "client costs" is much like artificial intelligence it will only grow with usage.

Firms practicing effective project management should be able to answer the following questions before embarking on a matter:

1. **WHY** are we handling this matter for this client? Why is it important to the client? What is the business goal of the legal work?
2. **WHAT** work will accomplish the goal and what work will specifically not be done? For example, is this a litigation matter or a mediation session with settlement on parallel tracks or will we take a scorched earth posture? Is this an asset or a stock deal?
3. **WHEN** must work be done and in what sequence? What are the hard deadlines, and what timing is uncertain or dependent on unknowns? What are the milestones and key dates in our timeline?
4. **HOW** do we manage the work based on constraints and requirements such as budget, strategic importance, client mandates or risk management protocols? What does our work plan look like?
5. **WHO** is involved in the work and what are their roles and responsibilities? Who is responsible for the actual work, who supports that person, and who must be consulted or informed about status and decisions?

Key project management responsibilities include:

- Plan projects
- Monitor project progress compared to the project plan
- Manage project progress
- Report project progress to all key stakeholders
- Confirm project completion
- Review of project outcomes

I would recommend you not try to go it on your own but rather it should be possible to retain a local expert on project management to come in conduct an internal session on project management (work to generate CLE

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credits from such a third-party session) for Associates and Partners.

Once you are comfortable with the concept and can execute it effectively, make sure your clients know you utilize a "Legal Project Management" approach in handling their matters. Possessing the knowledge that their law firm is utilizing this approach can serve as a fee reduction deterrent.

Legal Technology

The use of effective legal technology will result in the ability to control "client costs" from two perspectives:

1. the time required to complete a task, and
2. allowing firms to re-jig their professional complement (move from expensive lawyers to less costly para-professionals) required to conduct the files.

There are several steps I would suggest firms consider doing to make certain they are using legal technology as effective as possible, including:

- **Conduct an audit** of all the existing legal technology being used by the lawyers / practice groups in the firm in order to gain an understanding of how it is used and what it is used for (ideal opportunity to include younger lawyers). Also, obtain an understanding of what it is they don't have but would facilitate a more efficient practice;
- **Visit Technology shows** (ie. [ABA Techshow](#) in Chicago, the [ILTA Conference](#), or [LegalTech](#) in New York) to gain exposure to the latest technology that is in actual use and determine what is applicable or appropriate to the firm's practice. I would recommend also visiting legal innovation incubators to see what is online to be available in the future (and see if there might be some opportunity to be a development site for future considerations);
- **Look at integration.** Ensure members involved in the audit are involved in the acquisition of the integrated accounting solution and optional modules to see if existing systems can be readily integrated or given the purpose of the existing stand-alone if an integrated module may actually work better;
- **Retain a system integrator** to develop and present the optimum system scenario (some stand-alone software may actually be the best solution but important to have an external perspective); and
- **Set a timetable** (could be 1 - 2 years given likely costs) to achieve the integration and execute on it. This is not a static process so annually you should review the plan and new developments to see if changes need to be made.

It is important if you are to achieve the full cost control from the technology review you must then take a hard look at your mix of professionals as keeping the same personnel even with the new technology is at best only slightly better than a break-even proposition.

Legal Process Improvement

According to Kenneth Grady, former CEO of Seyfarth Lean Consulting LLC, a subsidiary of the U.S. law firm Seyfarth Shaw LLP, *"Legal process management digs deep into how each step is performed"*. The team, using process mapping, walks through each step examining and sequencing what it takes to complete the services. According to Mr. Grady *"Traditional legal service delivery is very inefficient; by some measures, professional services are 30 to 80% waste. Stripping out the waste improves quality and reduces costs."*

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Irrespective of the jurisdiction(s) firms operate in, legal process management will enable them to handle client matters cheaper, faster, better.

A key premise of legal process mapping is that lawyers have to begin looking at the service value proposition from their client's perspective. To do this, lawyers must ask themselves the following three critical questions at each step in the process of delivering legal services:

- Does the activity move the matter forward?
- Is it something the client wants and is willing to pay for?
- Is it done right the first time?

If your answers are "no", legal process enthusiasts will opine that your work is wasteful, and in this economy, waste is something clients are increasingly unwilling to pay for. This will even be truer in the face of a recession.

By way of a simplified explanation, the process map lies at the core of the lean six sigma approach. It provides a visual representation of every step, touch, task, person, and resource used to complete a legal transaction.

Mapping is an interactive process that reveals rework loops, steps that don't add value (from the client's perspective), bottlenecks, misallocation of resources, and other forms of waste that impede the flow of quality work. The map serves as a baseline from which to identify and target improvement opportunities.

The goal should be to implement sustainable solutions that optimize processes by reducing errors and waste, and increasing quality and productivity.

Process maps can serve multiple purposes, including:

- Capture the best practices of your top lawyers;
- better describe your approach and best practices for clients - an important marketing tool;
- Train students, new associates, and lateral hires in your approach and best practices; and
- provide more accurate estimations and pricing.

The result of successful remapping will not only provide a more efficient process (marketable to clients) but will also cause a restructuring of who handles the file and therefore a potential restructuring on the mix of professionals required in the firm (normally reducing the costs for the firm).

I would recommend taking one area of practice and even one aspect of it and try a remapping exercise to see first what efficiencies might result and, based on these results, whether this is something the firm should start pursuing on a systematic basis. The fact that the firm utilizes this approach to look at how it delivers legal services will serve as a further deterrent to fee reduction by clients.

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The reason I suggested "the recession strategy was simple but will be a challenge to execute" stems from the tendency of most lawyers to focus on reasons why something will not work. Many of these same lawyers will be unaccepting of the signals of the oncoming recession.

To that end I would get your lawyers to focus on the strategy as being one for any time and if possible re-enforce with them Dr. Robert Anthony's philosophy "*Forget about all the reasons why something may not work. You only need to find one good reason why it will.*"

¹ [CNBC Article - "This market indicator has predicted the past 7 recessions"](#)

² [Wikipedia - Legal Project Management](#)

³ LPM 101: First Principles of Legal Project Management - Aileen Leventon, JD, MBA, is President of QLex Consulting Inc., which focuses on improving the results and economics of legal services for both clients and their counsel.

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