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What are the newest legal trends in Orange County? Are they different from California or the U.S.?

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The trends in Orange County mirror those in the rest of the country. 1) The number of trials has decreased, with a concomitant growth in alternative dispute resolution. In fact, there has been explosive growth in the ranks of ADR providers. 2) Corporate litigation clients are getting away from the billable hour and are looking for flat fees per case stage, monthly flat fees for the entire course of litigation, contingent fees on plaintiff business cases, hybrid/reduced fees with a success component, and other alternative arrangements. Many large law firms are ill-equipped to be that flexible with fees.

What are the growing areas of law in Orange County? Cybersecurity, privacy law, cross-border representation and white collar criminal defense seem to be robust and growing fields. The state courts have become much more active in prosecuting financial crimes, so previous experience as a deputy district attorney has become an advantage to white collar defenders, most of whom “grew up” in the federal system and are sometimes ill at ease in the state courts.

Which areas of law are declining in Orange County? Medical malpractice (driven by the fact that MICRA fee and damages caps have not increased since 1975), personal injury (filings are at almost an all-time low), class actions and patent litigation all seem to be on the wane. Various diversion programs have decreased the number of criminal cases requiring an expensive defense. There are rumors of commercial litigation’s decline, but at our firm it is booming. Generally, an area that can be automated, such as drafting and reviewing contracts, is an endangered species. Eventually, this will be true of legal research.

What are you advising clients about sexual harassment cases? This is a bad time to be a sexual harassment defendant. The playing field has changed. Companies need to show they have aggressive programs in place to root out sexual harassment, and demonstrate they will not tolerate it at any level. If this means losing highly placed executives, so be it.

Are the industry’s fees in Orange County falling, rising or staying the same as in prior years? For the super-elite law firms, fees have risen. But those are few and far between, and many charge higher “rack rates” to keep up appearances, but then discount them substantially. The next tiers, and especially mid-market firms, are getting squeezed by corporate demands for lower fees, and many are trying to merge

their way out of the doldrums. Some boutique firms, which are more nimble and don’t carry massive overhead, are thriving. Boutique firms like ours, with something unique to offer – like deep trial experience in a world where most litigators have little or no exposure to trials -- are booming.

What are the trends in pro-bono work? Which areas need more representation? Immigration is the single area where the need is greatest, due to the Trump Administration’s almost across-the-board anti-immigration stance, including not just DACA, asylum and refugee programs, but cuts to legal immigration, student visas, work visas etc.

Other: It remains a challenge to get younger lawyers jury trial experience. Smaller civil trials, where junior lawyers once cut their teeth, have been diverted out of the jury system because trying them is just too expensive. About the only place a young attorney can try cases these days is in the public sector, in criminal prosecution or public defender offices. But there isn’t the turnover there once was in those places, as many lawyers have chosen to make careers in public law offices. Yet in business litigation, while there may be fewer trials, the ones that do see a jury tend to have larger stakes than ever before. Corporations with hundreds of millions or billions at stake are unwilling to trust their trials to litigators with little jury trial experience. But the population of experienced business trial lawyers is graying. So where will the next generation come from? It’s a vexing problem that so far hasn’t been answered.

Over the last decade there have been structural changes to law practice. Where once document review was done by first and second-year lawyers hunched over thousands (or tens of thousands) of pieces of paper, now document review is now done by programs that employ algorithms to do key word searches. Or it’s outsourced to cheap teams of contract lawyers abroad, often in India. The upshot is that we need fewer lawyers, but law schools are still churning out just as many as ever. Those from lower-ranked schools find it very difficult to get even entry-level, low-paying jobs. And many companies refuse to pay fees for the work of first- or second-year lawyers, which discourages firms from hiring “right-out-of-school” attorneys. Those same new admittees often carry massive student loan debt and desperately need good jobs. These are profound changes to a highly traditional and change-resistant profession, and the ones bearing the brunt of the changes are the newest lawyers.