

law firm

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management



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Evaluating partner performance

One of the most difficult tasks a law firm's management faces is the evaluation of partner performance. Not all partners are created equal, and they possess a wide range of skills that contribute to your firm's financial results. Comparing and contrasting these various contributions in order to divide the profit pie fairly is the overriding reason for the evaluation process.

Successful partner attributes

Evaluating a partner's performance goes beyond considering personal billable hours and business origination. Being a partner in most firms means much more than simply being an owner. The title implies certain positive behavioral traits that you want your partners to exhibit. You may expect your partners, for example, to demonstrate the ability to:

- ▶ Transfer knowledge to less-experienced associates,
- ▶ Market their own services and those of others in the firm,
- ▶ Generate work for others,
- ▶ Develop, maintain and strengthen client relationships,



- ▶ Attract new clients that fit the firm's overall strategic objectives,
- ▶ Upgrade existing skills and add new ones to make them more competitive in the market, and
- ▶ Lead teams.

Not every partner will possess all of these abilities to the same degree. An evaluation process can help make partners aware of where their deficiencies lie and what abilities need to be developed and/or strengthened. Feedback from a variety of sources is essential to helping an attorney identify and correct performance shortfalls.

A highly motivated and leveraged attorney, one who is able to keep several other attorneys busy with work, might generate \$5 million or more.

What to evaluate

David Maister, in his book *Managing the Professional Service Firm*, notes that there are four personal factors that ultimately determine partners', and thus your firm's, profitability: utilization, rate, margin and leverage.

Breaking down the meaning, attributes and actions that influence each of these factors will give you a fairly complete list of the behaviors on which you should base your evaluations:

Utilization. Either too few or too many billable hours can be problematic. Too few hours, for example, may indicate that a partner is slowing down, has personal issues or has a declining client base. Too many hours can be symptomatic of a tendency to hoard existing business because the partner isn't sure he or she can generate new work. It can also reflect a desire to work alone — that someone just isn't a team player. Everyone in a firm should be doing

DEVELOP A YARDSTICK

Before you can gather data and evaluate partners' performance, you must have set benchmarks on which to base the evaluations. The billable hours goal for the managing partner, for instance, will probably be different from that for a line partner. Similarly, the leadership and consensus-building skills of a practice leader will be assessed on a standard different from the one used to evaluate a first-year partner.

Once you've established your criteria, you can begin gathering data. There are several sources available. The most common and easiest to produce are internally generated, quantifiable reports, such as personal billable hours. A little more work goes into both gathering and interpreting data related to the behavioral traits you desire in your partners. The best sources for the latter include:

Self-evaluations. These afford partners the opportunity to reflect on their practice, achievements, shortcomings and goals.

Peer evaluations. Ask partners to evaluate their fellow partners in such areas as legal competence and cooperation.

Upward evaluations. Associates must believe they have absolute anonymity if you're to gather any meaningful feedback on such crucial areas as accessibility, mentoring and ability to lead a team.

Client feedback. Periodic client satisfaction surveys can provide valuable feedback on partner performance, but you should ask for client feedback only if you're willing to act on the results. Failure to do so can create client dissatisfaction.



what he or she does best, so the firm operates as a team with members complementing each other.

Rate. Part of life as an attorney is the continual reassessment and upgrading of skills to become more valuable (or at least stay even) in the marketplace. The more recognized a partner's skills become, the higher the rate he or she will command.

Margin. The more efficient a partner is in using firm resources (such as associates, support staff, technology), the more profitable the practice will be.

Leverage. This may be the most important factor in the profitability formula. Various estimates indicate that an extremely motivated and efficient attorney working alone may generate billable fees of \$2 million to \$3 million per year. A highly motivated and leveraged attorney, one who is able to keep several other attorneys busy with work, on the other hand, might generate \$5 million or more.

Change your partners to change your firm

Partner evaluation isn't an easy task, but it is an extremely worthwhile one. Making it an integral part of the compensation process is often the only way to achieve complete buy-in. But, in the long run, the insights partners receive will enhance their ability to achieve more success — personally and for the firm. ☐



You really do need internal controls — here's why

Many lawyers scoff at the idea that a firm made up of collegial professionals needs internal controls — or any strict, by-the-book policies, for that matter. But a law firm is a business, and internal controls ensure the integrity of its financial transactions.

What are internal controls?

Internal controls are the policies and procedures that protect your firm's assets, create reliable financial reporting, promote compliance with laws and regulations and achieve effective and efficient operations. They include firm procedures for handling the funds you receive and expend in your operating and trust accounts, preparing financial statements for the executive committee and equity partners, evaluating internal operations, and implementing personnel and conflict-of-interest policies.

Financial statements should be distributed to and reviewed by your executive committee and all equity partners.

Segregate for safety

The receipt of cash and checks by firm personnel calls for segregation of duties. The person who opens the mail should be different from the individual who prepares the listing of checks and cash received, and neither of them should be the one who applies receipts against open accounts receivable. Also, all checks received should be endorsed with a stamp that includes your firm name, financial institution, account number and the words "For Deposit Only."

Similarly, safeguards should be in place before funds are disbursed from your firm's operating account or any client trust accounts. All check requests should have an approved signature authorizing the disbursement, and supporting receipts and documentation



should be attached. Original invoices should be required and, to prevent resubmission, stamped "paid" once the check is cut. Never process or sign blank checks for anyone, and require two signatures for checks over a specified limit — such as \$1,000. In many firms, one signature must be that of the managing partner or a financial-matters designate.

Ensure trust-worthy client accounts

Client trust accounts are a special and valuable practice area for most law firms, and attorneys are placed in a unique position when it comes to managing them. Unfortunately, the top reason for disbarment is the mishandling or misuse of client funds. To protect against fiduciary failures:

- ▶ Monthly trust account reconciliations should be prepared and reviewed by a separate staff person,
- ▶ Any unusual items should be clearly and adequately explained and documented,
- ▶ Any transfer or disbursement of funds should be signed by the responsible attorney and an explanation should be provided,

- ▶ The managing partner or a designate should periodically review all trust account reconciliations, and
- ▶ Blank checks should be kept secure.

Show them the money

Monthly, or at least quarterly, financial statements — including a balance sheet, income statement and summary of cash flows — should be distributed to and reviewed by your executive committee and all equity partners.

Save your policies; save your firm

All of your internal policies and procedures — including hiring, vacation and sick leave, health insurance and other benefits, performance evaluations, ordinary and overtime compensation,



conflict of interest, code of ethics, and review of associates' legal work — should be in writing and given to all employees upon hiring, with changes communicated on a regular basis. Lack of clear policies in these areas can represent significant risks to any law firm. ☐

Boost your Web site's "clickability" quotient

Done properly, a law firm's Web site can be an effective marketing tool. Here are some easy tips for keeping your site in tip-top shape and visible:



Provide key information. A good Web site should streamline communications between you and clients and potential clients. You can avoid a lot of unnecessary phone calls if your site includes your practice areas, directions to your offices and contact information. Just be sure everything's always up to date.

Keep it fresh and readable. When was the last time you looked at the copy on your Web site? Revising your marketing copy can give your site an occasional face-lift. One tip: Remember that visitors scan, more than read, long paragraphs of copy. Break your copy into coherent chunks, and use subheads so visitors can find what they're looking for quickly and easily. Keep newsletter articles new and fresh — having the same articles up month after month can give the impression that your firm is disorganized or lackadaisical.

Post attorney bios and photos. People like to know whom they'll be dealing with. So incorporate educational information, a summary of the areas in which each attorney practices, any recent publications and favorable news clippings, significant cases they've won or been involved with, and any awards and visible pro bono or public service projects. Also include each attorney's direct telephone number and e-mail address. Photos should be recent and in color.

Direct your traffic. Advertise the site in local business journals and attorney directories, and use periodic e-mail campaigns to direct existing and potential clients (who have opted in to receive electronic information from your firm) to your site.

Also, when people use a search engine to find a lawyer or firm by practice area or geographic area, factors such as page content, keyword density and number of site pages will influence how high in the search rankings your Web site will appear. A good Web site developer or consultant can help design your site to optimize these factors in your favor.

No pain, real gain

Nonequity partnerships may solve vexing problems

At some point almost every law firm is faced with one of the following situations: A long-time, hard-working, profitable associate who falls a bit short of the criteria to make partner is being wooed by a fierce competitor, or a previously productive partner's performance has been falling off steadily for some time and coaching attempts have been unsuccessful.

Should you let the associate go? Should you force the partner out? One potential solution lies in having a second tier of partners, commonly referred to as nonequity or income partners.

No risk

"Nonequity" means just what it says: These partners have no capital invested in the firm and are not liable for the firm's debts. Compensation is set much as it would be for an associate, with a salary and performance bonus.

A nonequity partner may attend partner meetings and even have access to firm financial information but usually cannot vote on ownership-related matters. It typically takes a supermajority of existing partners' votes to elect or dismiss an equity partner. By contrast, the authority to elect or terminate nonequity partners is given over to firm management.

Changing times

Single-tier, full equity partnerships are as old as the profession, but two-tier firms have increased in popularity over the past several decades. For many years firms were governed by the old "up or out" rule. If an associate hadn't made partner in seven or eight years, it was time to move on. One problem with this rule is that it caused firms to get rid of some highly productive and profitable associates who might not make partner for reasons such as an inability to develop new business opportunities.

Another change in the profession was that partners became more willing to pull up stakes and move their practices to another firm. Although the new firms were happy to have the additional billings, they were often reluctant to make someone a partner if they hadn't practiced with him or her. At the same time,

they realized they would be unable to attract these recruits without the promise of partnership.

A more recent phenomenon is associates turning down full equity partnerships. Many younger lawyers see their tenure at a law firm as an opportunity to gain experience and training, earn a good living and then move on. The idea of a career-long marriage just doesn't interest them as much as it did preceding generations. These issues have forced firms to look outside the traditional structure for more flexible organizational styles.

Two-tier advantages

The advantage of a two-tier partnership lies in its flexible organizational approach. It's important for many people's egos to have the title "partner," and the marketplace doesn't know the difference between equity and nonequity status. Nonequity partnerships can help you hang on to that valuable associate who's being courted by a competitor or provide a safe haven for a partner who, while winding down, isn't quite ready to retire.

They're also a way for partners from other firms to make a lateral move in. Joining a new firm as a nonequity partner for a period of a year or two gives both parties time to judge whether they fit well.

On the other hand

Paradoxically, the same flexibility that makes two-tier structures attractive can also be one of their greatest disadvantages. Flexibility can be used to avoid making the tough calls. There may be some very good reasons that a long-time associate was never going to become a partner. If he or she doesn't fulfill a real need, it's time to part company. Making the associate a nonequity partner can just prolong the agony. Worse, it may lessen the status of all the partners if these flaws are apparent to the staff and/or the marketplace.

The two-tier partnership structure can be a great asset to firms if used appropriately, but it shouldn't be used as a means of sidetracking difficult personnel decisions. □



When less is more

How billable hours can strain profitability

It may seem counterintuitive, but sometimes your partners can have too many billable hours. Having partners concentrating too much time and effort on billable hours can actually work against your profitability.

Here's why: The most successful partners (those at firms with the highest per-partner incomes) are those who are able to leverage their time and expertise. They make more money when they can have others doing much of the work while they spend the bulk of their time managing their practices and the firm and developing new business. Unfortunately, this simple formula doesn't translate into economic reality for many midsize firms.

The leverage ratio

A recent Juris Inc. and Managing Partner Forum survey of 243 midsize firms showed a direct correlation between the amount of leverage in a firm and per-partner income. In the top 20% of firms ranked by per-partner income, the leverage ratio (the number of associates divided by the number of partners) was 1.7 associates per partner. That compares to an average of 1.3 across the board, and only 0.6 in the bottom 20%. So why are many firms and their partners reluctant to embrace the leverage concept?

Often partners are reluctant to give up billable hours because of how they get paid. At many firms, partners' total personal billable hours and dollars generated are still the No. 1 factor in determining annual compensation. Those figures are the easiest to quantify and use in comparison to other partners — there are few gray areas with respect to billable time. The key to determining compensation, however, should be the role the partner plays in the firm.

If it can be proven that a partner is likely to make more money when a higher degree of leverage is

introduced, and the roadblock that is preventing that from happening is the compensation system, it seems safe to say the answer is to change the way in which partners are compensated.

Put a lid on it

One possibility, which may be viewed as somewhat extreme, is to cap billable hours: Any hours over the limit don't qualify for credit in the compensation formula. For instance, a billable hour cap of 1,500 hours would mean that Partner A and Partner B would both be credited for 1,500 hours, even though A actually has 1,800 and B has 1,600. This encourages partners to spend their time beyond the cap on other activities, such as business development and/or staff development, that can increase their compensation.



Use incentives

The gap in the allocation of total firm income that a billable hours limit causes should be filled with incentives for bringing in new business and developing associates. Moving from a system that puts a premium on personal production to one that encourages development of a larger group can be difficult, but it's justified by the increased rewards. ☐



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