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International Review

S P R I N G 2 0 1 3

**SIX ELEMENTS
OF
MEANINGFUL
DIFFERENTIATION**

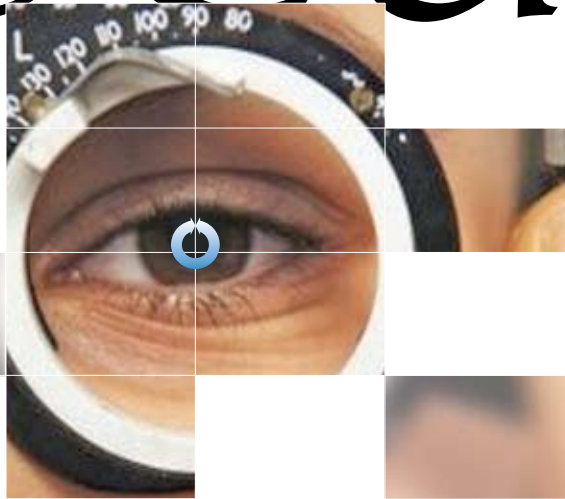
**MALIGNANT
LEADERSHIP**

**INSIDE THE
CORRIDORS
OF FIRM
LEADERSHIP**

**PRACTICE
GROUP
LEADERSHIP
2.0**



BRING YOUR FIRM INTO FOCUS



BECOME THE LEADER IN YOUR FIELD

All law firms must have one major objective—be the leader in your field. Easy to say. Hard to do?

Achieving leadership demands superior legal performance complemented by savvy marketing—inside and outside the firm.

Begin by realizing your BRAND. Successful executives understand that clear, consistent marketing strengthens their firm's leadership position and their BRAND. However, they also know their attorney's are enrolled in the intellectual challenges of crafting successful and brilliant solutions for their clients. This, after all, is what attorneys do. But let's face it, most attorneys dislike marketing. Marketing steals billable hours. Grooming attorneys to embrace the firm's BRAND and adopt their role as

marketers requires guidance and a strong arsenal of support. Without this your BRAND becomes diluted and ineffective.

Intelligent marketing requires agility and focus in today's fast-paced, linked culture. Creating a consistent, clear BRAND connectivity is a "must" dynamic for success. If you are not proactive you will fall behind and perhaps fail.

Perpetuate your BRAND. Avoid looking stale and getting lost among your competition. Actively maintaining a current-looking web site is critical. Establish your site as a living breathing marketing tool which looks fresh and accurately portrays who you are. It should also acknowledge your attorney's accomplishments giving them a tasteful marketing BRAND. One they are proud to wear. One that

rewards performance and leadership.

However, what is most often misunderstood and neglected is making a commitment to optimize your search engine presence. This is a daily marketing process not an IT project. Paying attention to your site's details and BRAND encourages repeat connectivity and seamlessly translates that you will pay equal attention to your client's needs. This builds trust which, after all, is what legal leadership strives to achieve. Maximizing these necessary components is essential for securing your firm's leadership role.

Bring your FIRM into Focus with PROKELLSEO, an experienced search engine optimization resource, and it's talented web site designers.

PROKELLSEO

Dear Valued Clients and Friends:

Here's to Spring and to my newest issue of *International Review* – an issue that I hope contains a balanced blend of thoughtful insight and practical contributions on law firm strategy and leadership.

Today, I believe we face a time when doing things fundamentally differently will ultimately trump doing the same things more efficiently. To succeed firms will need to focus increasingly more attention on how they might differentiate themselves in ways that client value. *My Six Elements of Meaningful Differentiation* is intended to provoke your thinking on this important topic. And you may note that while this may not be the most comprehensive piece on this subject I have deliberately not identified costs as a significant differentiator. For those who engage in predatory pricing, you might win the fee-cutting race . . . right to the bottom - but the real strategic issue is whether you will have a sustainable practice after you get there.

I am delighted to include an article that *American Lawyer* magazine agreed to publish an excerpt from earlier this year. *Malignant Leadership* reflects upon some lessons from the Dewey catastrophe and has probably garnered more responses from readers than almost any other article that I've written over the years.

Be sure to have a look at the results of my latest research into the dynamics of being a managing partner as conveyed in *Inside The Corridors of Firm Leadership*. This expose represents the responses from firm leaders of AmLaw 100, AmLaw 200 and other firms on everything from their job descriptions and how they spend their time to their leadership priorities and intentions for when they leave office.

Finally, I am observing a trend wherein more firms are starting to hit the Reset Button on their practice group management efforts and trying to start fresh. *Practice Group Leadership 2.0* is my attempt to prescribe some fundamental structural recommendations for what firms absolutely must do to make their practice management efforts successful.

I am, to the best of my knowledge, the only law firm advisor to publish a regular magazine for firm leaders. It may be indicative of my old-school values, but I still enjoy reading real books and magazines rather than some electronic facsimile. So I sincerely hope that you find some practical ideas, tips and techniques here that you can put to use immediately. Please send me your observations, critiques, comments and suggestions with respect to any of these articles.

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SIZE ELEMENTS OF MEANINGFUL DIFFERENTIATION



At a time when the demand for legal services is on a decline, the root of all successful strategy lies in being differentiated. Your firm and your individual practice groups must all work at making themselves distinctive and intrinsically more valuable to clients.

The curious irony is that most law firms go to great lengths to look like every other law firm. In fact the common response that you are most likely to elicit from the management of any firm when first presenting a new concept, idea, or potential market opportunity is: “Can you please give us a list of the other firms which are doing this?”

Competitive advantage means getting out in front, by focusing on some area in which you can be distinctive, meaningful and unbeatable. But, rarely have I ever seen information on any law firm’s web site that identifies: “What Differentiates Our Firm.” By definition, if you are doing what everyone else is, you don’t have any advantage. To test this thesis, let’s think for a minute. How different is what you are doing right now — the strategies that you are employing now — from the four or five key competitors in your marketplace?

In strategy sessions with groups of partners I have often posed a simple question to the entire group — a question I believe is reflective of the primary concern that occupies most prospective clients’ minds. It goes like this: “Tell me please — as a prospective client, why should I choose you (your practice group / your firm); what makes you distinctive and what added-value can you bring to my business matters — **that I cannot get anywhere else?**”

The answers that I usually elicit make reference to the firm’s long revered history, the firm size and perhaps the geographic spread of offices, the diversity, community involvement, the firm’s ability to be responsive and cost-effective, and so forth. All very interesting answers; but all less than compelling if you are the prospective client — largely because it is the same thing that you are likely to hear from every good law firm these days . . . we are different in the same ways everyone else is!

The good news is that when you look at differentiation, starting from a practice group perspective, many of your groups have something meaningful to offer. The not-so-good news is that much of it is, either hidden, understated, or (believe it or not) totally unrecognizable from partner to partner within the same practice group. In other words, whenever I have discussed this at length with the members of a particular group, I continue to be amazed at how some partner may be doing something incredibly differentiating, that the other partners in the very same group are totally unaware of.

So, where do you start?

What follows are a number of the elements, in no particular order of importance, that from in-depth discussions with clients, form the basis for meaningful differentiation. No one particular component will provide you a silver bullet. Your practice group’s meaningful differentiation (and ultimately your firm’s differentiation) comes from recognizing that what may make you truly distinctive and valuable emanates from having something to offer across a number of these areas.

1. Exceptional Service

Key Question: Please identify what it is that you do in the way in which you, as a group, consistently serve your clients that is perceived as rare, valuable and different from what other competitive firms might offer?



Check out a significant firm's web site and you will see how they promote their use of technology, their hiring practices, even their philosophy and principles but aside from the occasional listing of clients served, there is little of any substance to how the firm will work with you as a client. Going even further, some firms call it their client service principles while others label it their 'Client Service Pledge' but irrespective of the specific title, much of it is less than impactful.

Too many firms rely on creatively worded prose to appeal to prospects and clients. Here is but one example from a global firm:

We pride ourselves on our creative, 'smart' way of thinking - whether it's in how we analyze instructions and set up our legal teams, how we find the optimal solutions to complex business issues, how we approach billing, how we service our clients' on-going needs and how we work with rather than just for them. No matter how challenging or complex the mandate, we are not satisfied until we have delivered the highest quality, most commercially effective legal advice.

Here is yet another example, from a firm setting out their 'Guiding Principles':

We are committed to providing consistently world-class legal services, as nothing less will suffice for the challenging matters our clients bring to us. Clients do not come to us with easy questions, simple cases, or routine transactions. Clients come to us because of our well-earned reputation for outstanding service delivered promptly. We pride ourselves on finding innovative solutions to complex problems that require us to draw on our full range of expertise and experience.

The only problem is that after reading these two client service principles, while they seem to espouse all of the right words, you could not distinguish any one firm from any of the others that champion similar sentiments. Other firms make veiled attempts to draft and display what they must think are compelling arguments to retain their services:

We understand that delivering the highest level of service means keeping in touch with, and being accessible to, our clients on a timely basis. Where appropriate, we use a senior lawyer/junior lawyer reporting relationship to ensure clients are able to reach a lawyer informed about their particular case and/or needs.

“Every research study conducted with clients shows that providing 'Exceptional Service' is one of the most powerful differentiators. The difficulty comes where it must be consistently delivered by every professional in your practice group – or firm.”

These firms all love to couch their prose in terms like “we will make every effort,” “where appropriate,” “if you wish,” “as quickly as possible,” and “we will endeavor to.”

Every research study conducted with clients shows that providing 'Exceptional Service' is one of the most powerful differentiators. The difficulty comes where it must be *consistently* delivered by every professional in your practice group – or firm. In other words, most published client service standards are either hollow rhetoric or aspirational dreams, but they don't become meaningful to clients unless and until you are prepared to make them absolutely **non-negotiable, minimum standards of performance**. And therein lies the great hurdle. It means that every attorney in the group must conduct themselves according to some governing standards and can no longer be autonomous – practicing as they see fit. And of course, where this all falls apart is where lawyers are allowed to claim (and get away with) the assertion that their “clients are different!”

That said, at a time when many firms preach “providing seamless service” there are some progressive practice groups that in striving for excellence, have differentiated themselves by setting out in writing and delivering to their clients, very hard and fast service standards, like the following:

- We will determine with you, a 'Preferred Communications Protocol' and set out under what circumstances you would prefer a face-to-face meeting, versus a telephone conversation, e-mail or other mode of communication. That written protocol, will then be communicated to every professional and support staff member serving your organization.
- We invite your in-house counsel to convene one special session semi-annually at our expense (airfare / hotel included) for the purpose of briefing

us on matters related to better understanding your current business goals and new developments in your industry.

- We will have our IT professionals work directly with your IT professionals to determine how technology can be employed to our mutual advantage. We will institute electronic data links to provide for communications, support, project management, work product retrieval, and on-line research.
- We will, at no cost, debrief at the conclusion of every major case or matter, over \$100K in fees – with those lawyers and corporate executives deemed appropriate, in order to consider the future legal impacts of current business practices; to determine ways to avoid future litigation and liability; and to evaluate opportunities to accelerate the closing of transactions or resolution/avoidance of conflict matters.

These practice groups have delivered these written standards to their clients as a means of both having their clients hold them accountable and to constantly remind their group members of what is expected of everyone.

2. Special Alliances / Contacts / Relationships

Key Question: *Do you, as a group, have any favored relationships, contacts or alliances that confer a market advantage in that they would be perceived by prospects / clients as special and noteworthy?*

When contemplating this question groups will often mention some attorney who was a former General Counsel, or served as the local Bar President, or reference their firm's membership in some international law firm alliance. In certain instances, any of these might have some interest to clients, but there are not likely to truly differentiate you. There are some other areas that you might consider.

While it used to be fairly common within the profession, there are still some law firms that enjoy the loyalty of a major corporate client. In one particular instance, a premier, super-regional utility company uses one law firm for the vast majority of their legal work. That relationship has allowed the law firm to be exposed to new areas of practice (climate change, solar and bio-mass technology) before many of their competitors and has been influential in attracting other prospective clients to use the firm's services. Do you serve a valued, loyal client that is widely perceived to be among the industry leaders and thereby reflects prestige on your firm?

There are examples where firms have achieved recognition by being acknowledged in a unique way by their peers. For example the Association of Corporate Counsel (Value Challenge initiative) have an internal program whereby they recognize those firms, who by way of nominations, have made great strides in controlling costs and are therefore held out as 'Value Champions.' Being identified by the ACC in such a manner can be a distinguishing credential.

Firms have achieved an advantage from having the endorsement of some critical governmental body, perhaps an academic guru; or have developed close relationships through representing a particular trade organization. Clifford Chance advises regulators around the globe on the regulation of Islamic compliant derivative structures and benefits from being counsel to the International Swaps and Derivatives Association in relation to drafting the ISDA/IIFM Tahawwut Master Agreement launched in March 2010.

Some law firms have pursued obtaining ISO 9000 certification – (or the international standard LAW 9000) a specialized quality management standard for legal practices. Concurrently, those corporations who have obtained their ISO 9000 designation are required to, wherever possible, use the services of other ISO certified

vendors, thus conferring a strategic advantage on any firms who have obtained their credentials.

3. Distinctive Expertise / Service Offering

Key Question: *Do you offer any particular expertise or service to your clients that is truly distinctive, valuable and not readily available from most other competitive firms?*

These ten words appear in some form on a good number, if not the majority, of AmLaw 100 firm websites:

Known as the firm of choice for highly complex matters.

Meanwhile, these days it is difficult to find any firm, who does NOT somewhere on their web site expound on their listings in Super Lawyers, Leading Lawyers Network, Best Lawyers in America, Martindale-Hubbell, or their prestigious fellows and various peer review ratings. A number of firms include quotes taken from Chambers, the Legal 500 or some other ranking:

This pre-eminent practice is highly regarded for its extensive international footprint and its presence on complex cross-border matters.

These are all wonderful-sounding accolades, but hardly a convincing differentiator if every other competitor claims to have the same or similar credentials.

One prominent firm even mentions their partnership philosophy:

As of October 1, 2012, the firm had 193 partners. More than one-third of our partners have served in two or more of the firm's offices, and 88 partners are currently based in our offices outside the United States. The firm remains dedicated to strengthening our practice primarily through internal growth – approximately 90% of our current partners joined the firm as associates.

And again, this may be very interesting in terms of what is happening within the profession, but

what does this really mean and where is the tangible benefit for clients? One also wonders how crowing about your Legal Marketing Association awards or your Silver Inkwell website design resonates favorably with clients.

So, with everybody professing to have the same expertise, how do you stand out in a crowded marketplace? Here are a few notable examples of firms that have differentiated their expertise and service offerings:

• **Distinctive Expertise:**

In a survey of more than 240 general counsel and in-house chief litigation officers and for the second consecutive time, Skadden was named a member of the "Fearsome Foursome" — the four elite law firm litigation practices that "corporate counsel would most like to have by their side in head-to-head competition.

• **Industry Niche:**

Balch & Bingham represents virtually all aspects of the solid waste industry. Our clients include public and private owners and operators of landfills, transfer stations, recycling facilities, waste to energy facilities, land-fill gas to energy facilities and composting facilities.

• **Online Service:**

The Clifford Chance Global M&A Toolkit comprises a growing collection of web-based transaction tools and in-depth analysis of the most important market and regulatory developments in M&A regimes across the globe. It aims to bring clarity to the increasingly complex world of cross-border M&A and features special access to our leading cross-border M&A databases, informative videos, and access to a library of specialist publications covering the key issues in global M&A.

• **Ancillary Service:**

Procopio Cory's incubator program, LaunchPad, assists entrepreneurs and start-ups in the formation, early funding, and growth of their companies. The incubator, housed in Procopio's new Del Mar Heights office, provide a basic legal start-up package, collaborative workspace, specialized mentoring, counseling

and contacts for entrepreneurs to grow their company and secure funding so they can take their endeavor to the next level within six to twelve months.

• **Emergency Management Team:**

Federal regulators now recover \$17 for every \$1 they invest in fighting health care fraud and abuse. So, it's no wonder that this industry is at the forefront of U.S. enforcement activity. Many providers live in fear that one day the FBI, OIG, or other investigators will show up at their door unannounced, demanding access to patient information and computer records, while insisting on immediately interviewing key employees. When an emergency situation arises, having the right legal and publicity response immediately available is crucial to protecting your people, your reputation, and your bottom line. We've got you covered. Our Health Law Emergency Management Team combines our health care compliance knowledge with the media crisis management expertise of Padilla Speer Beardsley, a leading communications firm based in Minneapolis. Whenever trouble strikes, an expert crisis management team will protect you from a legal standpoint, and prepare you to convey your situation to the media, shareholders, employees, and/or government officials in the most favorable light.*

The larger any market, the more specialization that takes place and the more specialized a firm must become if it is going to prosper. For many, to be highly profitable today, you have to narrow your focus in order to stand for something in the prospective client's mind. The firm that captures a lead in a new industry sector or legal services niche early can achieve a big advantage as that sector matures.

One other related approach that a few firms have been using to differentiate themselves is by way of the concept of "thought leadership".

Skadden tells their clients and prospects: We are pleased to provide our annual collection of commentaries (Skadden Insights) on the critical legal issues our clients may face in the year ahead. Many of these issues relate to the responses by governments, markets

and business entities to the economic conditions and market instability of the past several years.

Latham offers a 'Knowledge Library' which includes a number of Blogs, a bog of Jargon® for the financial community, various events, podcasts and webcasts, and some 2000 articles and briefings that you can sort through by industry, practice or geography.

4. 'Proprietary' Processes / Software

Key Question: *Do you provide your clients with any tangible and proprietary process, checklist, template, procedure or software program for effectively and efficiently handling their legal matters?*

When one thinks of what might be described as a proprietary process, perhaps the best example might be 'the poison pill' — invented in 1982 by famed corporate lawyer Martin Lipton of Wachtell Lipton, and a practice that came into widespread use after the Delaware Supreme Court affirmed its legality in a landmark 1985 case. Literally thousands of companies have adopted poison pill plans in the years since then, either as a general policy or in response to takeover threats.

The benefits to the client of using the poison pill soon became obvious and "benefits to the client" are (once again) the key differentiating factor. For example, one AmLaw 100 firm promotes their award-winning technologically advanced system:

In order to take maximum advantage of the collective experience of our lawyers, we have developed a number of important knowledge management systems and tools. These systems improve our efficiency. AnswerBase is our award-winning enterprise search engine. The search engine enables us to access the firm's best and most pertinent practice materials, internal research, attorney experience, client and matter information and other important firm information. AnswerBase has won a number of awards, including an award from Law Technology News ("Best Collaboration in Implementing Enterprise Search") and Citytech Global Tech

Leaders Top 100 (“Law Firm Project of the Year”).

That is the total of the information available and leaves us only to ponder – what it means to me as a client?

Alternatively, Baker Donelson sets out very clearly the benefits from their offering:

Baker Donelson’s BakerConnect Online Client Services are collaborative, web-based tools that allow our clients to manage corporate and litigation matters more efficiently through real-time information. BakerCorp Connect and BakerLit Connect and related online services deliver cutting-edge legal support to our clients, reducing costs and improving results through innovative knowledge management. Through an extranet site, clients can choose from an extensive menu of online services, store and share documents, communicate with our legal team members and view current industry data. Baker Donelson develops and maintains all tools and content based on the individual client’s needs, in addition to providing system training and support, and is responsible for software updates. All services are secure and access-controlled by the client, and are accessible from all electronic devices, including mobile devices. No client investment is required; all that is needed to access these tools is access to the Internet.

Another great example of a differentiating proprietary process is Seyfarth Shaw’s Lean Legal system.

At Seyfarth, we are continuously looking for better ways to meet our clients’ needs for value and efficiency, while maintaining high quality with our legal services. Based on that goal, we have become the only large law firm to build a distinctive client service model—called SeyfarthLean—that combines the core principles of Lean Six Sigma with robust technology, knowledge management, process management techniques, alternative fee structures and practical tools. The broad, systemic use of such

“I can just hear some prospective clients thinking to themselves . . . ‘that all sounds nice but, as evidenced by what?’ We need to remember that it is not what we assert that helps differentiate us – What helps differentiate us is what we can prove.”

a model across multiple practice areas is unique to the legal profession and reflects a fundamentally different approach to delivering legal services. This approach manifests itself with tangible processes and special tools, as well as the more intangible and fundamentally different way of thinking about how to deliver legal services.

5. Cumulative Experience

Key Question: *When you think of your group’s total experience, what tangible, statistical, factual compilation of data would accurately capture and reflect what you have accomplished?*

In discussions with members of practice groups, as we explore what may differentiate them by way of their vast experience, I will hear things like:

- We have relationships with many of the leading players in the health care industry.
- Our team has extensive technology transfer and licensing experience.
- We have served numerous Fortune 500 companies.

I can just hear some prospective clients thinking to themselves . . . “that all sounds nice but, as evidenced by what?”

The compilation of who you are and/or what you, as a group, have accomplished (think: specific number of Fortune 500 companies represented)

can be very powerfully presented if made tangible, quantifiable, and proffered in a statistical framework.

We need to remember that it is not what we assert that helps differentiate us – “Our group’s high level of industry experience is consistently recognized as among the best.” What helps differentiate us is what we can prove – “During the past 5 years we have had the honor of representing six of the ten largest hospitals in our State.”

In fact, some firms do a good job of listing their “Representative Work” or “Key Representations” by practice or industry area with some substantive specifics:

Distressed assets – *We recently represented MAHLE GmbH, one of Europe’s largest automotive parts manufacturers, in a USD156 million acquisition of distressed assets in 13 different jurisdictions from the engine parts group of Dana Corporation. The transaction involved the shutdown, cleanup and sale of underperforming manufacturing locations and the strategic consolidation of production capabilities within the United States and Latin America. (Baker & McKenzie)*

The point here, is that any firm can do a decent job of differentiating themselves if they begin to look at their cumulative experience over some period of time. In other words, if your “individual” key representations aren’t that significant (as compared to the example above), then perhaps presenting the total value of all the distressed asset sales that your group has handled over the past five years – now looks like a significant number!

Over the past five years, we have participated in more than 250 public offerings and Rule 144A placements raising over \$100 billion. In the past five years, we have served as company counsel in more than 800 venture financings raising over \$12 billion. We are counsel to more venture-backed companies in the eastern half of the U.S. than any other law firm. (Wilmer Hale)

Since 2004, we have represented life sciences clients in more than 100 venture capital financings valued in total at over \$1 billion and completed more than 100 public finance and M&A transactions in the life sciences sector. (Morrison Foerster)

The interesting aspect of cumulative experience as a differentiator is that it takes some work to go back and examine your group's client matters and begin to statistically compile the results and so – few groups ever bother to do it. But those that do can present some impressive data for prospective clients to consider. As one managing partner expressed it to me:

We kept track of our deals in Los Angeles, to the point where it looked like we had bought / sold more than half the prestige properties downtown – and we had! Every time we closed a prestige deal we gave a custom commissioned framed picture to the client as a closing gift. And kept one for ourselves to put in the hall way for our department. Every time a client, or agent / broker / title officer / lender / prospect / opposing counsel . . . anybody . . . walked through our space they passed trophy after trophy. We weren't competing to be in a field, we were confirming that we were already there. Boy did that work!

6. Social Evidence

Key Question: *What is it that satisfied clients are saying about you that they would be prepared to codify and allow you to visibly disclose to others?*

There is an old adage that still rings true – “You are known by the company you keep.” People follow the lead of others – especially those who are similar to them and/or those whom they respect.

I remember reading a study about how a group of researchers went door-to-door soliciting donations for a charitable cause. On their second attempt they displayed a list of local residents who had already donated to the cause. As time went by, the researchers found that the longer the donor list became the more likely those solicited would be to donate as well. This supports what most sales

professionals already know. Testimonials or endorsements from satisfied clients work! And they are especially powerful when the satisfied client and the prospective client share similar circumstances – location, industry, status, and so forth.

While many firms will list their “Representative Clients” and many of those lists are very impressive, the typical sophisticated prospect knows full well that having a particular company name on the website does not guarantee that the firm did groundbreaking work for that company. They may in fact be one of just a number of law firms across the country that purports to represent this particular Fortune 500 entity, when in fact most of the work done is pretty routine in nature.

One prominent New York-based firm makes this claim:

Our clients, many of them industry and global leaders, rely on the exceptional, collaborative service we deliver through our 10 offices worldwide. Their success is our core focus. Following is a sampling of feedback from our clients about our work with them.

This is then followed by numerous quotes – BUT without ever mentioning a single client by name – so we are expected to take these at face value.

Alternatively Reinhart Boerner posts over 20 impressive client testimonials on their website, mainly from company Chairman, presidents and CEOs, complete with pictures of the originators of the commentary:

When looking to further solidify Badger Meter's dominance in the meter industry through an acquisition, we knew the M&A attorneys at Reinhart would be the right choice to help us get the deal done. They impressed me and my team with their responsiveness and diligence throughout the entire process. Reinhart's negotiating acumen and attention to detail were key to helping us acquire additional technologies that will give us the potential to increase our sales, production, and workforce.

Rich Meeusen, Chairman, President & CEO - Badger Meter, Inc.

Gibson Dunn is another firm that features selected testimonials on their site:

Gibson, Dunn & Crutcher is staffed with highly competent lawyers who are understanding of Evergreen's objectives and who work hand in hand with me to develop strategies to meet my company's objectives, while being sensitive to legal fees. Litigators in the firm's New York office were extremely helpful in developing a clever and unique approach to achieve success for the Company in several complicated securities matters vital to the Company's future success.

Bill Laughlin, VP, GC, & Corporate Secretary
- Evergreen Energy Inc.

CONCLUSION

Perhaps it helps to know, but should not provide justification, that those in the legal profession are not alone in this struggle to adequately differentiate themselves. Deloitte Consulting's CEO, leader of the \$7 billion in revenues professional services firm, when asked “what do you view as Deloitte's main differentiators from your competitors?” responded in a recent interview:

We are not affirmed or defined by comparing ourselves to someone else. There are a lot of firms out there that are wonderful at what they do, and that is wonderful for them. We are unique. We produce insights that produce results. We are a firm that has world-class insight on various topics, whether it's a large merger, transformation, a large human capital issue or finance . . . we have insights, but we also have the ability to take the insights and help our clients execute on them. This is a unique capability that we have.

All of this should provoke your firm to really search what it is, and recognize what it is not; what it can do, and what remains aspirational and not a true definition today of what it wants to be. Cut out the aspirational delusion. Build on the strength of what you are, in accurately defining your advantages. Then get to work laying the bricks for all the other things you want to be, the things you should be.



MALIGNANT LEADERSHIP

Even though Brobeck failed in 2003 and firms across the country all had the opportunity to look closely at what was happening and why, for the most part, it is clear that they did not (and Brobeck isn't over yet; that case is still open after nine years). Rather, firms distanced themselves by quickly concluding that they were sufficiently different such that it couldn't happen to them. Then came more failures, and the bankruptcy disaster for partners with Thelen, Heller, Coudert, Howrey and Dewey. The significant difference with Howrey and Dewey from the other four open law firm bankruptcies is that we see the rumblings, for the first time, of holding leadership accountable for their misbehaviors.

Over the past few years a number of high-flying, confident, talented and ambitious leadership stars caused their firms to flame-out resulting in irreparable damage to those who were their partners. Why were their errors, so obvious later to various observers and commentators, not spotted or challenged by those of their colleagues who had a responsibility to oversee their actions? What went wrong and what are the lessons to be learned?

Some firms become dysfunctional when certain governance processes are absent. I believe that a major cause of the misbehavior, that we've seen, happens when entire boards / executive committees can and do (perhaps unconsciously) collude to deny, overlook or "work around" crucial, acute and chronic firm issues. In other words, it happens when good people do nothing! There is an absence of checks and balances. Power is centralized and those monitoring authority and responsibility have either been silenced or choose to operate in a mode of selective deafness. So when the board is benign . . . the leadership becomes "malignant."

RECOGNIZING THE MALIGNANT LEADER

Looking closely at the misbehavior of those who have driven their firms off a cliff, one can observe a very similar catalogue of themes. Ma-

lignant leaders initially perform, and perform very well; but ultimately manipulate, mistreat and undermine their colleagues and engage in a number of destructive behaviors; such as:

- exhibiting a powerful desire for heroic recognition and high visibility (leaders whose elevators are stuck at the ego floor);
- deliberately providing colleagues with grand aspirations and portraying themselves as having the answers (insatiable ambition), all ultimately to enhance the leader's excessive authority and power;
- misleading with purposeful fabrication and misdiagnosing situations and issues (often relying on outdated or unproven strategies and tactics);
- stifling criticism such that fellow partners are oriented (usually through authoritarian processes – eliminating anyone who might challenge their decisions) to comply with rather than question the leader's actions;
- ignoring negative feedback and failure with a tendency to continue a failing course of action regardless of the consequences; and
- declining to nurture any possible successors and otherwise clinging to power (putting personal interests ahead of firm interests).

It can take some time to realize that some firm leader is on a path to disaster. This is particularly the case when a malignant leader has had a stellar career where everything they touch seems

to transform itself into a resounding success. But, thankfully, there are steps that can be taken to prevent an unfortunate situation from unfolding.

I. FIRM GOVERNANCE OPTIONS

Firms have the prerogative of setting policy options and initiating actions that can attempt to restrict possible misbehavior and preclude or limit the ravages of malignant leadership. While this list is not exhaustive, it does present a number of options for consideration:

■ Effective Leadership Selection Processes

The normal leadership selection process usually starts with identifying a necessary set of abilities, competencies or skills deemed appropriate for the job. In short, the Board specifies what kind of leader it is looking for given the environment the firm is likely to be facing in the coming years and then seeks evidence that a candidate has those attributes – the ideal selection factors. But what of “rejection” factors? It is rare for firms to have a set of rejection factors that they actively look for. These may be things like impulsivity, arrogance or volatility. Leaders who later fail may have been selected because nobody chose to disqualify those prone to or susceptible to malignant behavior.

In any effective firm leadership selection process, the full partnership / shareholders should be consulted and asked to submit feedback, anonymously, on each of the candidates. This process should include safeguards to allow partners to provide candid feedback without any possibility of reprisal. I have personally been involved in working with the Boards of a couple of AmLaw 100 firms where in the course of selecting their next firm leader, candid partner feedback highlighted hidden behavioral issues that were not readily apparent. You need to

“**A** major cause of the misbehavior, that we’ve seen, happens when entire boards / executive committees can and do (perhaps unconsciously) collude to deny, overlook or ‘work around’ crucial, acute and chronic firm issues.”

hear from those who have seen the candidate under all sorts of situations; of threat and stress, where extremely difficult judgments had to be made, how they coped with triumph and disaster; what they confess as their aims and ambitions. If partners feel confident that their views will be kept confidential, they are more likely to honestly share their experiences dealing with each individual candidate.

Articulate and self-confident professionals can bluff their way through most any interview, if firms even bother to submit the candidate to any kind of formal selection interview process. They can charm, cajole and cover up a wide range of suspicious behaviors and especially when the interview questions are anything but rigorous. Alternatively, a few firms have subjected their candidates to an interview process wherein the candidate is presented with a number of very difficult but highly probable scenarios, from which to explain to the board precisely what action they would take or what specifically they might say to their partners. This step in the selection process helps identify how respondents are really likely to behave under real-world stress; how they would handle a moral dilemma or cope with a critical setback.

■ Psychological Evaluations

Personality influences leadership style and the

more latitude and discretion any firm leader has, the more their particular personality and style matter. Some like to make decisions by consensus, others by their own judgment. Some are communicative, others secretive. Some love divergent thinking while others are highly detail oriented. Meanwhile, leadership weaknesses (arrogance, acting aloof, micromanaging, etc.) are most apparent in situations where there are few constraints upon them.

There are now valid and useful psychometric instruments that can detect those leaders likely to derail. Most of us can manage our dysfunctional tendencies most of the time. But increasing stress, work overload, fatigue, high emotion and lack of social vigilance can increase the probability of malignant leadership. Furthermore, dysfunctional behavior is more likely to appear in situations that are ambiguous, where leaders have too little structure and too much discretion.

As part of the leadership selection process some firms have asked that the candidates engage in psychometric testing. The one that I favor and that we use in our First 100 Days masterclass was developed by Hogan Assessments. Hogan is a world-leader in the area of personality assessments and the one that we have used with new managing partners is an assessment of what is called their “Dark-side” personality. It measures the destructive behavior that can emerge when a leader is highly stressed, bored or simply not paying sufficient attention to their actions. What is most intriguing is that the dark side is simply what emerges when you use your strengths to an extreme. For example, arrogance is the flip side or “dark side” of confidence; melodrama the excess of charisma; volatility the extreme of energy, and excessive caution the excess of logic and analysis.

■ Term Limits

In my article entitled “Tenure Trap” (published in *American Lawyer* in April 2009), I outlined a recognizable progression of effectiveness in which any new firm leader transforms from their initial honeymoon period to a peak of creativity and innovation. Then, after about twelve years in office, most leader’s productivity and contribution tends to tire and wane. My research (92 responding firms) tells me that the average firm leader tenure in 2011 was 8.6 years – having grown from 7.4 years in 2004. But at the extreme there are many firm leaders who have served in excess of 15 years. Limiting the length of time any firm leader may serve in the role is probably beneficial, both to the firm and to the individual.

■ Regular 360 Degree Reviews

Confidential reviews of firm leaders, provided by way of input from those with whom they interact frequently (executive committee members, practice group leaders, office heads, and so forth) would go far toward giving those leaders some concrete feedback and a clear perspective on their strengths and shortcomings. My observation is that 360-degree feedback gets a good to excellent rating wherever it has been used. It is an ideal tool for providing personal development feedback. And from Liz Espin Stern, DC office MP at Baker & McKenzie I heard:

We have relied on 360 evaluations and surveys on various aspects of management decisions and strategic direction. These tools have consistently opened dialogue.

■ Mandatory Performance Appraisals

It is rather ironic that the only appraisal process that exists in most firms is about telling partners and associates how they

are doing, but there is no mechanism for upward appraisal. This issue is about accountability and transparency. Every firm leader needs to be self-aware and that comes from receiving a candid appraisal of their skills and talents. Malignant leaders overestimate their abilities and what they are truly capable of achieving.

“Most of us can manage our dysfunctional tendencies most of the time. But increasing stress, work overload, fatigue, high emotion and lack of social vigilance can increase the probability of malignant leadership.”

I suspect that most firm leaders are far more willing to submit to an annual physical examination than a rigorous performance review. That said, in an online LinkedIn discussion amongst firm leaders in August, numerous firm leaders from U.S., Australian and European firms weighed in on this subject; all explaining the various systems that exist in their firms by which to provide formal appraisals. Here’s what Chuck Adams, managing partner at 300-lawyer Adams and Reese had to say:

The Executive Committee annually evaluates and determines whether to renew the MP’s appointment. It appoints one of its members to conduct the evaluation/assessment of MP performance during which he or she will interview the firm’s senior non-lawyer managers, Practice Group Leaders, Office Partners in Charge and others involved in significant leadership roles

in the firm and will offer to accept input from any other partners who want to provide it. The EC discusses the results of that process and provides to the MP what it considers will be useful feedback to the MP. This might include performance, motivation, strategic direction, suggested use of time, etc,

Boards should review annually the performance of their firm leaders. A thorough review would flag potential problems relatively early, allowing the firm leader to learn from the previous year’s performance and assist in establishing clear expectations for the coming year. Firm leaders should advocate for such a process so that they can demonstrate to their partners that they view their performance seriously and are open-minded to receiving feedback on how they can become even more effective.

II. LEADER’S PROACTIVE MEASURES

Firm leaders who are reluctant to invite feedback, embrace constructive criticism and confront their mistakes are probably well on their way to malignant leadership. Alternatively there are specific actions that I have observed wise leaders initiate, including the following:

■ Promote A Feedback Culture

Why don’t firm leaders get the feedback they need? Typically they don’t build the kind of firm culture that results in deep dialogue about what’s working and what’s not. You need to raise your self-awareness by soliciting uncensored information and there are two basic ways to do that:

1. Informal Reality Checks – Ask for feedback.

If you are not getting feedback, then you don't really know what tone you are setting throughout the firm. The most successful leaders actively seek out constructive feedback. They make a point of investing time to get out of their offices and visit with partners on a regular basis to get a valid, ongoing sense of what people are thinking. They let it be known that they are open to receive critiques either of their ideas, their strategies, their actions, or their leadership style.

2. Formal Reality Checks – Devise a feedback instrument or process.

There is an old saying that goes, “since it is inevitable that you are going to be measured, why not take control and shape the stick by which that measurement is going to take place.” Here's how one firm leader phrased his particular initiative:

After I was elected as MP together with two fellow Board members, we started our firm's first annual feedback initiative. Two partners interview all our partners on the Board's collective performance and the individual performance of each member. In addition, key non-lawyer staff members were interviewed by these two partners. Based on these interviews, the two partners drafted a detailed report on the collective and individual performance. That report is shared with all the partners and discussed in a partners' meeting.

We've done this twice now and it worked extremely well because it gave us a clear and candid view on our performance and on the partners' views on the firm's strategic direction and other issues, some of which we weren't fully aware of, as not everyone speaks their mind. It helped us to set the agenda and prioritize for the next year and generally created an atmosphere of transparency and openness towards feedback from peers. We will definitely repeat this in the coming years with a different set of two partners

each year to stimulate involvement by as many partners as possible.

■ Host Regular Town-Hall Meetings

While I have seen a number of firm leaders instigate and conduct regular sessions with all partners, often by videoconference, allowing your partners to openly question any management initiative, not only provides for transparency and trust within the partnership, but also sets the tone for accountability throughout the firm. When any leader expects to be asked to explain the thinking behind some course of action, there is an increased likelihood that that same leader will be far more reflective and think far more deeply about any important decision they are considering.

■ Appoint A Consigliore

As an effective firm leader you need to place people around you who *tell you what they see*, not what they think you want to see—they're your mirrors and life-savers. Here is what one AmLaw managing partner told me that he did:

Any partner who had a question or challenge, was free to bring it up to my Consigliore partner – a senior, acknowledged for his embrace of the firm culture and values, someone whose judgment and fairness was well respected. Any partner had access to approach and in total confidence lay out his / her concerns, if they were for any reason concerned about doing it directly to my face. My promise to the partners was that there was no issue or subject too sensitive or too toxic, and no excuse for not getting it to me. My pledge was that whatever I was doing, would be halted instantly and I would carefully go through with the consigliere whether the issues and concerns were not being weighted fully enough, or if they were game

changing in their nature, before proceeding. It only happened twice during my years of service, but it was worth having for the effect it had on the trust in my decisions and elimination of any fear or concern of my being or becoming an arbitrary or arrogant leader.

■ Develop An External Advisory Board

A couple of firms have found it useful to form an advisory board comprised of outside business executives to offer the leadership their impartial advice. One notable Cleveland based firm launched their Advisory Board back in October 2009, comprised of the CEO of a manufacturing company, the former CEO of an investment bank and a former office managing partner at McKinsey specifically to meet with the firm Chair and managing partner on a quarterly basis and provide input into the firm's strategic initiatives.

CONCLUSION

With each step up the leadership ladder, firm leaders often discover fewer restraints, fewer performance reviews, and the power to make decisions unchallenged by anyone. Some firm leaders tend to view governance not as a wise system of checks and balances, but as a suffocating system of bureaucracy. Rules and processes, ever-watchful partners and other sensible constraints simply reduce the opportunities of the grown-ups to misbehave. The actions outlined here are not to inhibit but restrain; not to tie the hands of firm leaders but to make sure that they have sufficient discretion to make wise decisions. That is how firms ensure good governance.

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formal training?

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Inside The Corridors of Firm Lea

job description?



formal evaluation?

In November and December I distributed a survey containing over 30 questions to a group of some 300 law firm leaders. I received detailed written responses from the leaders of 98 firms divided into two, roughly equal groupings – those from Am Law 100 and 200 ranked firms and those from other firms of 100 attorneys and larger. I subsequently conducted one-on-one conversations with a number of the firm leaders who graciously responded. What follows is a summary of what I learned from my research and what those leaders told me.

TIME SPENT MANAGING

When asked how much of your total time do you dedicate to your role as firm leader, 43% of the AmLaw leaders occupy the position and serve “full-time,” declining slightly to 39% for other firms. What I heard from many serving less than full time was that while their leadership position really occupied about 80% of their attention, they still felt a need, enhanced since the economic debacle, to “keep their hand in the game serving a few clients.” That said, there is a bit of a trend among the AmLaw firms (about 14% of

them) toward having co-managing partners or one firm leader assisted by deputies that allow the incumbents to spend only half their time on management matters.

When asked, “compared with 5 years ago, how complex would you say the challenges are that law firm leaders face?” ironically it was a majority of the full-time leaders who responded: “Almost overwhelming at times” with most of the others acknowledging that things today are “more complex.”

When asked, “How is the whole notion of leadership regarded by most lawyers in your firm?” 49% of the AmLaw but only 31% of the other leaders all said – “critical to our future” with most remaining firms confirming that it was “important.” Meanwhile, 5% of the AmLaw firms and 19% of the others answered that leadership was regarded as “a necessary annoyance” in their firms.

Here is where one disconnect occurs. When I inquired, “how would you categorize your current job description?” not a single respondent among the AmLaw 100 firms, only 23% of the AmLaw 200 firm leaders and 28% of the other firm leaders claimed to have a formal written job description. The vast majority classified their job description as “informal and understood” with a few respondents bemoaning to me both in written form and later in supplementary comments that their partners “really

don’t understand what I do.”

While asking about a formal job description might seem a touch bureaucratic, I learned some years back that few attorneys in any firm truly appreciate the magnitude of this job. In fact, some years back I participated in conducting a thorough activity analysis that resulted in the codification of a 53 bullet-point ‘Responsibilities and Essential Functions’ document. When this five-page listing was shared with the partners, during the process of soliciting nominations for a full-time managing director, a couple of alleged candidates declined putting their names forward. I concluded that these attorneys now understood that this role was not the position of semi-retirement that they may have first suspected.

Not to belabor this particular issue but when I inquired of a colleague, Dr. David Dotlich (named one of the top 50 CEO coaches and author of nine business bestsellers) whether CEOs of Fortune 1000 companies have a written job description, David confirmed “most CEOs of large public companies certainly do have a formal job description. In fact, now SEC regulations demand that a formal succession plan is required of the Board. This has led to much more discipline in the creation of formal job descriptions. The trend is definitely in the direction of rigor and formal descriptions because Boards are afraid of shareholder litigation for lack of oversight.”


 Leadership

criteria for successor?

One cross-correlation that followed from this question of job descriptions was a question asking “is there any understanding covering your role and compensation when you relinquish your firm leadership responsibilities?” Those that had written job descriptions usually also had a written agreement covering their compensation for a few years after they stepped down. The remainder either claimed that there “is precedent based on how successors have been treated” (15%) or more commonly, confessed that there is “no formal agreement, but that they trusted their partners to be fair” – 61% for AmLaw firms and 49% for the other leaders.

THE DYNAMICS OF THE JOB

My research shows that today’s typical law firm leader has served for about 9.8 years and has a 4-year term, which in 82% of the cases is renewable. The converse is that 18% have term limits – usually varying in length from 6 years (2 terms of 3 years) to 15 years (3 terms of 5 years). I did hear from 12 incumbents who have thus far served over 15 years and another two who had served over 30 years in the role.

The firm leader (80% for AmLaw firms and 84% for other firms) usually reports to an “elected” Executive Committee/Board comprised of an average of 10 partners for AmLaw firms and 7 partners for smaller firms. The other respondents

stated they have “very broad discretion” with a few describing how they report to a group within the firm, but one that is not formally elected.

My survey queried leaders on “what they liked doing the most” and then “what they found most time-consuming” which produced some similar responses across the board.

Among the AmLaw 100 respondents, the top three activities were: determining strategic direction and implementation; having responsibility for the overall firm performance; and visiting with key clients. When then asked what they find the most time-consuming, these same leaders selected: lawyer counseling and thorny people issues; day-to-day administrative responsibilities; and having responsibility for the overall firm performance.

With the AmLaw 200 firms, their top three were: determining strategic direction and implementation (same choice for most favored activity); but then: initiating change necessary to ensure long-term success; and traveling to spend time with partners in the various offices. What they then found most time-consuming was similar – day-to-day administrative responsibilities; lawyer counseling and thorny people issues; and traveling to spend time with partners in various offices.

As one Firm Chair expressed it, “leadership is a

contact sport. Leaders of large firms have always been on the road; this is not a new development. But now the stakes are higher. With so many offices and markets demanding attention, it becomes more challenging to check the pulse of the partners, to gauge the effectiveness of local office leaders, and to know when to intervene.”

For the other firms responding to this survey, the top three were: determining strategic direction and implementation; having responsibility for the overall firm performance; and initiating change necessary to ensure long-term success – while those determined to be most time-consuming were exactly the same as the AmLaw 100 leaders.

What we see here among firms of all sizes is that another disconnect occurs between what firm leaders like doing and what consumes their time. To be specific, one could conclude that while strategic direction is seen as a priority by all firm leaders it was not something that many find the time for – given being consumed with administrative minutia and thorny people issues.

On a similar note, I was interested in hearing what these respondents thought the “key hurdles were to exercising leadership in their firms.” The top three for all firms participating and by a wide margin were: reluctance to change cited by 86% of firm leaders; some of the lawyer personalities

(45%) and complacency (41%).

And, while we have all heard the old adage that “it’s lonely at the top,” when asked how they would rate the feelings of isolation that they experience, 60% of the AmLaw 100 leaders claimed that they were “not at all lonely.” But, the same feelings did not hold true for the AmLaw 200 leaders (36% responded in the same way) or the other firm leaders where 27% were not at all lonely. These numbers would indicate, ironically to some of us, that the smaller the firm the more leaders are inclined to feel isolation.

HOW THE CURRENT INCUMBENT GOT THE JOB

I asked these leaders how many candidates there were for the position when they obtained the job. In a majority of cases (56% for AmLaw firms and 58% for the others) the current incumbent was the only candidate. My subsequent conversations concluded that many of them concur with Keith Wetmore, the recently retired Chair of Morrison & Foerster who said, “We have no competing elections. We have extensive consultation resulting in a consensus choice.”

When I inquired as to whether there was any formal interviewing process incorporated into the selection process, about a third (32%) of all firms told me that there was. Interestingly, there was absolutely no correlation between those subjected to formal interviews and those being the only candidate, or those having job descriptions or even those serving full-time.

TRAINING AND GUIDANCE PROVIDED

I was curious to learn how the current chair or managing partner received guidance or training to prepare them for assuming their top leadership position and posed a number of questions on this subject.

I started with asking respondents to reflect back on when they first took the job, and tell me “what

was of greatest concern to you?” Consistently, the top three responses were: satisfying my partner’s expectations, having the strengths and competencies necessary to do a good job; and making a meaningful impact on the fortunes of the firm.

Consistent with leaders being concerned about their strengths and competencies, I asked about the guidance provided. Only 9% of the AmLaw 100 firms reported receiving counsel from the previous firm leader with 56% claiming that it was “pretty much a sink-or-swim proposition. Meanwhile, only 38% claimed that having served on the firm’s executive committee/board “was helpful” in preparing them and only 15% professed to have been “pretty much prepared for everything I encountered.” In fact, the only correlation to feeling totally prepared was “having served as a firm leader previously” or “having external management/leadership experience.” Ironically, having served as deputy managing partner, an office managing partner, or as a practice or industry group leader seemed to have minimal value in preparing one for taking on the responsibility of being a firm leader.

With the AmLaw 200 and other firms, the results were slightly different in that about 40% reported receiving guidance from the previous firm leader – but unfortunately, it didn’t seem to help them feeling any better prepared. Here the correlation was even stronger between “having served as a firm leader previously” and “being prepared for everything I encountered.”

So why doesn’t the predecessor’s guidance have any impact? It makes one wonder whether firms have any defined internal process whereby a thorough debriefing occurs between the departing leader and the successor – or whether it is just left to happenstance. In other words, is there any effort expended in having the two develop a first 100 days written plan for the launching of the new leader’s initiatives? Is there any in-depth discussion concerning short-term opportunities that are ripe for harvesting by the new leader looking to make a quick, positive impression on the partnership?

Or, heaven forbid, is the process simply one of the departing leader telling the incumbent to “call me if you need me.” (Could it have occurred to some departing leaders that the worse the new one performs, the better the old one looks?)

I also inquired about “how long the transition period was between when your predecessor formally stepped down and when you actually took the reins?” Whether it happened immediately (34%) at one extreme, or took longer than three months (26%) at the other, 73% felt that the transition period was “just right” – except that once again, there was absolutely NO correlation between how long you had to prepare and how prepared you actually felt you were! In fact, numerous respondents told me about how they had “shadowed” the current managing partner for many months, or how they had served in numerous roles and committees throughout the firm, but when it came to their preparedness, admitted that, “there were a number of things that they would have done differently” or that they “simply had no training and were not well prepared.”

One managing partner put it succinctly when he stated, “You really can’t understand this position until you’re in it.”

PERFORMANCE EVALUATION

I asked leaders “how they would categorize the way in which their performance is evaluated?” In ONLY 8% of the responses received from AmLaw 100 firms (27% for AmLaw 200 firms and 13% for the others) did I hear that a firm indeed had a formal, annual written evaluation process in place. For 24% of firm leaders I heard “there is no real evaluation of my performance” and 8% told me that they don’t believe they need any evaluation of their performance. For the remainder, any evaluation “comes from the Board in an informal, ongoing manner.”

With that as a backdrop I inquired as to whether firm leaders received compensation bonuses and learned that 42% of AmLaw 100 firms, 50% of AmLaw 200 firms and 46% of the other firms

provide bonuses – often based on both individual and firm performance.

Now I will leave it to you to determine if you can reconcile these two sets of statistics.

LEADERSHIP SUCCESSION

To conclude, I asked what “one reason triggers a firm leader to begin thinking about stepping down?” What I heard most often, irrespective of firm size – is when “enthusiasm is dwindling” (31%) followed by “the job now needs someone with different talents” (24%).

I then asked whether there was any process in place for selecting the next firm leader and solicited answers that were all over the map. The most common response (43%) was some variation on “simply accept nominations from the partnership” – perhaps through an executive or nominating process, whereby a succession committee interviews partners to develop a slate of candidates. I also heard from firms who told me about how they conducted a series of internal meetings in search of a consensus candidate to one firm who informed me of how every partner’s name appears on a ballot.

Meanwhile, 17% of the current firm leaders, again consistent in responses from firms of all sizes, claim that they “pick and nurture the lawyer who will be my successor” while the remainder admit that they have no precedent for how they will approach the selection process. One firm leader expressed the strong view that “one of the challenges inherent in having any current leader pick and nurture their successor is the natural human instinct to want to select someone just like myself – which may not be what the firm needs at this point in time.”

On a related note, I asked whether there were any specific qualifications required to be the next chair or managing partner. An astonishing 75% of AmLaw 100 firms declared that there was “nothing specifically defined (which dropped to 59% for AmLaw 200 and 78% for other firms). A few spoke of

“*I* t makes one wonder whether firms have any defined internal process whereby a thorough debriefing occurs between the departing leader and the successor – or whether it is just left to happenstance.”

wanting previous management experience while the remainder made reference to various factors like unselfishness, compassion, temperament, vision, trust, visibility within the firm and so forth.

This is a far cry from one recent experience wherein 450 partners, by way of a firm-wide survey, identified from a list of 53 leadership attributes, their top 12 – the ones that they collectively felt would be most important for any candidate to demonstrate as the new firm leader. In other words, where we need this firm leader to take us is obviously different from the last; the world has changed and so the skills we need from our new leader are very different.

I asked firm leaders to identify “what one issue would be most important to you when you relinquish your position?” It came as no surprise that the majority identified “agreeing on a plan to manage the transition period.”

What was interesting was the 37% who indicated “how to let go, how to move on and how to say goodbye.” There was a very direct correlation between this answer and the length of time that some firm leader had served. Determining the right moment (assuming no term limits) to move on remains a gut-wrenching decision and one that many partners and a leader’s successor, don’t

often fully appreciate. As one managing partner expressed it, “we all have a shelf life where we begin to lose our spark and then wonder how to exit with grace. When everything is clicking, it’s easy to overstay your welcome.”

My final survey question was to inquire what these firm leaders had planned for themselves when they completed their terms. Among the AmLaw 100 firms, 8% would return to practice, 33% take on a reduced work load, 8% planned to retire, 21% look for some alternative career and the rest didn’t know for certain. “Returning to practice” was the preferred choice of 41% of AmLaw 200 and 31% of the other leaders.

An interesting dichotomy of views emerged wherein some 14% claimed that they wanted to stay involved in firm management. As one expressed it, “we have a tradition wherein the departing Chair becomes a trusted advisor to the new Chair. It’s a bit unusual but it works.” Taking the opposite view was another Chair (selected recently by Law360 as one of the most innovative firm leaders) who told me, “One of the unique challenges in a large law firm is that the CEO often stays with the firm. An ex-CEO can be a real problem for the new CEO. So you need to get out of the way and channel your leadership energies outside of the firm.”

A FINAL QUESTION

What all of this seems to indicate is that we have some leaders of America’s largest law firms who do not devote 100% of their time to managing multi-million dollar businesses, who have no clear job descriptions, limited formal training, no formal evaluation process and no established criteria for choosing their successor.

While this may sound unduly harsh, it does beg a question: “What might your professional counsel be, to the Board of a client company with the same revenues as your firm, which has this as their profile and were looking for a recommendation from you on what action they might take to improve their overall organizational governance?”

PRACTICE GROUP LEADERSHIP 2.0

If you are like many, for a number of years now you've been attempting to get your practice and industry groups to function effectively . . . with only limited success.

You appointed professionals to positions as practice group leader whom you thought would do the job (and who promised you that they would try); you provided them with some basic training; you endeavored to meet with them all as a group, periodically, to provide a bit of a pep talk; but in spite of all of your efforts, you have only a few of your groups that are functioning as you had hoped. So what to do? Well, you've now decided to embark upon "Practice Group 2.0" and start fresh, largely by changing most of your leaders and hoping that some new recruits might do a better job.

If I've learned anything over the years, it is that your challenge is not so much a people issue, as it is a structural issue.

To be specific: twice a year I have the privilege of conducting a one-day master class for practice group leaders, usually held at the University of Chicago and hosted by the Ark Group. Over the years I have now conducted about a dozen of these sessions and in all cases the participants come from firms of over 100 attorneys in size including the likes of Jones Day, Kirkland & Ellis, Morgan Lewis, Sidley Austin, Weil Gotshal, Winston & Strawn and many others.

I usually begin the day by posing a few questions to the assembled participants. First, I ask, by a show of hands, how many of them have a formal written job description. At my last

GROUP LEADERSHIP

master class, out of a group of 26 participants, ONLY four hands went up – which is pretty typical of the responses I usually elicit.

My second query is to determine how many have a formal, clear understanding of precisely how many non-billable hours they are expected to spend managing or leading their particular group. With this question, I rarely get even one hand going up.

Then I ask: “How many of you work in a firm where the partners have been required to choose one ‘core or primary’ group, wherein they will invest 100 percent of their non-billable time to working on projects that will progress the ambitions and best interests of that group?” The response, again, is a couple of participants acknowledging that this is indeed how it works in their firms.

Before we go any further, please note what we have now determined (by the answers to these three questions) to be the norm in Practice Group Leadership 1.0. Most practice leaders concur that they have accepted the ‘Job’ – without knowing what the job is; how much time they are expected to invest in *doing* the job; and even, *who* specifically is in their group. Now there is a recipe for success!

In other words, before you concern yourself with who occupies the role, you need to verify whether there is any integrity to your structure. Otherwise, history will repeat itself and most of your new practice leaders will fail.

My work with literally dozens of firms and hundreds of practice leaders over the past decade confirms for me that there are 10 structural impediments, in no particular order of impor-

tance, but all of which MUST be addressed if you hope to have effective groups.

1. A Formal Written Job Description

Reflecting back on those who answered this question in the affirmative, what I’ve now learned to ask as a follow-up question is – “tell us specifically what your job description covers?”

While working with one firm, in my preparatory briefing with the managing partner, I asked the usual one about formal job descriptions. I was informed that indeed, a written job descriptions had just been developed in draft form. I learned that this job description was formulated during an exercise conducted to determine what tasks and activities these practice leaders should be held responsible for executing.

I received a copy of the draft, all four pages of it, entitled, ‘Practice Group Leader Position Responsibilities.’ This document covered EVERYTHING – from developing an annual budget to approving marketing expenditures and signing-off on quarterly WIP reports; from coordinating file distribution to workload management; and from circulating draft agendas in advance of meetings to coordinating the performance reviews of students and associates. This was the most exacting laundry list of *administrative minutiae* I had ever read through. It included everything . . . EXCEPT anything to do with the activities involved in actually leading a team.

My response to the managing partner was: *I will be surprised (almost alarmed) if you don't hear from some of your practice leaders, after having reviewed this job description, that it is a touch “overwhelming.” I personally think that the practice leader's job description should be evolutionary such that you begin by identifying a few ‘mission critical’ tasks that you will absolutely hold people accountable for achieving and then slowly progress to adding more responsibilities.*

This particular managing partner had no idea what I meant by “a few mission critical tasks” and so I set out for him the following:

I would, if I were drafting this job description, start with what I believe should be your two mission critical objectives which are the highest value use of the leader's time (and not addressed anywhere in the draft job description):

- **Mission Critical Objective Number One:**

You job as the practice leader is to invest time in getting to really know the individual members of your team; getting conversant with their strengths and career aspirations; and coaching and helping (one-on-one) each individual member become even more successful than they would have been, had you not been the practice group leader.

- **Mission Critical Objective Number Two:**

Your job as the practice leader is to work with your group, as a team, to identify and implement specific joint action projects intended to increase the group's overall morale; enhance the visibility of the group in their competitive arena; improve the service and value delivered to clients; secure better business; and work towards developing a dominant position in some niche area(s) in your marketplace(s).

From that as my start, I would then include perhaps one page of only the key, essential items that have been documented over the 4-page attachment, as simply supplemental action points to accomplishing these two mission critical objectives.

Further, I would respectfully delete any reference to ‘Financial Management’ for two reasons: I believe that these activities lead practice group leaders into unconsciously behaving like policeman rather than coaches; and I think that much of this should be in the job description of the office managing partner or executive director. (and in the case of your office manag-

ing partners, consider: what is that individual's responsibilities? And how do they interface with your practice leaders?)

2. Clearly Defined Non-Billable Hour Commitments

In an environment where we normally measure the billable hour to the nano-second, when it comes to how much time we expect people to spend managing their groups, we completely ignore the non-billable (or as one managing partner calls it – “investment”) time.

Once you've chosen the individual expected to lead a particular group, you owe it to that person to have a frank one-on-one discussion to determine how much time this job is going to require. The time required is likely to depend on the size of the group and any travel requirements (related to the geographic coverage of multiple offices). It is not uncommon to see practice leaders investing anywhere from 200 to 500 non-billable hours.

The very best example I ever heard was from one firm leader who described is like this: “We have a minimum and maximum expectation of you. The minimum amount of time we would like you to spend is 300 hours and we would like you to track your time in our system. If you spend less than 300 hours we will need to talk about how you're managing your time. The maximum amount of time we would like you to spend is also 300 hours. In other words, if you invest more in working with your group, we will be delighted; but please do not use any excess investment as an excuse for your own billable performance.”

Where practice groups are fairly large and dispersed over numerous offices, it is not uncommon to see some model of shared leadership emerge. At Skadden Arps, Jack Butler, the practice leader of their global restructuring group related to me how he had a couple of deputy

leaders, each responsible for certain activities. And when the firm wanted to make a solid commitment to further their knowledge management effort, rather than burden the practice leaders, it developed a model where partners were selected from within each group, given responsibility for KM, and then collaborated together across groups and offices.

3. An Internal System of One Core (or primary) Group

Many practice or industry groups are formed for the primary purpose of harnessing a group of professionals to engage in activities that will bring in business – especially in this economic period of declining demand. Much of what is required to build the practice is not capital intensive. Throwing money at advertising or branding the group will not necessarily deliver increased revenues. The most important asset the group possesses is the cumulative non-billable time of its members – working together on projects and activities deemed to be beneficial. This becomes very difficult to accomplish if your structure allows partners to be members of as many groups as they wish, without any acknowledgement of where they will invest their marketing time. In other words, you cannot expect a partner to divide their finite, precious non-billable time amongst a number of different groups. It just does not work! It only serves to frustrate the practice leader and provide the partner with a handy excuse as to why they weren't able to follow through on their specific promise to accomplish something.

What does work is requiring each partner to select, *voluntarily*, the “one core or primary group” that is their first choice to invest in. They should be informed that they:

- may also choose, as a “resource or secondary” member, to join as many other groups as they wish (thus able to attend meetings, participate and receive minutes of meetings, but are not obligated to invest any specific

- time in doing anything for the group);
- may (depending upon the culture of the firm) still perform client work in practice areas that are not their core group; and
- may change their mind, at a later stage, should they feel that their core group is not performing.

4. Selecting The Right Individual

It's an old story but it still remains true in far too many cases. In Practice Group Leadership 1.0, you selected as the practice leader that partner who either was the most senior, the gifted luminary or the best rainmaker to initially become the practice leader. Now you realize that except for taking the title, nothing much has happened. You're tempted, in your vision of launching Practice Group Leadership 2.0 to replace this individual, but now you have a different issue. Your problem now is to determine how do you get him or her to relinquish the title without them being embarrassed and losing face. Even worse, you have a little chat with the individual to subtly explore whether they really do want to continue as practice leader, only to be told that they really don't want to do the work required, but having the title contributes to their client origination results and . . . you wouldn't want to jeopardize that, would you.

What a number of the more progressive firms have done is create a *title* for their senior, luminary, rainmaker – called Practice Chair. This is to acknowledge the individual as both a subject matter expert and a substantive mentor to others in the group. The Chair is required to invest a minimal amount of their time to assist group members on substantive matters, contribute to internal CLE efforts, and provide a bit of help on client development issues to those in the group with need.

That leaves us to now look for some partner in the firm who either has an interest in leading the group (would actually like to do the job)

and a partner who has the aptitude for actually helping their fellow partners. In other words the job of being a practice leader isn't so much about having certain skills as it is about having the right attitude. We need to select that partner who can get satisfaction out of helping others succeed.

I've joked with many a managing partner that I think we made a huge mistake in calling our people practice 'leaders.' For one thing, everyone wants to be known as a leader, and all too often the concept of leadership is taken to simply mean being a "role-model." Or put slightly differently, "I was clearly promoted to this role of leadership because I am such a successful practitioner. So if you too want to be successful just do what you see me do." Perhaps we should have more firms adopting the title of practice group coach – which removes the glamour and enhances what is really required of the individual occupying the position.

5. Determining Practice Group Leader Term Limits

One of the challenges inherent in any leadership position is having the incumbent get bored and stale after a number of years. In my article "Tenure Trap" I reported on academic research that clearly proved that at some point (13 years on average), job mastery gives way to boredom; exhilaration to fatigue; strategizing to habituation. Inwardly the leader's spark becomes dim and responsiveness to new ideas diminishes.

The more progressive firms have introduced term limits for practice leaders. From my research, the most common term is usually 3 years, renewable for two further terms, or a maximum of nine years of service. This usually fosters a sense of leadership succession and the idea of introducing new leadership of the group without unduly embarrassing some leader seen to be stepping down.

6. Obtaining Practice Leader Input Into Partner Compensation

Another element necessary to structural integrity is allowing practice leaders formal input into the compensation of the partners in their group. Did this individual attend the meetings, contribute to the group's success, implement the projects they volunteered for, and help others in the group? It would be naïve to believe that leaders will not occasionally have to deal with severe degrees of non-compliance, such as some partner who never follows through on his promises. It helps when that partner knows that each group leader is being invited to provide specific input into how each member has contributed (or not) to the collective effort.

Your job, as firm leader, then becomes to communicate to partners at year-end on the results of their contributions. Are you able to actually point to a definitive bonus or penalty that accrues to some partner as a direct consequence of their actions. Without this feedback loop, your practice leaders lose all credibility and partners are perceived to be free to do whatever they wish.

7. Defined Non-negotiable Expectations of Groups

Whenever I seem to ask firm leaders what they expect of their groups, I tend to get some vague notion of how the groups should meet periodically and that perhaps they should develop a business plan . . . but no real precise and consistent definition of what is required of ALL practice or industry groups.

I can report that the firms that get this right, set out very specific expectations, most often in writing, for their groups. Those expectations usually include things like:

- Every practice group *must* meet at least once monthly, for a minimum of one hour, with an agenda dedicated to exploring and executing joint projects intended to advance

the position of the group in the competitive marketplace.

- Every partner is required to devote a minimum of 60 non-billable hours to:

- (1) doing some task/project that will benefit the interests and goals of their core/primary group (with any activities undertaken to benefit that partner's personal practice commended but not sufficient); and
- (2) promoting the group's profile and visibility through active membership and participation in some selected industry or trade organization.

- Each practice group must devote some time and attention to:

- (1) exploring and discussing how they can enhance the value they deliver to clients; and
- (2) accomplishing client matters at less cost with a written progress report delivered to the management committee quarterly.

8. Ensuring Every Practice Group Has A Formal Written Plan

Now this is one of those questions, that when I do ask attendees of one of my master classes, usually elicits a good number of affirmative responses. Except that when I dig deeper, I find structural impediments that have us still coming up short.

Impediment One. In too many instances we relegate planning to some four-page template that each practice group is expected to complete. I don't know where these templates originate, but I see similar documents in every firm. It asks things like:

- list five current clients for which your group can expand the volume and scope of the work handled
- list five prospects that your group will target for business
- develop four ideas for collaborating or cross-selling with other practice groups
- list the client entertainment activities you

have planned for the coming year

I have crassly come to call this “wet dream marketing.” It sometimes goes well beyond being aspirational. I’ve seen group plans that show them targeting prospective clients, so out of step with reality, that one just knows that no one has bothered to question them on their thinking.

Impediment Two. After the written plan is submitted, I dare you to ask any of the partners in the group to tell you about their group’s business plan. I issue that dare from knowing that in too many cases the practice leader will have simply taken the template home and filled it in, without consulting any of the group’s members. I know that from hearing them tell me that this is “just one more bureaucratic exercise to appease the marketing department.”

Impediment Three. In most cases there is absolutely no feedback loop from your firm’s management committee to individual practice leaders to see how the implementation of that business plan is progressing – except maybe, maybe at the end of the year when it’s too late to offer any constructive suggestions or make course corrections. And then we do it all over again the next year thinking that this time it will work out better!

What practice groups need to do is get everyone together (think of it as a half-day mini-retreat) to assess their work, the clients they serve, the competitors they face-off against, the trends that are impacting their practices and determine specifically where their greatest opportunities are and what they should specifically do to capitalize on those opportunities.

9. Minutes of Group Meetings Provided to Management Committee

Whenever I’ve been called in to work with a firm’s practice groups, one of my first questions of firm leadership is to please send me copies

of the groups’ meeting *minutes*. The response I usually get is . . . “Minutes? What do you mean by minutes?” Which tells me everything I need to know.

I find that too many practice group meetings are simply a convenient excuse to have lunch and find out what everyone has been up to lately. The most effective practice groups spend their time action planning, determining some joint projects that the group would benefit from working on and having partners volunteer to implement certain tasks.

The acid test is: are your groups really doing anything meaningful? The only way for firm leadership to determine the answer is to get the group’s minutes and see whether there are specific tasks/projects underway with specific partners committed to implementing those projects – and ideally those projects should line up with the business plan that each group created.

As the firm leader if you are receiving the monthly minutes from each of your practice groups, you can fairly easily determine who’s being effective and who is off track, who’s working on implementing their business plan and who is not; and which practice leaders you might need to spend some time coaching and which you need only send a “good work” note to. Alternatively, without regular minutes you will not likely find out how any of the groups are progressing until the end of the year, if then.

10. Regular Quarterly Meetings of All Practice Group Leaders

It has become increasingly common for firms to periodically bring all of their practice leaders together, usually for a couple of hours over lunch. When I ask practice leaders about what is on the agenda of those meetings, I’m informed “it was simply a management data dump!” In other words, it was an opportunity to report on the firm’s initiatives, activities and

financial progress, perhaps with reports to each practice leader on who in their group needs some remedial attention. All subjects deserving of time and attention, but also capable of being communicated by email without the necessity of a physical meeting.

Again, the more progressive firms do meet and meet at least quarterly with the firm leader and all of the practice leaders. That meeting is not a data dump. That meeting usually has three consistent agenda items:

Agenda Item One: Help With Problems

“In a moment, I’m going to go around the table and I would like to hear from each of you about some problem, frustration or headache that you are confronting, that perhaps others here may have experienced and that we can help you with.”

Agenda Item Two: Replicate Successes

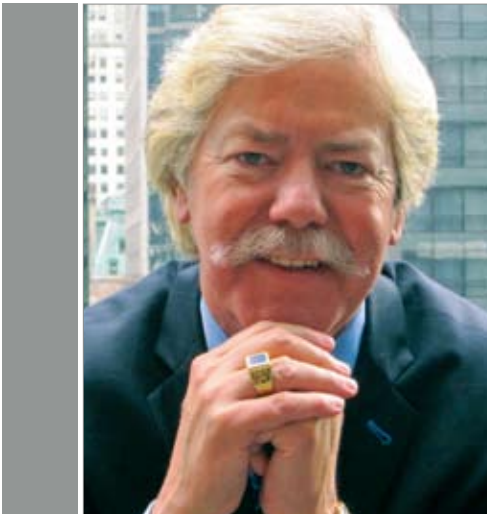
“In a moment, I’m going to go around the table and I would like to hear from each of you about some success that you or your group has experienced that could be emulated, duplicated or leveraged by other groups in the room.”

Agenda Item Three: Explore Cross-selling Opportunities

“In a moment, I’m going to go around the table and I would like to hear from each of you about ONE timely, hot and pressing legal issue that you are currently helping your particular clients successfully deal with, and an issue that other clients in this firm may also be facing.”

CONCLUSION

As I stated at the beginning of this article, to make Practice Group Leadership 2.0 work you need to address each and every one of these – ten actions to help make your practice groups function effectively.



PATRICK J. MCKENNA

P R O F E S S I O N A L P R O F I L E

An internationally recognized authority on law practice management, Patrick McKenna serves as co-Chairman of the Managing Partner Leadership Advisory Board, a forum for new firm leaders to pose questions about their burning issues. Since 1983 he has worked with the top management of premier law firms around the globe to discuss, challenge and escalate their thinking on how to manage and compete effectively.

He is author of a pioneering text on law firm marketing, *Practice Development: Creating a Marketing Mindset* (Butterworths, 1989), recognized by an international journal as being “among the top ten books that any professional services marketer should have.” His subsequent works include *Herding Cats: A Handbook for Managing Partners and Practice Leaders* (IBMP, 1995); and *Beyond Knowing: 16 Cage-Rattling Questions To Jump-Start Your Practice Team* (IBMP, 2000), both of which were Top 10 Management bestsellers.

One of the profession’s foremost experts on firm leadership, his book (co-authored with David Maister), *First Among Equals: How to Manage a Group of Professionals*, (The Free Press, 2002) topped business bestseller lists in the United States, Canada and Australia; has been translated into nine languages; is currently in its sixth printing; and received an award for being one of the best business books of 2002; while in 2006, his e-book *First 100 Days: Transitioning A New Managing Partner* (NXTBook) earned glowing reviews and

has been read by leaders in 63 countries. The book *Management Skills* (John Wiley, 2005) named McKenna among the “leading thinkers in the field” together with Peter Drucker and Warren Bennis; and in 2008, the book *In The Company of Leaders* included his work amongst other notable luminaries like Dr. Marshall Goldsmith and Brian Tracy.

His published articles have appeared in over 50 leading professional journals, newsletters, and online sources; and his work has been featured in *Fast Company*, *Business Week*, *The Globe and Mail*, *The Economist*, *Investor’s Business Daily* and *The Financial Times*.

McKenna did his MBA graduate work at the Canadian School of Management, is among the first alumni at Harvard’s Leadership in Professional Service Firms program, and holds professional certifications in both accounting and management. He has served at least one of the top ten largest law firms in each of over a dozen different countries and his work with North American law firms has evidenced him serving at least 62 of the largest NLJ 250 firms.

His expertise was acknowledged in 2008 when he was identified through independent research compiled and published by Lawdragon as “one of the most trusted names in legal consulting” and his three decades of experience in consulting has led to his being the subject of a Harvard Law School Case Study entitled: *Innovations In Legal Consulting* (2011).



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