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LAW FIRM PARTNERSHIP & BENEFITS Report®

Addressing the Fraying Partnership

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A Challenge to Leadership in Difficult Times

We are now in the sixth year of intense structural pressure on the legal industry, and it has become clear to everyone that we are not going back to the way things were. Lawyers are not alone, of course. Most other industries have experienced similar or in many cases far more significant pressures on their

business models. But in many ways, law firms have struggled far more than have other industries to "adapt" to the new realities of the marketplace. Not all firms are struggling with change, of course, but many are. This helps to explain the current reality that while "on average" the industry remains fairly flat, there seem to be fewer "average" firms out there than ever before. That flat average is made up of a lot of firms doing quite well, and many others that seem to be in some form of long-term struggle, leaving the middle ground under-populated.

Key Factors

What explains the differences between firms doing well and those that seem to struggle along? There are many factors, of course, ranging from luck to extraordinary (good or bad) management, but one factor seems to be playing an increasingly important role — the structure and resilience of the firm’s "partnership," which is linked to its culture. (We use "partnership" here in a generic sense, irrespective of the legal structure.) And, in a self-reinforcing way, resilience declines as the firm remains under pressure, reducing the firm’s ability to right itself and fostering long-term, gradually declining drift.

The mechanism here is a human one. As firms endure long-term economic stress, the bonds of partnership come under increasing pressure. Whereas in good times most people are reasonably happy to share good fortune, in difficult times most people will naturally focus first on their own situations.

If your personal economics are suffering while your own performance is holding steady or improving (even if only in your own mind), there is a tendency to look around and question the performance of others who might be holding you back. "Why is old Joe’s compensation still so high when his clients have largely retired?" "Why do we still have a real estate department when no one has built anything in this town in five years?" "When are we going to do something about those people who aren’t billing any hours?" And on the story goes. "Me-first" behavior supplants "firm-first" behavior, and the erosion of the partnership culture becomes even more severe. If the firm’s economics reach a critical enough stage, fear sets in, making it very difficult for partners to focus on the good of the whole.

The longer difficult times persist, the worse the situation gets. And other aspects of the partnership culture fade as well. Formerly hard-working firms gradually drift into "lifestyle" mode, affecting both the economics and the culture. With limited available client work, many firms lose the ability to keep the high tempo necessary to maintain a performance culture. And in most of these firms, there is little cultural precedent to "do something about it." These partnerships have always been hands-off in their approach to partner performance, preferring to treat weak performance as a compensation issue rather than as an issue fundamental to membership in the partnership.

And as economic performance slips, it is harder and harder to vary compensation enough to account for weaker performance while still treating lower performing partners as partners. So performance lags, weak people get weaker, and the partnership becomes more and more fragile. Resilience declines even further to the point where the firm can no longer withstand exogenous shocks. The next really bad thing that happens could push the firm over the edge.

How Do You Change Direction?

Lawyers are naturally change-averse, and it is common for that natural aversion to get increasingly concentrated in law firm leadership teams. Making matters worse, leadership tends to be dominated by those who have the greatest stake in the past — the rainmakers who have been successful under the current model and might see change as putting their personal positions at risk. These individuals also, invariably, have relations with others for whom they feel a great deal of loyalty, and whose circumstances they view paternally. Partially as a result, even when leaders understand that their firm is in an unsustainable position, they will defer change that goes beyond their comfort zone until the situation becomes so desperate that recovery will be both very difficult and potentially unsuccessful.

In addition, particularly in mid-size and smaller firms, there is limited historical experience with top down directives to "change." Unless you have a benevolent dictatorship — and even then sometimes — the leadership group cannot simply tell everyone to behave differently and assume it’s going to happen. It won’t. Compensation incentives might help, but those too will likely come up short. So how do you right the partnership?

Changing Culture

First, in spite of the last comment, it is important to focus on changing behavior, as a necessary first step in changing culture. If the average lawyer’s hours have slid to 1400 (or any other number significantly off reasonable and normal historical levels), the firm will be operating on a reduced tempo. Change that. Insist that partners release some of the work that they are hanging on to (they will be, no matter what they say) to provide more work for the best of the younger, up-and-coming lawyers. Next, insist that each partner have a detailed, executable marketing plan consistent with the firm’s strategy to focus on bringing in more good work — and that they work that plan intensely. Provide regular check-in points and oversight. The goal is to raise the activity levels to heights associated with a more fully billable firm. Insist that the firm keep its intensity muscles in top condition. Eventually, this will result in more work.

Recognize, however, that it will take a lot more to make this happen than just saying it. Leaders must lead by example, demonstrating the behaviors the firm needs. Reinforcement and recognition (a.k.a. public praise and "cheerleading") can help as well. Use regular partner meetings (and if you don’t have them, start) to celebrate individual change efforts. And keep on reinforcing the message, including with compensation decisions. Insist that practice groups have regular meetings to reinforce the message and coordinate efforts.

Leadership and Structure

Second, examine the leadership team and structure, and consider significant change where appropriate. It is often the case that firm leadership stagnates and becomes fixed in its ways, effectively paralyzed by historical success and unable to recognize that different circumstances call for different strategies and actions. Thoughtful changes in governance and practice leadership ranks can bring significantly different ideas and perspectives, which can result in new actions with potentially different outcomes.

Rethink Partnership

Third, rethinking the historical partnership compact is often necessary. A very large number of today’s partners became partners: 1) prior to the fundamental shift in the industry’s economic structure and no longer have an owner-level role sufficient to justify their continued tenure; or 2) under conditions of limited scrutiny and adherence to standards on the premise that they had "demonstrated potential" and would grow into the role. Neither works in today’s client-driven legal economy. But whether those individuals can rise to meet a new understanding of the partnership test will vary from person to person. The first step is to redefine the test. What, exactly, do we expect our partners to contribute, at a minimum, to justify their place in the firm? High level skills and client service capabilities, of course. Minimum productivity levels certainly. A real contribution to the presence of the client base? This is almost certainly important in all but the most institutionalized of law firms — but not really demanded in many firms today, in spite of the changes we have seen in the market.

As part of this rethink, the concept of tenure must fade away. Partners may remain partners for as long as they continue to deliver on the minimum commitments of the partnership, but no longer. There should be greater flexibility in moving out of the partnership as individual circumstances change. While most lawyers are likely not yet ready to accept the idea (in normal circumstances) that someone could leave the partnership but remain a viable member of the firm, as an industry we would be well-served to move away from the generalized notion that if you are not granted "ownership" in a firm by, say, 10-12 years out of law school, you have somehow "failed."

People in every other industry understand the concept of a high-value employee. The concept of ownership needs to mean much more than it does at many firms today. While it may be culturally impossible to move extremely quickly, over a reasonable period of time firms should move in the direction of having partners who truly meet the agreed-upon standards.

Correct Compensation

Fourth, consider corrections to the compensation system that properly match the minimum expectations of the owners to the lower end of the equity partner compensation system. Mismatches at this level are one of the most frequent causes of internal partnership friction, where partners are perceived to be compensated at levels not justified by their contribution. Ideally, every equity partner of the firm should be considered a valuable contributor, and be proud to be a member of this group irrespective of his or her compensation slotting. In reality, though, lower-tier partners in most firms (after the early years of partnership) tend to be looked upon, and sometimes see themselves to some degree, as failures, which creates both an unearned upward bias for compensation movement and resentment by other partners that such partners are not carrying their weight.

Teamwork

Fifth, look at the firm's practice management structure and approach from the point of view of team building and teamwork. Do lawyers work together to get new clients? If not, why not? Compensation could be an issue here, but the firm's practice level leadership could also be a factor. Does the group have a real plan? Does the group leader galvanize (and model) teamwork, or does he spend most of his time as a solo practitioner? Do the key rainmakers "share" their clients in a meaningful way (access, not just "credit")? Or is everyone on their own to scramble for clients and work as best they can? Do leaders work proactively to cultivate cross-group collaboration? In conjunction with the second suggestion above, make sure the group leaders in place are people able and willing to focus the group's efforts on fundamental change where needed, rather than trying to just make the old ways of doing things work better.

Restructuring

Finally, sometimes you have to hit bottom to get people to take action and come to grips with the problem the firm faces. But at that point, it is often the case that the firm is significantly overstaffed and will have to be shrunk dramatically to have a chance of surviving. In these instances, most partnership agreements work as a barrier to change, requiring that termination of partners be put to a vote of the partners. This requirement is painful enough when one individual is involved (generally for egregious reasons) that most leadership teams will do whatever is necessary to reach a compromise that does not require a public vote.

When significant restructuring is needed, these provisions will effectively tie leadership's hand. It is necessary sometimes to change the rules of the game by getting partnership agreement to allow trusted leaders to make the changes they think necessary without resort to partnership approval and debate. While this may be contrary to the democratic proclivities of most firms, sometimes saving the partnership requires abandoning at least temporarily some of the principles and culture that once defined it.

Conclusion

Reversing the course of negative change in a fraying partnership is not easy, but it can be done if leaders and their followers are willing to step outside their comfort zones and embrace positive change. But doing so often requires the firm to question the very principles it has long considered core to the culture. In most cases, though, the original and true values of the partnership have already been compromised: "autonomy" has morphed into "lack of accountability," "we value more than work" has become "we don't work too hard," and "democracy" and devolved into stagnation. Focusing the partners on the changes that have already occurred and the risks they pose will be a challenge for leaders of firms "below the average" for the next several years.

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