

Dealing with the Downturn: How Law Firms Can Meet the Challenges and Exploit the Opportunities

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Part 1 : CUTTING COSTS AND INCREASING EFFICIENCY

To thrive during the current precarious economic climate, law firms need to be aggressive in cutting costs and increasing efficiency. But the rise and fall of particular practice areas, coupled with an overall decline in legal work, also provides a perhaps unprecedented opportunity to strengthen your firm by re-thinking its approach to bringing in new business, strengthening its relationships with existing clients and enhancing the career development of your professionals – improvements that are often neglected when work is plentiful and the firm is busy. In short, firms should not only focus on mere economic survival, but also take advantage of the crisis to transform themselves into the types of firms they would like to be a year or two down the road, when better times have returned.

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This article, the first of a two-part series suggesting what firms can do to deal with the downturn, focuses on firm economics. The second part considers the “people” dimension, both internally within the firm and externally involving clients and prospective clients.

An assumption that forms the basis of many of these suggestions is that during this period lawyers in both large and small firms should devote more time to practice-management issues – not only because they will have the time but, more importantly, because they need to ensure that they emerge from the recession in the best possible position to take advantage of the rebound. This assumption will not be true to the same extent for all firms, and its relevance will vary according to size, location, breadth of practice and other factors. As a result, these suggestions are more a menu to choose from than prescriptions that fit all circumstances.

Exercise Fiscal Discipline Without Cowardice

Economic crises are no time for timidity and procrastination in making financial decisions – both the short-term ones necessary to weather the crisis, and the longer-term ones that will strengthen the foundation for the firm’s future. At this point in the recession, almost all of the hardest-hit firms have taken steps to cut their costs in the short and medium term. Fewer, however, have gone on to imbed the financial discipline they will need both to survive until the recession ends, and to put the firm on sound footing for the future.

As they turn to these tasks, they can draw lessons from the method and consequences of the short-term cost-cutting. First, controlling costs is not a task well-suited to consultation and consensus-building; leaders need a mandate to make the tough decisions. Second,

a piecemeal approach to controlling expenses, looking carefully at hundreds of items to see which can be cut, seldom does much good. The firms that have been most effective at reducing costs have generally told their administrative cost centers to cut their budgets across the board, excepting only areas where the firm has a strategic need to invest (opening a new office, for example, or upgrading its technology). Third, firms have found that some cuts in overhead and staffing seem to have almost no effect on the firm’s efficiency and performance; clearly, fat had built up over the boom years. These cuts should stay in place even after the recession ends, especially since the boom is unlikely to return.

Another lesson emerges from recent experience: you cannot simply create a single, lean budget and then sit back. Develop a number of budget scenarios based on different assumptions that are reasonable in your circumstances: for example, a worst-case projection, anticipating a longer-lasting major decline in revenue; a less-than-worst- case decline; zero-based, contemplating no growth; and some degree of profitability. Monitor relentlessly and revise regularly. If your firm does not yet track expenses closely enough to identify overruns precisely in detail each month, now is the time to create that system. That approach, and those systems, should stay in place permanently.

Fiscal discipline means more than cutting costs, however. It also means not taking any work you can get just because it will increase revenue. If a particular matter does not align with your vision of the type of firm you want to be in better days, or if it may conflict you out of a larger assignment in the future, turn it down. In firms where business intake is left primarily to individual partners or practice areas, this discipline may require more energetic oversight by the firm’s leaders or by a partner or committee named for that purpose. And, again, that discipline should become a permanent part of the firm’s business model.

The biggest temptation that should be resisted is sticking with the status quo by taking no risks whatsoever. If you had intended to open a new office before the downturn hit, it may still make sense to do so if the office remains in line with your strategy and if moving now will position you better in the future. Firms are also continuing to merge in order to be ready for the upturn, to strengthen particular practice areas, and to survive the downturn.

Similarly, although expanding staff tops the list of what you do not want to do, some hirings - for example, of laterals who are absolutely indispensable for filling in gaps in practice capabilities - are good investments. Another good investment may be to accept a short-term operating loss in a practice area if necessary to retain key people. It may also be wise to resist the temptation to reduce the number of equity partners you elect, even if they will be under-employed for a while, so they can help to generate revenue later and so you do not lose them to other firms in a year or two. If you require more staff to sustain your practice but view the traditional staffing models as too expensive, consider taking on contract lawyers for specific projects and expanding non-partnership track positions.

Finally, the crisis provides an opportunity to make major changes to your staffing and compensation structures to improve your finances for the long as well as the short term. Several firms have already made structural changes to control their compensation costs – for example, by establishing or expanding a category of lawyers (often called “staff attorneys in the U.S.”) that are billed and paid at lower rates, or by lengthening tracks to partnership without providing a full annual “step” increase for each of the later years. Some firms are contemplating “profit-based” compensation even for non-partners, with compensation tied more explicitly to the billing rates and profitability of a practice area or office. Similarly, some firms have moved further towards performance-based compensation, with the goal of using compensation to encourage behaviors required to support a firm’s strategy and values. For partners, for example, compensation criteria may be modified to discourage hoarding of work to the detriment of the firm as a whole. For both partners and associates, the criteria may take into account not only the quality of their work but also their contributions to the success of teams and practice/industry groups as well as non-financial factors such as the management of people and files.

Reassign and Retrain Before Going Outside

The current downturn affords an excellent opportunity for firms and practice groups to assess which practice areas are likely to remain challenged in the near, medium and long terms, and which are likely to prosper, or at least climb out of the downturn sooner. There is a strong case to be made that associates and partners should be trained wherever possible in areas that are likely to prosper in the future, rather than being made redundant while the growth areas hire expensive laterals. The case supporting retraining includes the following:

- It reinforces firm morale if professionals are re-tooled, as it shows that the firm values its professionals and is willing to invest in their development.
- The cost of hiring expert laterals is likely greater than the cost of retraining lawyers, given the premium that must be paid for experts in hot areas, the considerable expense involved in direct recruitment, and the cost of the ramp-up period while laterals integrate into the firm’s culture and learn its policies and procedures.
- It broadens the skill set of your professionals, enhancing their long-term ability to become trusted advisors to their clients.

- It keeps client knowledge within the firm, rather than losing it to potential competitors.
- It allows professionals within your firm to get to know one another better than if they stayed in practice silos. This interaction will pay dividends in cross-selling of practice areas going forward.

In order for reassignment and retraining to work, a firm needs to have key professionals within the prosperous area committed to training and expanding their group. If a learning culture is already in place, then the task of re-training is much easier. The learning culture includes having partners and senior associates committed to training and a supportive knowledge management system that provides guidance for completing work assignments, including checklists and annotated documents to make it easier for smart professionals to quickly gain mastery of new areas. But re-training can succeed even without that support, if a cadre of existing experts is willing to perform the re-training. If there is only one expert and that expert is already overly committed to doing client work, then retraining is unlikely to be successful (although, in some practices, external training programs can relieve some of the burden on the firm's internal experts). It may also be possible to recruit recently retired partners with the relevant expertise to return in a professional development role to contribute to the retraining program.

The re-training will be easier, of course, if lawyers move into an area complementary to their original practices. Examples of such re-training include M & A and financing experts morphing into restructuring and bankruptcy lawyers, corporate commercial lawyers assisting in employment matters, junior transactions lawyers assisting litigators in commercial litigation and bankruptcy proceedings, or commercial real estate lawyers assisting in property litigation.

Focus on Project and Team Management to Provide Better Service

Law firms are only beginning to embrace the disciplines of project management and work-flow process. A constant criticism of the billable-hour system is that it encourages inefficiency and allows costs to get out of hand; even worse, clients complain that their bills seem unrelated to the value of the work being performed. Project management means organizing all significant matters so that clients and other stakeholders in the matter know what needs to be done, what milestones must be achieved, who will be working on what elements of the project, when critical decisions must be made and what happens when unforeseen events occur. As a result, project or matter management not only provides a road map for the client and all other stakeholders, but it also provides a planning device and a communications template that includes getting approval from key stakeholders at pre-determined intervals.

Project management has several advantages, all of which will put a firm in a better position to serve its clients effectively:

- Over time, the more projects or matters that are subject to project management discipline, the easier it becomes for law firms to determine the cost of doing a certain type of project with accuracy. Because project plans are constantly updated as they are carried out, those using project management discipline will soon learn where difficulties tend to arise and

what external factors are likely to contribute to the increased cost or time to complete a project. As a result, a firm will be better able to predict costs for a client, even if it still relies on a billable-hour approach to fees.

- Project management can help lawyers with poor organizational skills become more disciplined. It also allows all professionals working on a project to know what their respective roles are, what expectations have been set for their performance, and when they need to complete a task.
- Especially when combined with financial modeling that allows partners to understand the effect of different staffing and leverage models on a matter's profitability, project management can help firms better allocate their internal resources because they will have a clearer understanding of the work to be done on each matter.
- Clients, not surprisingly, enjoy the transparency of a project plan, and much of the mystery of what occurs in a transaction or case is dissipated. As well, if problems occur, they are recognized sooner. Where a process is taking too long, the project plan draws attention to the impediments and forces those involved to re-evaluate and streamline their processes.

Be Flexible about Fee Arrangements

As clients face a hostile business climate, they will appreciate those service providers who are willing to share risk with them. The hourly rate billing model has come under increasing criticism, and the current economic climate is accelerating that criticism. As well, law firms have indicated their willingness to move from an hourly rate billing model. These trends suggest that most firms will need to become more flexible with respect to their fee arrangements. In addition to flat fees for relatively routine work, law firms will increasingly be asked to share the risk. In litigation, this may mean lower hourly rates in exchange for success fees. It may also mean a fixed fee arrangement in exchange for all of a client's litigation work. There have been instances already of such arrangements, and, when managed properly, they can be a win-win for both the client and for the law firm. They force law firms to examine their working processes and stream line them to the greatest extent possible, resulting in less wasted effort and less re-inventing the wheel. Clients welcome the focus on efficiency, as well as the ability to predict their legal costs more accurately. In addition, these arrangements can improve the morale of a firm's lawyers, especially its associates, because the focus shifts to the professional value of their work, not the hours they accumulate.

Discussions can also take place with clients about saving expense by outsourcing certain routine legal matters to low-cost service providers. Commonly outsourced services include due diligence for legal transactions; review of documents for discovery, particularly e-documents; and basic legal research (for example, for multi-jurisdiction reviews of regulatory or compliance laws). The client's in-house lawyers can manage this work directly, allowing its preferred law firm to concentrate on higher value work.

Despite the intense pressure from clients to cut rates, partners should be instructed to defer the decision about a discount to an in-house committee of partners. This insulates the partner from appearing to resist the client's proposal and at the same time ensures that the law firm will be taking a consistent approach with all clients. In-house counsel are more sophisticated than ever in comparing notes with respect to the cost of legal services, in part as a result of networking sites like Legal OnRamp. This additional transparency makes it imperative that all clients are treated in a consistent and fair manner.

Renegotiate Overhead Agreements

While the overwhelming cost of running a law firm is in the form of salaries and partner draws, there are other significant costs that can also be cut. Office leases can be extended into the future in exchange for lower rates if the cost of leasing has or is projected to go down. Therefore, agreeing to a longer-term lease for space can result in a decrease in present leasing costs. Increasingly, law firms are outsourcing word processing, accounting and payroll, IT services, copying and printing, catering, public relations and even elements of business development. Law firms need to determine which office functions can be outsourced to save costs while still keeping service at acceptable levels. Even where services are not outsourced to external service suppliers, they can be re-located to lower cost centers, either to locations in the same city where expenses may be lower, or, where a firm has multiple offices, to the office where costs are the lowest. Why not have your IT development and programming take place in the office where the cost for IT specialists is lowest?

Insurance, particularly errors and omissions insurance, is becoming an increasingly large cost for law firms. Pooling with other law firms, particularly for excess of loss insurance above a certain level, is likely to yield significant reductions in the cost of premiums.

Dealing with the Downturn

Part 2

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Develop Business and Nurture Client Relationships

The key to surviving and remaining profitable throughout the downturn, and then emerging from it ready to take advantage of the rebound, is to focus on the sole raison d'être of a law firm - its clients. At the very least, this means staying close to the clients of the firm and ensuring the firm meets the needs of those clients. But something more may be required.

For many years, large numbers of firms have had the good fortune to enjoy almost continued growth. Because the business model they have adopted has worked well, the temptation is to assume that the way to ride out the current storm is to carry on pretty much as before, although perhaps with fewer people some of whom are doing slightly different work, while collectively making more effort to chase after and (it is to be hoped) win a fair share of the probably declining overall volume of work. That may be the case but it is a risk to assume it is.

Some firms are taking the opportunity presented by the downturn to re-appraise their whole operation and to assess (in no particular order):

- what their client base should look like;
- what are the key, collective skills of the firm which will make the firm and its lawyers attractive to their target clients;
- what is the right business "shape" for the firm if it is to remain competitive in its particular market (size of firm; leverage of partners to associates and staff; location).

In other words, some firms are undertaking a fundamental review of their strategy in the light of current conditions and their "best guesses" of where their businesses will go over the coming years. This is not to say that radical change is necessary for survival. It is saying that failing to contemplate radical change runs the risk of missing opportunities and having no basis for being assured that the current model is the right one for the particular firm in its particular market. Whatever the outcome of such a review for these firms, the one common element is the need to ensure that the firm is delivering what its clients and potential clients need – which, in these tumultuous times, may not be the same as what they have been accustomed to saying they want.. Therefore, a focus on client relationship management and business development is more important now than perhaps it has ever been.

Such a focus will have a number of elements:

1. What exactly do the clients want? It is a given that they want the best quality legal advice but because it is a given, it is the service delivery which makes the difference in terms of winning the mandate and/or getting repeat business. In boom times when the lawyers have enjoyed high levels of work, they may focus on getting the legal task done rather than delivering the service the client wants. Time spent now nurturing the relationship with the client will produce returns down the line.

The starting point for this is to have in place a systematic program for collecting feedback from the clients on work quality and service. There is a wealth of data on what clients expect from their professional advisors (lawyers or others) and most of it boils down to wanting advisors who support them and their businesses. This means more than doing a first-rate job on the work your firm is accustomed to doing for a client. It means understanding the clients' businesses and

delivering a service which meets the needs of that business. Therefore, the firm's feedback program should focus on "What can we do to help you?", rather than on "How are we doing?" If the feedback does produce criticism of the firm's service delivery, this must be addressed and perhaps the way the firm organizes its work will have to change (for example, by creating client service teams).

Linked to ensuring the firm knows what its clients want, the firm should also know what it services it can offer that the clients do not know about. What added value services could the firm make available to its clients? Information is an obvious one, whether in the form of knowhow materials or training, for example. However, care is needed. It is counterproductive to send out a general mail shot on some new development if the client who receives it either has already had the information from several other advisers or, even worse, if the mail shot is not seen as relevant to the client.

Other "free" or relatively cheap services may be attractive. For example, one firm has made its surplus office space available to members of a client's workforce who have been made redundant so that they have an office base from which to carry out their job searches.

2. *What client development skills do the lawyers possess and what gaps need to be filled?*

The list of skills needed can be long. Over and above the relevant legal-technical knowledge, the list will include:

- a knowledge of the client's market sector and of the particular client's business;
- strong pitching skills to win the work;
- project management skills to do the work efficiently;
- financial awareness to ensure the work is done profitably;
- relationship building skills to secure the relationship

...and the list goes on.

If there are perceived gaps, some may be filled by individual research (such as gaining market knowledge); others may be filled by training (such as presentation skills training).

3. *Client development activities must fit in with the firm's current or revised strategy.*

Because under-utilized lawyers may feel pressure to find work to meet their billing targets, they may be more concerned with bringing in any kind of work than with whether the work fits with the firm's strategic goals. This problem can be addressed by the firm setting clear overall strategic objectives which can then be cascaded down to groups within the firm and then down to individual lawyers.

While client development has traditionally been seen to be the preserve of the seniors in the firm, in the current environment it should be seen as everyone's responsibility to look for opportunities (recognizing it is still for the seniors to pursue most of them). Aside from anything else, encouraging juniors to think about contributing to the development of the firm's business will lay solid foundations for the business-development tasks they will have to undertake when they are seniors.

There is no doubt that in many sectors the flow of work has declined but there is still work to be had. The firms which focus on nurturing their clients and building the business development

capabilities of their lawyers will be the ones which are best positioned to win that work and so survive the current crisis.

Strengthen Professional Development

A robust professional education enterprise is important not only to support recruitment and retention when the market for talent is highly competitive, but also at any time to ensure that lawyers obtain the knowledge and skills required to carry out the firm's business plan and deliver superior client service. Now, when firms are reviewing their strategy and lawyers are not as busy as in the recent past, is the perfect time to take professional development in your firm to a high level. Here are the building blocks of a systematic approach to improving professional development:

- Identify the generic (e.g., negotiation, writing) and practice-specific (e.g. corporate transactions) legal knowledge and skills-often referred to as “competencies”- needed by the firm's lawyers, given the nature of its practices.
- Identify the “business” (e.g., client relations, business development, practice management, leadership) knowledge and skills needed by the firm's lawyers.
- Specify what skills and knowledge in these two categories should be achieved at each of the firm's career levels (e.g., junior associate, senior associate, income partner, equity partner)
- Set out a training plan – a “curriculum”- for helping lawyers develop the knowledge and skills they need. Tailor the curriculum to individual circumstances by requiring professional development plans for all legal professionals, guided and monitored by mentors.

Undertaking these tasks may appear daunting, but does not have to be. Many firms will already have something approximating competency lists, such as sets of performance evaluation criteria, including benchmarks for partnership admission that can serve as a foundation for the partner list and for the senior associate level courses required to meet the expectations. Other useful sources include regulatory authorities, firm and continuing legal education provider websites, the professional associations of law firm education specialists, and (more recently) books and articles about competencies.

Under the guidance of those responsible for leading the firm's professional development program, assign one or two students/trainees or junior associates to research these sources and compile samples of competency lists. Agree on a consistent style and have the lists reviewed by small teams (a senior associate and partner) in each practice area for content and compatibility with the firm's practice and culture. Follow the same procedure for the business category, with the assistance of people familiar with that area. Once all the competency lists have been formulated, repeat the process to develop the curriculum and draft course descriptions consisting of concrete learning objectives. Implement through internal and external courses and on-the-job training.

At the same time as you are building a stronger foundation for your firm's professional development program, you should resist the temptation to include external education and related networking activities in across-the-board cutbacks in discretionary spending. The temptation is

strong in tough economic times, but these cuts may turn out to be false economizing if done randomly. During halcyon practice periods these activities may be discouraged by the pressure of billable hours, to the detriment of career progress and relationship-building. Free time creates an opportunity to offer your most promising associates and partners the tools they need to function effectively in the type of firm you envisage emerging from the downturn.

On the education side, consider what can be achieved realistically through internal resources (do not neglect the contribution of internal practice/industry group meetings) and fill in gaps with the most effective and cost-efficient external learning, including online and other new media courses that are inexpensive, convenient and do not entail travel. Determine who should participate in more expensive offerings by considering individual needs and prospects and also firm strategic objectives (for example, practice areas that you would like to build or industries in which you want a stronger presence). For events that have primarily a networking orientation, such as conferences and industry meetings, consider and who is best-suited to exploit the opportunity. For both areas, keep in mind that approval of attendance, especially during a period of financial difficulty, sends a strong message to recipients that the firm is committed to their career development. You can cut back rationally without cutting out entirely.

Develop Knowledge Management Systems

Knowledge management systems seek to organize the collected wisdom of law firms to enable lawyers to practice effectively and efficiently, and to reduce the risks that arise when a lawyer works without full access to the firm's accumulated expertise. KM content can encompass a wide range of information and tools, from legal updates through intelligence on clients and their industries to analysis of deals and guides for completing specific legal tasks. Typically only larger firms have invested in setting up their own systems, which differ significantly in the sophistication of their technology and the quality and accessibility of the content. If you already have a KM enterprise in place, now is the time to determine if the information is comprehensive and current; recruit lawyers to upgrade it as necessary. If you do not have a system of your own, explore subscribing to a commercial product as an alternative to incurring the major up-front costs involved in establishing one.

Although commercial offerings have improved in recent years, you may be unable to find one that meets the practice and business requirements in your jurisdiction and decide to proceed independently. Because of the broad scope of KM, there are many possible starting-points and degrees of complexity. A simple point of departure that can stand alone, requires no new investment in technology, and will pay immediate dividends, is to develop one or two common model precedents, with annotations to provide guidance on nuances of application (e.g., a stock purchase/sale precedent, due diligence report and checklist). Encourage junior lawyers to use these model documents, and reinforce the importance of this through mandatory training programs.

Encourage Secondments and Pro Bono Work

Like KM, both secondments and pro bono offer training benefits. They also have significant relationship-building potential that increases during economic downturns.

Secondments operate in a variety of contexts, for differing lengths and with varying terms, and can benefit both sending and receiving firms. A secondment with another firm can have as its primary goal to help a receiving firm to staff a practice area that was not prominent during better economic times, or to allow a sending firm to provide on-the-job training that is not available at home. In both cases the secondment can reinforce the relationship between the participating firms by creating familiarity among new colleagues and with common clients, and by instilling confidence in respective client service capabilities. Multi-office firms can use secondments for the same purposes and on a larger scale, as well as generally to rationalize staffing. For the same reasons, secondments are also key features of successful law firm alliances, facilitating collaboration and stimulating referrals among member firms.

Secondments involving clients can serve to strengthen client relationships. Corporate law department staffing levels are now under pressure and budgets are in no better shape than those of law firms. Clients may need external lawyers to work with them on special projects; they will appreciate a lawyer secondment on a salary replacement basis if unable to afford the fees of outside counsel. Or law departments may simply want access to valuable on-the-job training. Law firms that respond to these approaches will reap the rewards when the economy improves.

As with secondments, pro bono activities provide client relationship and training potential that is not realized fully when paying work is plentiful. Seizing these opportunities can also raise a firm's profile and enhance its reputation for public service. Consider identifying favorite charities of clients and set up joint projects with them, so your lawyers benefit both by reinforcing the relationship and by acquiring new skills. Initiatives of this sort will be particularly welcome now, when reductions in not-for-profit funding are emerging.

Some firms have their own corporate responsibility programs or participate in social entrepreneurship arrangements. These recent refinements to the traditional litigation-oriented pro bono model broaden the training value by adding transactional training elements. However a law firm conceives its pro bono mandate and organizes the work, it should seek ways expand the range of its portfolio to achieve the greatest training benefit.

Communicate, Communicate

For many firms, this advice may be arriving late in the day, but it is still relevant. The more associates know about the economics of law firms in general, and the business of their own firm in particular, the better they will understand the decisions the firm is making to weather the tough times. In addition, and over the longer run, they will also be more likely to feel that the firm regards them not just as disposable employees, but as colleagues who deserve -- and can

respond professionally to – a look behind the curtain that often veils a firm’s economics from its associates.

Ideally, in the year or two after associates join a firm, it should begin to educate them about the business side of the law, and then report to them periodically about the firm’s performance. If your firm has not yet developed this habit, the depths of a crisis may not seem the best time to begin. But it is not too late. In fact, this kind of communication can do the most good when everyone craves information because they are worried.

Think about holding “straight-talk” sessions with associates – not only to discuss how the firm is responding to the crash, but also to educate them about the basics of law-firm economics. Whether you decide to undertake such a session depends, of course, on what you can realistically and truthfully say about the state of the firm. If the underlying economic pillars are shaky, then the gloom such a presentation spreads may well outweigh the morale benefits of speaking to associates frankly and openly about the realities of your business. On the other hand, if the firm’s business is solid aside from a lack of work – costs are under control, debt is low, it does not have a lot of overpriced and increasingly empty office space – then the news may be comforting, even if you cannot rule out lay-offs (or another round of lay-offs). Moreover, the fact that you are having the conversation may help to sustain associates’ trust in and commitment to the firm, even if you have had to undertake lay-offs and still cannot guarantee jobs for everyone.

Depending on the size of your firm, you may want to have those discussions within practice groups and offices or, at least, for audiences small enough so that there is likely to be some discussion. This communication can be especially useful if it runs in both directions, demonstrating that the firm takes seriously its associates’ ideas and ability to contribute to the common cause.

In some firms, such an open approach to communication may feel counter-intuitive to the partners. They may be accustomed to discussing the business side of the firm only with partners, or they may fear that talking openly about difficult issues will cause people to worry more. And, in some firms, the leaders are accustomed to communicating only when they have something new to say. In times of great anxiety and stress, however, silence is not silent. It is the echo chamber in which rumors and fears are amplified, and it can easily be read as a signal of indifference. After a round of lay-offs, the firm’s leaders should be communicating more than usual, not falling silent, and communicating in ways that engender dialogue, rather than through pronouncements from on high.

Manage Lay-offs Humanely, and Look for Innovative Ways to Avoid More of Them

The economic crash has become a tsunami of such proportions that associates seem not to be blaming firms for lay-offs. But a badly handled lay-off can have two long-lasting consequences.

First, it can turn those let go into permanent enemies. Life is long, and some of them will almost certainly end up in positions with clients or regulators where you would prefer to have a neutral party, if not an ally. Second, a botched lay-off, one that suggests that a firm has abandoned its professed values, damages the morale of the survivors and diminishes their loyalty to the firm. Among the scores of firms that have laid off lawyers and staff, or have taken other steps such as delaying start dates for new hires, some have managed the process better than others.

What can make these steps go “well”? Some tactics – severance packages and outplacement consultants for those laid off, for example, or stipends for those whose start dates are delayed – will cost money, and therefore pose the dilemma of how much to cut into the savings that the step is intended to produce. The details of a firm’s cost-cutting moves seem to hit *Above the Law* and other websites a few minutes after they circulate in the firm. As a result, while very few firms want to be more generous than their peers, they should do whatever they can to ensure that they are not perceived as being a lot less generous. That perception, once created, will linger inside as well as outside the firm for a long time.

One lesson of the many cost-cutting moves to date is that innovation and flexibility help. Lay-offs are better received if the firm also seems to be exploring other ways of reducing its compensation costs (and, of course, its costs in general). In addition to the many firms that have delayed start dates, some have offered stipends – as much as \$80,000 for a year – to lawyers to work in public-interest organizations; indeed, some have offered stipends to associates to do as they wish for a several months or a year. A few have reduced salaries across the board, in at least one case with the suggestion that the cuts will be mitigated through bonuses if profits pick up significantly.

Finally, a few firms are experimenting with moving some associates to part-time status. That tactic is not a solution for a large practice that has crashed dramatically. But it may work in some smaller firms and some practices within large firms. An analysis by Linda Chanow of the Project for Attorney Retention suggests that, aside from the intangible benefits, having six lawyers move from a full to an 80% schedule will save more than firing one of them. The chances are good that some of those six will actually be happy with the change: Many lawyers who would like to work part-time have been afraid that doing so would damage their careers. And even those who prefer to work full-time are likely to applaud the strategy.

Moves such as these not only mitigate the human costs of the recession and demonstrate that the firm is trying to cause as little damage as possible as it struggles to control costs. They also retain experienced and expensively trained lawyers who were valuable to the firm when business was good and, once business picks up, will be valuable again – if they are still there.

If a lay-off has to happen, how it is handled matters a great deal. First, when the time comes, those laid off should get the news face-to-face from a partner, preferably one they know – not from the HR department, and not by being summoned one-by-one into a conference room to face

someone they have never seen before. Second, they should not then be treated as if they were invisible. If they remain in the firm for any length of time, partners should check in with them. When they leave, the firm should continue to have an outreach program, providing as much help as it can (for example, by using partners' contacts to help in their job hunt) and also simply demonstrating that it has not forgotten them. And they should be invited promptly into the firm's alumni network.

Pay Lots of Attention to Those Who Remain

Now is not the time for business as usual in how firms manage associates, on the theory that they should all be happy just to have a job. The question is not whether they will leave this year, but how energetically they will work for the firm's benefit and, once the economy turns, whether the best will then leave. (In fact, they may leave even before then; the lateral market has shrunk, but it not disappeared.) If your mentoring and training and work-assignment programs are mediocre, for example, improve them. These improvements will be especially effective if you focus on bringing senior lawyers into more frequent and useful contact with associates – in mentoring conversations; in discussions of how associates can contribute to building the firm's infrastructure (by creating knowledge-management resources or marketing materials, for example) or building their own careers (by writing articles or speaking at conferences); or in training programs that involve small-group discussions with senior lawyers rather than lectures to large audiences. One sad consequence of law firms' increased leverage was the decrease in informal mentoring, coaching, and simple human conversations between senior and junior lawyers. There is now an opportunity to regain some of that lost ground.

[End]