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A New Leadership Model Is Needed

*The Changes Occurring in
The Profession Require New
Approaches*

By Robert W. Denney

Even though there are signs that the economy is starting to recover, this recession will have a far greater impact on the legal profession than any previous recession in the last 70 years.

With each of the prior recessions (which occurred every 10-15 years) the profession continued pretty much unchanged. Clients raised few, if any, issues and firms continued to operate, more or less, as they had before. Business — and the practice of law — returned to “normal.”

The situation is far different this time. Whether or not the law firm “business model” — whatever that is — is actually broken (as many legal pundits including Richard Susskind declare), there are developments and trends that are raising challenges in the management of law firms. Furthermore, these are challenges firm leaders have not faced before and for which there are few, if any, precedents. This means new approaches are needed. Certainly the historic models for financial planning, firm structure, operations and client service, to name just a few, need to be re-examined. But it is the models for management and leadership that need a major tune-up if not replacement.

WHERE TO BEGIN?

Before firms can address the changes they need to make in their management and leadership,

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Number One Challenge to Lawyers’ Efficiency? Too Much Information!

By Sheldon I. Banoff

In the midst of a legal recession, one might assume that lawyers’ greatest challenge is to attract and retain clients, increase revenues, control costs, and operate more efficiently. This newsletter’s readers who are practicing lawyers and those involved in law firm administration (or both) face numerous challenges to operating efficiently.

We submit, however, that the number one challenge to lawyers’ (and administrators’) efficiency is in dealing with the ever-increasing barrage of information (online and off) that bombards us day and night. The author claims no expertise in information technology, human resources management, or time efficiency. However, we herein submit to our readers several anecdotal examples, and identify some of the consequences, of information overload, provide some recommendations which may apply to reduce the stress and help us proficiently filter through the info overflow, and invite your thoughts on the topic for a possible future update in *Law Firm Partnership & Benefits Report*.

This author has been a tax law specialist for 35 years, and early on identified and “wrestled” with the challenges of trying to keep up with the plethora of tax regulations, rulings, cases and legislation (and secondary sources) that help create tax advisers’ information overflow. See Sheldon I. Banoff, “The Tax Lawyer As Sumo Wrestler,” *TAXES — The Tax Magazine*, Vol. 57, pg. 103 (February 1979). We recently revisited the topic of tax lawyer information overload, and observed that we still crave more and more dissemination of materials, articles and governmental releases, so we can better serve our clients and stay even with our peers (who we must assume are doing the same thing). At the same time, we identified the tax lawyer as “Info Schitzo” — a part of us would be thrilled if there was a moratorium on new developments, guidance and articles until we can catch up on our backlog of law-oriented reading (fat chance of that ever happening!). Sheldon I. Banoff, “The Tax Lawyer as Sumo Wrestler: Sayonara, or See You in 2019?” *Id.*, Vol. 87, pg. 21 (October 2009). The tax law practice is not different from many other law specialties; information overflow is our common enemy.

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Apprenticeships

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the expense. In most apprenticeship programs, associates' billing expectations are reduced and while salaries are usually dropped below market rates, they remain high.

The economics of an apprenticeship model are staggering. At Howrey, first-years' salaries have been sharply reduced from \$160,000 to \$100,000, with an additional \$25,000 signing bonus. These associates will be expected to bill only 700 hours. During the second year, the billable hour expectation goes up to 1000 and salary rises to \$125,000 with an additional \$25,000 bonus for associ-

ates who finish the program. Salaries jump to market rates after the second year. Howrey estimates that the program will cost between \$3 million and \$4 million, including lost billable hours and training costs. The firm expects to save close to \$1.7 million through salary reductions. But even with those savings, this is a loss of \$1.3 - \$2.3 million. While large firms may be able and willing to absorb the cost of this kind of program, most firms will not or cannot afford to do it.

CONCLUSION

Moving to an apprenticeship model holds great promise in helping young lawyers transition into practice and in helping firms show that their young

associates can make valuable contributions to client service. There are many ways apprenticeships could be implemented in law firms, but individual firms are not likely to do it because the challenges and expenses of these programs are too great. A new model is needed for lawyer education, training and development that would have broader applicability. Law schools, law firms, bar associations and CLE providers are all exploring new ways to educate and prepare new lawyers. The current apprenticeship models will provide tangible experience and outcomes these entities can call on as they search for solutions.



New Leadership Model

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they must identify and understand the trends and issues that have developed, and the challenges they are creating. The list is extensive. It includes reduced profitability, oversupply of lawyers, commoditization of certain work, and globalization. But what must be recognized is that this is the first recession in which clients have been so outspoken and persistent in raising issues and making demands on their law firms. Therefore, the place to start is with clients. Every other issue must be addressed from the perspective of successfully serving clients. This is, after all, the objective of any successful business or organization — to successfully serve its customers or clients and to organize its management and operations to accomplish that objective.

In the case of law firms, this is not just a matter of reducing fees or de-

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veloping alternatives to the billable hour. It goes much deeper than that. For the first time clients are demanding "value" for their legal dollar. The Association of Corporate Counsel addressed this issue when it developed its Value Challenge in 2008. However, each client may still have a different definition of value other than "more bang for the legal buck." Notwithstanding that, there are certain things that every client wants its law firm to do:

- Ask for feedback and an evaluation of the firm's work, service and personnel.
- Learn and understand the client's business, industry, operations and business plans.
- Help the client be successful and achieve its goals. Be business counselors, not just legal counselors or service providers.
- Tell the client what it can do and how to do it, not just what it can't do.

The only way to obtain feedback and learn the client's business is by a client audit of each the firm's most important clients, conducted either by someone with the firm or by a qualified third party. Most partners in the majority of firms still oppose asking the client for this feedback and information. In the firms that have instituted and implemented this program, their leaders adopted a new approach to leadership — an approach which then became the model for addressing other challenges that need to be met.

THE NEW LEADERSHIP MODEL

In today's world, the responsibility of firm leaders is to get their partners to do what they don't want to do on their own. The effective leaders do not wait for consensus to develop. That takes too long — and may never happen anyway. Nor do they announce a new program or strategic initiative and then just encourage it. They recognize that, when leading lawyers, it is not enough to simply state what is expected of them.

These leaders do a number of things that leaders in other firms have not yet done. They lead by example. They provide active and aggressive support to the stated objectives and do not allow passive support and implementation to prevent change. They articulate the reasons for the change and how it will benefit, not only the firm as a whole, but also the individual lawyers. They provide skills training if it is needed *i.e.*, in how to conduct a client audit or how to manage a practice group or client team. They introduce and implement systems, such as compensation or recognition or both, to reward success or positive results. They may also implement penalties for negative results. And they take prudent risks.

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Too Much Information

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someone who is down the list (but is affected “dead on” by that article)?

SHARING REVELATIONS

First, our revelations to our readers: We frequently don’t practice

what we preach! We’ve been multi-tasking too much for too long! But like the tax lawyer who files his own returns late, do as we say, not as we do! Or better yet, do for you what works for you. Readers, we request your revelations: Let us know how you cope with the information

explosion (e-mail: sheldon.banoff@kattenlaw.com). We hope to pass on helpful solutions in a future update. (We promise not to treat your e-mails as info overflow to be discarded upon receipt!)



Contract Attorneys

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Not all Other Insurance provisions are created equal, however. Usually a policy whose Other Insurance provision is more specific will apply as excess over a policy whose Other Insurance wording is more general. The best way for the firm to increase the chances that its professional liability insurance will be excess is to make the language of the Other Insurance provision in its own policy as specific as possible when referencing contract attorneys.

Here Today, Gone Tomorrow

Even after insisting that contract attorneys carry their own professional liability insurance, firms should be cautious in placing too much reliance on contract attorneys’ policies when managing their own risks. Most contract attorneys’ insurance will be claims-made policies. If a contract attorney decides not to renew its insurance after the engagement is terminated, *e.g.*, the staffing agency is no longer in business, the policy may not be available to answer to claims.

CONCLUSION

Contract attorneys will continue to perform a substantial amount of work that once would have been handled by the firms themselves. Law firm managers must take steps to not only reduce the liability risks, but also to make sure those risks are covered by their firms’ professional liability insurance. Most issues should be easily resolved with a few changes to the policy, but only if they are recognized before a claim arises.



New Leadership Model

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What are some of the characteristics of these leaders who have adopted the new model? The major ones are:

- They have vision.
- They are businessmen and women as well as good lawyers.
- They are supreme but also prudent risk takers.
- They ask questions and are skilled listeners.
- They are excellent communicators, within and outside the firm.
- They delegate both responsibility and authority.
- They have commitment — the catalyst that makes all other leadership qualities a reality.

THE NEW MANAGEMENT MODEL

Although listening to clients is the first step in addressing the challenges that must be met, the process does not end there. Once the needs and demands of the firm’s important clients are identified, there must be a well-crafted system that reviews them and then establishes other strategic programs in order to keep and successfully serve these clients. This will require

identifying the trends, issues and challenges that must be addressed. The list may be long and will often include:

- More effective use of technology in both practice and serving clients.
- Lack of loyalty by partners and associates to their firms.
- The need for sufficient capital (most law firms are under-capitalized).
- Tort reform in many jurisdictions.
- Outsourcing and off-shoring.
- Increased use of contract lawyers.
- Legal services being provided by other than law firms.

To address these challenges will require most firms, even mid-size and smaller, to adopt certain changes in their management model including:

- Developing a job description for the Managing Partner or CEO that focuses on strategic planning, setting the future direction of the firm and cultivating a relationship with major clients.
- Delegating responsibility and authority for managing the non-legal, business operations to a strong Chief Operating Officer or Executive Director who heads a team of non-lawyer, business professionals.

- Raising the position of practice group head to the senior management level and selecting leaders who have the ability and are given the authority to manage their groups.
- In larger firms, de-centralizing management.
- Giving the members of senior management — Managing Partner, Executive Committee, Practice Group Leaders — sufficient non-billable time to effectively fulfill their management responsibilities.
- Compensating the members of senior management for the time they must devote to management and for the results they achieve.

CONCLUSION

Managing any entity is a challenge. Managing and leading a law firm today is a major challenge — some experts would even say it is an impossible one. When approaching these daunting tasks, it may be best to remember the words a young President spoke at his inauguration 48 years ago — “Let us begin.”



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