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by

Thomas S. Clay, Altman Weil

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TheRemsenGroup
1020 Rosedale Road - Atlanta, GA - 30306
404.885.9100 - www.TheRemsenGroup.com

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The leader in legal consulting.

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by Thomas S. Clay, Altman Weil, Inc.

Contact Altman Weil

Two Campus Boulevard
Newtown Square, PA 19073
(610) 886-2000
www.altmanweil.com
info@altmanweil.com

Thomas S. Clay: tsclay@altmanweil.com

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What Are the Obligations of Partners in 2012 and Beyond?

By Thomas S. Clay

"Partners who do not consistently achieve the required level of contribution should be relegated to a status other than equity ownership." When I made this statement before a group of managing partners, one said, "Isn't that awfully harsh?" My response was, "It may seem harsh but it is eminently fair. It is not fair to have some owners contributing in all the ways that sustain the health and vitality of the organization while others choose (independently) not to do so. If they are making that choice, then the organization has the right, and possibly the duty, to require those partners to suffer the consequences. Living up to one's obligations is ultimately about fairness among owners."

In 2002 I wrote an article entitled "What are the Obligations of Partners?" which began with the paragraph above. I have received more comments on that article than the dozens of other articles I have published during my career. Recently, several Managing Partners have asked if I would update the article in light of current law practice realities.

What has changed since 2002 that mandates a new, more rigorous standard for law firm owners? It's a buyer's market. Clients are demanding efficiency and innovation at lower price points. Facing onerous budget pressures, they have necessarily become less wedded to any one lawyer or firm.

Law firms can no longer rely on large, annual rate increases to drive profitability growth. Hungry competitors are fighting for work in a slow or no growth market and going down market if they have to. Nimble newcomers and non-traditional service firms are trying to redefine how legal services are delivered and priced.

In a highly competitive, low-growth market environment, the requirements of law firm ownership are more stringent and more important than ever before. Many firms are seeking to clarify or redefine the obligations of partners in light of the changing environment. What does it take to become a non-equity partner? To become an equity partner? To remain an equity partner?

As one managing partner confided, "I don't think we do enough as firms and leaders to be clear about what we actually expect of our partners." Clearly defining obligations, judging whether or not a partner is living up to those obligations, and then holding each partner accountable is critical for the financial and cultural success of any law firm. Firms that are not disciplined about this will risk decreased competitiveness, defection by valuable partners, ongoing dissention and internal bickering, stagnation, breakups and even dissolutions.

ACTING LIKE AN OWNER

Perhaps the comment I hear most often from managing partners, executive committees, and compensation committees is, "We just don't have enough people acting like owners." For many firms this is defined too narrowly to mean that the partners in question are unwilling or incapable of developing business.

"Acting like an owner" should have a much more expansive definition. While acquiring and growing business is an undeniable economic imperative, successful efforts in that area should not be the only thing that is rewarded, nor the only thing required from a partner.

Equity owners of law firms must contribute in a variety of ways. They will share risk and reward, invest non-billable time and capital in the business, be accountable to uphold firm values and expectations and hold their partners accountable in turn. And they will do so in a firm-minded manner.

MINIMUM REQUIREMENTS VS. HIGH PERFORMANCE

Ten years ago, my original article outlined the minimum contributions of an equity owner. In today's environment, establishing "minimum performance" thresholds is simply not good enough. It is time to rethink this idea.

"FIRMS NEED TO DEFINE WHAT OUTSTANDING PERFORMANCE LOOKS LIKE AND MANAGE FOR THAT."

Many law firms set goals and expectations for minimum billable hours, minimum working fee receipts and the like. Minimum expectations, regrettably, have become the norm in many firms, and many firm leaders have come to accept this mindset. Because minimums are by definition the weakest acceptable performance, managing around minimums will not build and sustain competitive strength today. Instead, I suggest that achievement of minimums should be seen as akin to a "C" grade, or "average," with rewards being awarded only for superior contribution in the "A" and "B" range. Firms need to define what <u>outstanding</u> performance looks like and manage for that.

A MOTIVATIONAL CRISIS

Another worrisome dynamic has crept into many firms' partnerships—complacency. Despite the recession, law firm incomes have not deteriorated to such a degree that partners are sufficiently motivated to do more of the things that would add value. As one law firm partner put it during a confidential interview, "I meet my billable hour and revenue goals, I don't make waves, and I earn more money than I ever thought I would. I am happy with things as they are."

That kind of complacency is at the heart of a motivational crisis that can and will render firms competitively disadvantaged against firms with higher overall levels of partner engagement and contribution. Moreover, as a general principle, a firm's highest-performing partners won't tolerate lax attitudes among their partners forever—either the chronic underperformers (and undermotivated) must go, or the high performers will.

THE FALLACY OF THE FINDER / MINDER / BINDER / GRINDER CONCEPT

In the past, it was said that firms had finders, minders, binders, and grinders:

Finders: Those who find the work;

Minders: Those who mind/manage the work;

Binders: Those who manage the clients; and

Grinders: Those who simply turn out legal work.

The thinking was that partners could select, usually independently, from these functions in the firm to fulfill their partnership obligations. Firms no longer have this luxury. As in any highly competitive, entrepreneurial environment, the owners of the organization need to <u>do it all</u>. That is not to say that the "mix" of contributions will be the same for each partner. Not all partners will find work in the same manner, nor will they all produce legal work at the same level or add value in the same ways. The point is that firms need the efforts of all partners in all of the following areas.

PARTNER OBLIGATIONS

What does every firm need from its owners going forward? Every partner must provide client-determined service quality, develop new business, contribute to the firm's profitability, add value to the firm beyond doing legal work and embody and live out the firm's values. Let's look at each obligation in turn.

1. Client-Determined Service Quality

The Obligation – Every partner is obligated to provide "client-determined" service quality. This means that clients, prospective clients, and internal clients (other partners) must receive from every partner the level of attention, treatment, responsiveness, timeliness, communication, concern, etc. that the client deems appropriate.

Rationale – Professional competency is the "price of admission" in a mature legal market—it is expected and assumed. What, then, sets one lawyer apart from others in the clients' eyes? Client-defined quality will increasingly become a competitive differentiator. Lawyers can no longer be comfortable delivering the service quality they deem appropriate. That's not good enough. Clients and prospective clients have too many options and are increasingly demanding, because they have to be and they can be.

This cannot be an empty sentiment. Law firm mission statements are replete with generic claims of delivering the "highest quality legal services." But in reality, if a partner produces a high volume of fee receipts, firms often choose to ignore lapses in service quality or fail to say something when quality is not up to standards. In our view, if there is any single criterion on which a partner cannot fall down, it is this one. Consistently excellent service quality, as defined by clients, must be non-negotiable.

2. Business Development

The Obligation – Every partner should energetically participate in business development efforts for him/herself and for or with others.

Rationale – In a slow-growth, no-growth, or declining economy, every partner must continually be focused on doing what he or she can in the business development arena. Too many lawyers who have met their minimum economic obligations see marketing and business development as someone else's job. This is especially true of individuals who don't consider themselves natural rainmakers, which is to say, most lawyers.

It is generally true that rainmakers are born, not made. The most successful rainmakers have certain inherent traits that other lawyers simply lack. However, there are skills that any partner can learn and habits that any partner can develop to generate business.

Firmwide programs that aspire to make every lawyer a traditional rainmaker are doomed to failure. That goal is irrational. However, there must be ongoing efforts by all owners in order to produce a constant, needed flow of new business.

"TOO MANY LAWYERS SEE MARKETING AND BUSINESS DEVELOPMENT AS SOMEONE ELSE'S JOB."

How often have I heard, "If I had wanted to be a salesman, I would not have become a lawyer"? This attitude cannot continue. Every owner must have the same level of commitment and must contribute each year to regeneration and growth.

The flaw in the "I am not a salesman" argument is that business development goes far beyond simply "selling." In law firms, it is a much more nuanced and sophisticated process and one in which any partner can participate by finding and committing to the right activities. It is each individual's obligation to do so, and it is leadership's obligation to provide guidance, feedback, resources, training, encouragement, coaching, rewards and whatever else is necessary for partners to contribute successfully.

3. Personal Economic Contribution

The Obligation – The obligation to make a personal economic contribution to the firm has evolved over the last decade. We used to think that simply producing enough working attorney fee receipts to cover one's allocated overhead and fully loaded compensation was enough.

Break-even was considered a sufficient contribution. That standard is no longer adequate. Now a partner must also produce investment dollars beyond simple break-even.

Rationale – At a time when leverage in law firms is increasingly difficult to achieve, where billable hours are harder to come by and there is intense pressure on rates and realization, it is necessary for all partners to be personally economically viable and provide for needed investment that goes beyond covering overhead.

Owners invest in the business. Law firms have increasing capital needs for talent acquisition, growth, technology, marketing, business development, training and coaching. Increasingly, adequate capital will not be generated by simply increasing billing rates. Debt is becoming a dangerous liability in some firms. Capital investment must therefore come from all equity partners.

"BUSINESS OWNERS WAKE UP THINKING ABOUT THE HEALTH AND WELL-BEING OF THE BUSINESS AND WHAT THEY CAN DO THAT DAY TO INCREASE ITS VALUE."

4. Adding Value to the Firm

The Obligation – Many firms refer to partner "investment time," meaning time spent on non-billable activities undertaken to increase the value of the firm in various ways. If a partner is not pursuing such activities designed to increase the long-term value of the enterprise, then I suggest he or she is not acting like an owner but as a well-paid employee. Business owners wake up thinking about the health and well-being of the business and what they can do that day to increase its value. Every law firm partner should be thinking this way and taking actions that reflect an ownership orientation.

Rationale – "Adding value" has become a platitude, but it is precisely what is needed from partners today. They must do things that enhance the value of the firm beyond doing legal work.

Partners should be able to answer the question, "What are you doing (or do you plan to do) to build the firm's capabilities and enhance our competitiveness?" There are a number of ways in which partners can add real value to the enterprise, beyond billing time. Here are a few examples:

- **Practice Leadership**: Highly effective practice group leaders can add tremendous value to the firm through their leadership and stewardship. A good leader has the opportunity to develop and implement a group strategy, acquire and integrate talented laterals, increase profits, lead the group's efforts to develop new business, cross-sell other groups, develop its legal professionals, grow the firm's presence and reputation in the marketplace, and enhance the firm's competitive position. Partners serving as practice leaders can add value through their own efforts as well as inspiring valuable contributions from the other lawyers in their groups.

- **Services Efficiency and Innovation**: Partners who take on the mission of improving practice efficiencies have the potential to add great value to their law firms. By developing new, efficient approaches to projects and matters, they will be able to manage for greater profitability, experiment with new staffing models, develop Knowledge Management systems, improve client satisfaction and create enormous competitive advantage.

- **Industry Leadership**: Partners who become acknowledged experts and leaders in particular industries or well-defined areas of expertise will enhance their firms' reputations, become a magnet for high-profile clients, and deliver the highest quality legal counsel, often at premium (and recession-proof) rates. This proven strategy will continue to be effective.

- **Succession Planning**: Partners who are approaching the end of their careers can add value to their firms by engaging in rational, systematic succession planning for those clients with whom they have strong relationships and where there is significant future business potential. These contributions should not be underestimated and should be encouraged and rewarded.

- **Skill and Knowledge Transfer**: Partners can participate in the development of younger attorneys into effective practitioners and future partners through mentoring, training and coaching. A skillful mentor will share know-how regarding technical and practical principles so that new lawyers can become economically viable more quickly.

It is leadership's responsibility to ask how each partner can be doing more or different things to add value to the firm and every partner's obligation to identify and do those things.

5. Live the Firm's Values

In my original article, I commented on firm-mindedness as an obligation of partners. Over the last decade, I have observed that the bigger issue is whether firm leaders uphold the firm's stated values.

Many firms have articulated values—norms, expectations or a code of conduct which all partners are expected to promote, embody and uphold. However, too many firms allow partners to bend, break, ignore or trample the core values, especially if a partner in violation is a major economic contributor.

The Obligation – An owner must act in a collaborative, team-oriented manner, complying with firm values, policies, systems and procedures, treating all lawyers and staff with respect and putting the firm first—*No jerks tolerated*.

Rationale – Law firms simply cannot allow unacceptable behavior, even from economically productive lawyers. Tolerating conspicuously awful behavior sends the wrong message to others. Many are the managing partners who have told me that they agonized for years over what to do with "Bill," who was a productive economic contributor but never a team player. When Bill either left or was asked to leave, almost without exception there was immediate total agreement in the partnership that it should have been done years ago. Effective organizations do not tolerate destructive behavior or ignore established values.

"IT IS OFTEN SAID THAT YOU GET WHAT YOU MEASURE… IN MY EXPERIENCE YOU GET WHAT YOU TOLERATE."

A CULTURE OF ACCOUNTABILITY

Finally, and perhaps most importantly, the willingness of owners to be held accountable and to hold others accountable for their required contributions to each other and the firm is at the heart of success. Unfortunately, my observation over decades is that firm leadership is often loath to truly hold their peers accountable.

It is often said that 'you get what you measure'—I don't agree. In my experience you get what you tolerate.

Adopting a culture of accountability doesn't mean creating more bureaucracy. Partners are always resistant to being told what to do or feeling micromanaged. What we are talking about here is simply a commitment by partners to do what they have said they will do, a willingness for firm leadership to check in with them on a regular basis, and agreed-upon consequences for those who fail to perform to expectations.

I suggest that all that is needed is:

1. A collaboratively determined contribution agreement or commitment;
2. Timely check-ins by leadership, rigorously scheduled and followed;
3. Honest feedback/debriefing by leadership regarding each partner's efforts; and
4. Readjustments to the commitment when indicated.

Of course a choice by a partner not to be accountable means suffering the consequences, which since the recession has meant reduced compensation, de-equitization or release in many firms.

CONCLUSION

Recently I asked a group of law firm managing partners why partners in their firms were not contributing as hoped. One managing partner said "Twenty percent of any group will run barefoot across the coals to get to the finish line. The others can't or won't." My response was, if the eighty percent truly can't make the effort, they should never have been made owners, and if they won't, they should no longer be owners. As I said before, living up to one's obligations is ultimately about fairness among owners.

I have great faith in lawyers' and firms' ability to reverse the percentage from 20% who meet requirements and 80% who can't or won't, to 80% who excel—if the owners commit to the full array of today's obligations and leadership does its part to hold them to it.

Thomas S. Clay is a principal with management consultancy Altman Weil, Inc. He advises law firms on strategy, management and leadership. Contact Mr. Clay at (610) 886-2000 or tsclay@altmanweil.com.

THOMAS S. CLAY

tsclay@altmanweil.com
Phone: 610.886.2015

Thomas S. Clay is a principal of Altman Weil, Inc. With 30 years experience consulting to the legal profession, he is an acknowledged expert on law firm management principles and is a trusted advisor to law firms throughout the U.S. and Canada.

Mr. Clay heads consulting assignments in strategic planning, law firm management and organization and law firm mergers and acquisitions. He is a thought-leader on the key issue of law firm practice group strategy and leadership.

Prior to joining Altman Weil, he was vice president and general manager of a venture capital company that specialized in the provision of consulting services and financing arrangements to entrepreneurial operations.

Mr. Clay has written on law firm management issues for national and regional legal publications. His comments on law firm management, finance and related topics have appeared in *The American Lawyer*, *National Law Journal*, *ABA Journal*, the *Wall Street Journal*, and the *New York Times*, among others. He is a frequent lecturer on the legal profession.

He is Fellow of the College of Law Practice Management (COLPM) and serves as a Judge for the College's InnovAction Awards which recognize outstanding innovation in the delivery of legal services worldwide. In 2010, he served on the ABA Commission on the Impact of the Economic Crisis on the Legal Profession. Mr Clay has been named as one of the "100 Legal Consultants You Need to Know."

Tom holds a Bachelor of Science in Business Administration from the University of North Carolina at Chapel Hill, and a MBA in Finance from Georgia State University.