Failure to Delegate

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This is the third in a series of articles about how corporate and government law departments can improve their performance and add measurable value to the organizations

A detailed analysis of law firm staffing patterns over the years reveals very idiosyncratic behaviours - variations in the ratios of partner, associate and paralegal time that cannot be explained except by a partner's preference on how to staff different matters for different clients. Partners in the same firm doing the same kind of work will use different proportions of associate and paralegal time.

This should be of significant interest to both law firm leadership and to corporate and institutional consumers of legal services. Law firm leadership should understand the extent to which partners leverage the time of associates at all levels of experience, of paralegals, and even of less senior partners. Leverage is central to law firm profitability. Gone are the days when a law firm would consider that first, second and third year associates were "loss leaders" – a very expensive training program with a serious attrition rate. More often than not, everyone in the legal "food chain" can readily delegate 20 % of their work to the next band of experience.

In most instances, this means delegating certain tasks rather than entire files. This requires planning and teamwork. Associates must do more than meet formal and informal billing targets. Firms should be more explicit in setting leverage objectives for individual partners. Delegation should be optimal.

Practice group leaders should consider this one of their core functions, not only because the law firm's bottom line is directly affected, but because knowledge transfer, training and development, and client service come into play.

General Counsel should take an avid interest in the staffing patterns of the law firms they retain both for an individual matter and for portfolios of legal work over time. Some of the reasons for doing so are the same as the ones that preoccupy law firm managing partners: turnaround time, knowledge transfer, and stable legal teams. However, the financial imperatives differ for the client.

The cost of a matter can be as much as 15 % less, depending on the extent of delegation. In recent years, law departments have bee asking for detailed matter budgets for complex work beginning with files requiring at least 50 hours. The distribution of work by phase and task and by fee earner is now an established process in most firms. Too few clients are rigorous in requesting and diligently reviewing matter plans and budgets.

Negotiating a blended hourly rate for all fee earners on the file helps the law firm to focus its resources on the tasks at hand, thus properly overseeing the distribution of who does what by when. The firm and the client should ensure that the matter plan and blended rate reflect the relative complexity of the file. However, a discounted blended rate will not control for the number of hours that are worked on a file. Better to agree on a capped number of hours, or on an annual fee that generates a productivity dividend - fewer hours – from the firm. It is easier to do this when the file is large enough or with a collection of matters over time. More eggs in fewer legal baskets.

Failure to delegate tasks is a much more widespread challenge in law departments. The law firm leverage model is simply not available. Counsel will work collegially enough, but individually still then to do more than 90 % of the work on a file, no matter how complex or simple the tasks may be. To the extent that there is any delegation by inside counsel, it will be by co-counselling with a law firm to use their associates or because the law department has paralegals available.

I recently spent time looking at file allocation patterns and service delivery in a 38-lawyer law department. About 85 % of the lawyers were litigators, supported by a legal assistant for each three (3) lawyers. Amazingly, there were no paralegals. Workloads were measured by file count without regard to any complexity levels or the mix of file types to each lawyer. There appeared to be no distinction made in file allocation to entry level and senior lawyers. No targets were set for file cycle times. All in all, this was a collection of hard-working solo practitioners.

Leverage in law departments need not take the form of senior and junior lawyers. Unlike law firms, law departments are not attrition-based models. Demographics suggest that most inside counsel have at least 10 years of practice experience. What is the solution when there are no juniors or paralegals on board? Twinning a lawyer with another lawyer and encouraging them to divide the work – that is to say the tasks of a given file – between them will drive productivity with two provisos. The first is that work intake and allocation must be centralized with group leaders in the law department such that workflow and deadlines are more explicit and capped.

The second is that law department leadership has a system to monitor file count, file complexity, and cycle times against objectives.

General Counsel and law firm leadership have much to gain but addressing the failure to delegate.

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