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WINTER / SPRING 2012

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ON THE COVER

Every department in our law firms is affected in one way or another by finance issues. Read along in this edition, and learn about the dollars and “sense” of running your law office.

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HUMAN RESOURCES AND FINANCE: PERFECT TOGETHER... WELL, MAYBE

BY GAYLE P. ENGLERT

I confess. For those of you who do not already know me, I am a Human Resources professional, and, although I am great at managing money and never saw a sale I didn't like, I really don't like numbers.

To me, numbers are rigid and scary and cold. I think this fear of math is deeply seated in my childhood. In my day, there was no preschool. There was nursery school, which I did not attend. Instead, I learned things from my mother at home (who, by the way, was very good at math) until I attended kindergarten. Kindergarten was great. There was an endless amount of play time with other children and they had a full-sized play kitchen that I absolutely loved.

My teacher (Mrs "S") (full teacher names have not been used to protect, well, me!) was a mature woman who was very nurturing and referred to me as "Miss Delightful." How could I not love her??? In class, we focused on basic learning skills of reading, writing and arithmetic (oh no, not that scary subject again). These skills were further developed in first and second grade.

My first grade teacher (Miss "D") was also great. She was young and hip, and very warm and welcoming. My only issue with Miss D was that she told my parents during Parent/Teacher conference that I was sometimes distracted with my schoolwork because I was busy socializing with the boys in class. I am not disputing her comments, I just don't think that she had to tell my parents! (I must admit that not much has changed today.)

Second grade was the catalyst for my thoughts about math. I was assigned to Miss "L's" class. She was the most dreaded teacher in the entire school. All of the children were afraid of her and no one wanted to be assigned to her class. Although she and I got along very well, she was not warm and welcoming as my other teachers had been. She used one of those pointers that were popular at the time, and she would tap it on the floor or in her hand waiting for you to respond to a question. Many of the children thought that she resembled the Wicked Witch of the West from *The Wizard of Oz* (absent the green skin, of course, although some surmised that she applied makeup to

cover up her true skin color). She made us go through constant drills about fractions and multiplication tables, reprimanding us if we did not respond correctly. From that point forward, I disliked math.

Time for confession number two. Not only am I a Human Resources professional, I am also a Libra. (Did I also mention that I am Catholic? Confession, another scary childhood memory.) The Zodiac sign for Libra is the scales. This is representative of the goal of a Libra, to be fair and balanced in somewhat of a detached manner. Libra is an air sign and, as a result, seeks an ideal resolution. A Libra has the capacity to view complex situations and make a well-balanced decision based on a fair and impartial consideration of all options. We desire popularity and love art. We are neat, plan ahead and pay attention to detail, and we can also be bossy at some times. (Bossy? Me? Never!) We dislike noise, confusion, and ugliness.

My personality is well suited for my profession, as Human Resources professionals are typically perceived as right brain individuals and extroverts. We are viewed as working in a field that has many shades of gray, and we can sometimes have difficulty with numbers. (There is that math thing again!) Conversely, finance professionals are perceived as left brain individuals and introverts. They tend to be analytical and very black and white in their thinking. Human Resources professionals focus on long-term effects of decisions with regard to their impact on morale, recruitment, staffing, etc. Finance professionals are often short term, bottom line, results-oriented individuals.

So how do you strike a balance between these two different yet equally important members of the management team? First is the need for each department to understand each other's function in the organization and the reason for the approach to handling issues; and while stereotypes do exist, they are not always 100% accurate. This can be achieved through training for both departments that provides insight into the operation and function of the other department, and meetings between the departments where the two groups can openly share ideas about how to collectively achieve the organization's goals.

Human Resources and Finance

(Continued from page 4)

Human Resources professionals are not just the party planners or advocates for support staff as they were once viewed, but rather they have become strategic business partners. Finance and management professionals have become more aware of the importance of human capital, due to an uncertain economy and the decline in the size of the labor market as baby boomers enter retirement. They have sought out the Human Resources professional to provide advice and counsel on how to effectively address the issues resulting from a changing market place. Similarly, Human Resources professionals have begun to see their Finance counterparts as an ally, rather than an adversary.

With the common focus of recruiting and retaining top talent in order to effectively achieve the organization's goals, Human Resources and Finance can be an incredible, successful team.

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BECOME A FINANCIAL LEADER

BY ROBBIN DOLAN, CLM

Law firm finance is a very important aspect of operations. It is ranked first among senior partners in importance in a 2008 Korn/Ferry survey of law firm leaders. The work that finance managers do each day can be a mystery to partners who may not know a lot about the nitty gritty, and who are only concerned about the final result: profits. At most law firms, financial leadership is probably not considered. In addition, in the traditional law firm, partners oversee financial managers or bookkeepers, therefore many of these financial managers have had little exposure to leadership training.

As finance is a key operational component, there is good reason to expect and demand that these key individuals be firm leaders. The benefits of identifying and grooming corporate leaders has been studied and demonstrated for years. The application of these concepts to law firm financial management is relatively new, due to the attorney-centric management structure. As more of these non-attorney managers take on high profile positions, the more the firm looks and acts like a corporation, and the better studies on leadership can be applied.

Financial leadership can be broken down into two skills sets—the “technical” set, based on daily machinations of cost control to improve profits, and the “people” set, involving application of traditional leadership concepts. This article explores how both technical and people skills can be applied to leadership in law firms.

Leading Financial Operations

Good financial managers can produce an accurate set of books. They tend to focus on the technical side of financial operations—accounting for profits, responding to new laws, and managing costs. They perform daily accounting operations well. They are very good at operational details, and by training have a technical skill set. Perhaps they manage a group of bookkeepers and accounts receivable clerks.

There are several ways leadership concepts can be applied to the technical operations of financial management. One is to “practice what you preach.” Be a model of cost control—don’t purchase the best leather chair or stay in the priciest hotels

when you travel. Your staff will acknowledge your efforts and abide by them when it’s their turn to do the same.

Another concept is to create and monitor an annual budget. Take the time to perfect your budget and monitor it monthly so that there are no year-end surprises, and so that adjustments can be made. Budgeting is a financial management tool that can make or break the year for the firm. By developing and sticking to a budget you demonstrate you are in control of the firm’s financial outcome.

Yet another concept is to properly manage your staffing. Hire the right people, manage workflow, and look for ways to improve processes. Hold staff accountable for their performance, and conduct annual reviews. Make them feel like part of the team.

Finally, while the daily activities required to run financial operations are time-consuming and can be distracting, a good financial leader needs to step back occasionally and remember that they do need to set an example for their staff. It’s easy to focus on the mundane daily tasks and think you are leading by managing the finances. However, management is not leadership, and to be a good leader, you need to spend time developing your “people” leadership skills.

Leading Your People

In essence, you want to influence your workers to follow your lead. Leading people is much harder than leading financial operations. This skill set is not something that is taught in business school and if you are lucky, you have had a mentor over the years to teach you leadership concepts. This is where passion comes in. This is where the good of the firm takes precedence over personal ambition. This is what makes the difference between a good firm and a great firm, and between a good manager and a great leader.

John C. Maxwell is a well-known author and speaker on leadership issues. In his book “The 21 Irrefutable Laws of Leadership,” he identifies some key points that can be readily applied to law firm financial managers.

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Become a Financial Leader

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One point is that leadership can come from all aspects of the organization; that the lowest level worker can exhibit leadership characteristics that will benefit the firm. He posits that the true meaning of leadership is based on the person's ability to influence others. This can be applied to people in every position, from the billing clerk to the CFO. You can empower your staff if you listen to their suggestions and communicate well with them. This makes them feel important and that their contribution has value.

Another point is that "leaders touch a heart before they ask for a hand." A true leader has the ability to make the most out of their relationships with people. They become close with their workers, and know their kids' names. They inquire about their weekends or their holiday trips. They become *engaged* with their employees. In turn, these employees become fiercely loyal and devoted to their firm.

In a recent *Star Ledger* newspaper article ("Nature or Nurture? What Makes a Perfect Leader," December 4, 2011), Steve Adubato, a frequent contributor on management issues, addressed this topic. He said that many managers failed to properly nurture their relationships with their workers, and that this lack of empathy

might be innate. To overcome it, good leaders must constantly question their performance and look within themselves. A good leader recognizes that nurturing relationships with their workers benefits all.

Leadership Learning Is an Individual Responsibility

Finally, developing leadership skills is an ongoing process that must be pursued by the individual. It is easy for the financial manager to get bogged down with daily minutia. The fast paced, high pressure environment of the law firm makes it much easier to focus on the daily emergencies and forget the importance of the support people behind them. While leading financial operations comes naturally to financial managers, they must continually remind themselves that without the devotion and skills of their staff, they aren't fulfilling their roles as good leaders. Becoming a good leader is an entirely different skill set that must be learned, and it is not taught in school. The learning process is one of self actualization and self-discipline, but when fulfilled can be very rewarding for the manager, the firm and its employees.

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WHERE DID EVERYBODY GO? THE ABSENCE OF ABSENCE MANAGEMENT

BY DOREEN MARINO

Human Resources isn't just about people. It is about what people cost. That is obvious when we talk about salaries and benefits, which are big items that stay on top of everyone's radar. The focus of this article is to discuss how your firm can be eating away at that hard earned revenue. These are not numbers that are obvious on a balance sheet. It is the cost of absences. Let's start with a nice hard fact.

A Mercer survey, similar to others conducted by the Disability Management Employer Coalition and the Integrated Benefits Institute in San Francisco, aggregates all employers and estimates average direct and indirect costs of all categories of absences at about 35% of payroll. (Robert J. Grossman, "Gone but Not Forgotten," *HR Magazine*, September 2011 (at 38)).

Each firm decides how much paid time off employees should be entitled to. A New Jersey firm is not required to provide employees paid time off and when a firm does so, it is a "benefit."¹ Employee absences cannot be underestimated on how much it costs the firm, and yet there are few managers who actively perform absence management. There is not much research as to why managers shy away from managing absences. Some myths are:

- Attendance discipline never really changes anything, attendance issues continue
- Flexible working schedules promote relaxed attendance
- Relaxed attendance promotes a better environment
- When employees are docked for overuse of time, it doesn't cost anything
- Absence management is on the top five list of most thankless tasks—wait, this is not a myth....
- The laws are complicated surrounding absences, it is easier to simply ignore

Let's take a quick look at the different types of absences and at the impact it can have on the bottom line.

1. Planned Time Off. As you know, this is allotted time to employees that is scheduled and approved in advance, giving you the ability to plan around absences. Vacation time and, in most instances, personal time fall into this category. Your biggest challenge should be how to make sure all the work is getting done during the planned absences. We know that this has become the

¹ Several states have adopted mandatory sick days that must be granted to employees. As of this writing, New Jersey has not adopted any mandatory requirements that employers provide sick days off.

easiest absence management challenge.

Once you setup a system to cover absences—workflow groups work buddies, overflow bin, etc. —all typically works out well and absences are covered. What you should be mindful of is what this "benefit" is costing you.

Direct costs are the costs associated with the compensation an employee receives for not working (inclusive is paid time off and any benefit that pays an employee while not working, such as disability insurance). Therefore, if an employee making \$55,000 a year (35 hours per week) is entitled to 25 days vacation, that benefit is costing \$5,288.46 (paying the employee for no work). If you multiply that by the number of employees entitled to the benefit, you can have some pretty significant numbers. Obviously, the larger the number, the more significant the impact is. This is your direct cost associated with employee absence.

Your workforce plan should be *inclusive* of planned paid time off permitted by the firm. So it should be obvious now that the more planned time off you offer employees, the more of a workforce you end up with. This simply means you are staffed in a manner that if an employee takes a vacation, you have the staff available to absorb the work needed to be done.

Many firms struggle with whether or not to pay for unused and accrued vacation days. Firms that are tightly staffed should be creative in inspiring employees' attendance. Some firms pay outright for unused vacation time at year end. Depending on your environment, if your indirect costs (as described later) are significant, it ends up actually being financially beneficial to just pay out the direct costs. So, this would be recommended only if the vacation will require indirect costs incurred, such as a temporary increase in workforce, *e.g.*, a temporary secretary to cover the vacation. It is much more economical to pay the employee for some of his/her vacation time. Partial payment for accrued and unused vacation and personal time is another successful incentive, but not as successful as a full value payout.

If more than 20% of your employees either have an abundance of paid time off or are being docked for overuse of time off, you probably need to analyze and adjust your paid time off policy. There are different ways to approach decreasing or increasing the amount of time off, but in both cases, be sure you are competitive, and, if not, that you have something else to offer in its stead (such as more holidays per year).

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Where Did Everybody Go?

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B. Unplanned Time Off. This roughly costs 8.7% of your payroll. Though most of us plan for emergency coverage needs, unplanned time off can become a manager's worst nightmare, especially if the unplanned time becomes extended. The only way to cure this out-of-control gremlin is to manage it. Most of us do not want to be overburdened with managing unplanned absences—it is cumbersome, tedious and most of the time the employee is (or will be) protected in some way or another. But you need to manage it because the gremlin is costing you. Either reward for planned time off or penalize for too much unplanned time off. Make attendance count in a meaningful way—either get it in a policy or utilize attendance information when considering raises and/or bonuses.

Unmanaged, unplanned time off forces you to add to the workforce in order to make sure work is getting done. If you can argue this and say that it does not, then you are overstaffed to begin with. Having an employee with bad attendance with no impact on the firm should really cause you to wonder.

Unplanned time off also negatively impacts firm morale. The employees who are very dedicated are harmed when others take unplanned time off. When this is not managed, employees become negative, productivity slows down, and complaining begins. Loss of productivity is another phantom cost because it is not distinguishably measurable.

One of the first and quickest ways to control unplanned absences is to practice procedures that require certain documentation after a specified amount of days. For example, once an employee is out more than three days, he/she is required to produce a doctor's note. You can also put procedures in place for a certain amount of specific days taken, such as Fridays and Mondays. You obviously wouldn't require a doctor's note, but you can require the employee to meet with management to discuss the concern. The point is that when we manage attendance, the act of managing in and of itself induces better attendance.

C. Legally Mandated Leave Time (FMLA/NJFLA). Make sure you are properly documenting and managing all mandated leave time. Appropriate and legally approved forms for managing leave time can be found at <http://webapps.dol.gov/library/forms> for federal forms and at http://lwd.dol.state.nj.us/labor/fli/worker/download_fl1_page.html for state leave information. Believe it or not, experts report that this will result in a minimum of a 2% decrease in employees taking leave time, an 8% decrease in the amount of time taken, and almost a 20% increase in reliable returns from leave. If you are not equipped to manage legally mandated leaves, you should consider outsourcing to your broker.

Require certifications and regularly follow up with employees on the status of their leave time afforded to them. Consult with your employment law attorney if you feel someone is taking advantage of your firm. But always remember, regardless of which mandated leave law applies to the employee (disability, family leave, worker's compensation, etc.), an employee should always be able to perform the essential functions of the job when at work (if not,

they are disabled) and the employee's return to work must result in a reliable attendance and performance.

If an accommodation is requested for a shorter work schedule, be sure you have the exact period of time the accommodation is needed and then determine if the firm can meet that accommodation. The smaller the firm, the more difficult it is to have an employee return on a reduced schedule for a long period of time. Remember, if the request causes an undue burden upon the firm's business, then you have the right to claim that the accommodation cannot be met. For example, a paralegal who is out on leave advises you that he/she is ready to return; however, the paralegal can only work for half days for a three-month period of time, before being able to return to full-time status. The position has been filled by a temporary paralegal working a minimum of full-time hours. If the paralegal returns part-time, you will be forced to retain the temporary paralegal, since the returning paralegal will not be able to work the requisite hours to fulfill the job requirements. Full-time employment is an essential function of this position; therefore, you have a right to advise the employee that the firm is not in a position to make that accommodation.

All forms of unplanned absences along with legally mandated leave time incur **indirect costs**. These costs include, but are not limited to:

- Compensation to any additional support needed to cover during an employee's absence (including floaters, temporary employees, part-time assistance, and *overtime compensation*)
- Added hours by management and time dedicated to assuring that absences do not impact productivity
- Impact on morale, which lowers production, again causing the chain reaction of added overtime to keep work up-to-date
- Employee burnout from absorbing absentee's work, again lowering productivity, and again causing the chain reaction of added overtime to keep work up-to-date.

To conclude, one of the best attendance cost reducers is an official attendance system. This does not mean an attendance software package—though for mid- to large-size firms there is no other alternative for successful attendance tracking. But even a manual system that is created in-house can be very successful, as long as it tracks the hours worked by non-exempt employees (and exempt non-attorney employees, if applicable).

To best explain the impact of an attendance system on the bottom line can be related to why dieters are recommended to write down everything they eat. If you make employees record their hours worked, they become aware of the required hours. Firms with formal attendance systems have less of a percentage of absence issues than firms that do not track employees' time. Something to think about.

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How Do You SEE YOURSELF?

BY NATALIE LOEB

If I asked you to select three adjectives that describe you and write them on an index card, could you do it? What if you were in a room with about 15-20 colleagues and they were each doing the same thing? Let's say next I asked each of you to place those three cards in front of you? Take a moment and think about which way you would face the cards. Face up or face down?

I've used this activity to start a communications-style workshop hundreds of times. Eighty per cent of the people place their cards face down. I've always found this interesting...and here's why. Placing the cards face down suggests the learner is not yet ready to disclose something about him/herself. The ironic thing is that we already know! Overwhelmingly, the others who work closely with them already know what they are like. How they behave. How they would be described. I call this occurrence the "spinach in the teeth" syndrome. Or in my personal case, the "skirt stuck in the top of my pantyhose" syndrome: *The clear things others see about us that we do not.*

All of the learners I have worked with tend to agree that the first thing they do when they become aware of one of these syndromes is to take immediate action to change the situation. Yes, remove the spinach; and as I personally did when stopped at the corner of 3rd Avenue and 63rd street in New York City, remove the skirt from my pantyhose and lower it over my backside. After moving through the feelings of embarrassment, awkwardness, and simply feeling stupid, I had been so relieved a kind woman had tapped me on the shoulder and said, "You may want to know that your skirt is tucked into your pantyhose." I replied, "Thank you," took the action of pulling my skirt out and down, and continued on my way with a huge sense of relief.

The next thing running through my mind was what could I

have done to avoid this awkward moment. If I had only taken the extra time to take a complete look at myself in the mirror before I left my apartment, I may have noticed I had to pull my skirt out and down.

If we all only took the time to take a complete look at ourselves every morning. What would we learn?

My next activity in this workshop is to ask the group to stand up and look at a set of words I posted on a piece of flipchart paper. The list starts with the word **ACTIVE**. Underneath are the words *fast-paced, dynamic, and bold*. You know...I say, those people that tend to speak fast with a direct assertive tone, you may see some direct eye contact, use of hand gestures, facial expressions, and they just have a way of being seen and heard. You would describe them as fast-paced, assertive, dynamic and bold! Most of the time I get some nods, smiles and oh yeses! Then I turn the

attention to the flipchart paper on the other side of the room where the word **THOUGHTFUL** is followed by *moderately paced, calm, methodical, and careful*. I then ask who knows someone like this? Someone you can describe as demonstrating more "thoughtful" behavior more often? You know, someone with a more moderate pace of speech, who tends to move, work, or get things done at a pace that doesn't seem urgent. In fact they seem to take their time, not to create drama, like to think things through. They may even be good at maintaining a stable, reliable atmosphere...secure and comfortable. Again I get some nods, giggles and yeses!

What happens next is the fun part. I ask the learners to stand and go to the side of the room with the flipchart that represents how they behave most often. Usually, there is a sense of hesitation, as if aligning with the flipchart that represents their behavior is going to give some big secret away. I always hope there will be someone completely puzzled who just doesn't

(Continued on page 14)

SAVE THE DATE!
Author Natalie Loeb will be the featured speaker at the NJALA Monthly Meeting on Tuesday, April 10, 2012. She will present a session on "An Introduction to DiSC Management."

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LAW FIRM PROFITABILITY—KNOW THE RULES AND GET IN THE GAME

BY FREDERICK J. ESPOSITO, JR., CLM

The biggest question on the minds of most managing partners and administrators today is “What’s Ahead for 2012?” Law firms are working in a roller coaster economy, and 2012 is looking to be a year where firms will need to regroup and adapt to the “new normal.” 2011 wasn’t necessarily a bad year for most firms, but the economic climate remains somber. Under the “new normal,” firms have cut overhead, are focusing more on business development, and doing more with less. In short, law firms are now officially in the “revenue game.”

In the wake of the recession and the new normal, clients are pushing back more on fees. They want more predictability, which has moved the profession towards more creative pricing and Alternative Fee Arrangements (AFAs). While there are arguments about the pros and cons of AFAs, the issue comes down to clients perceiving a widening gap between the amounts they are charged for legal services and the value of the services provided. AFAs have turned the tables, providing more certainty and less risk for clients, up front, and law firms are now sharing more of the risk.

Under the new normal, law firms must deal with the realities of client expectations and focus on delivery of legal services in an efficient and cost-effective manner, and deliver those services in a profitable manner. Understanding how much it costs the firm to produce a billable hour per task and per lawyer is essential to AFA success and profitability. This seems like a relatively simple undertaking, but while recently presenting at an ALA Regional Conference, I asked a room of approximately 60 administrators if they knew what it cost their firms to generate a billable hour for each of their attorneys. Much to my surprise, only four administrators could say they have gone through the exercise. Clearly, law firms will need to understand and focus on the economics of their firms if they are going to generate profit in 2012.

The second big question many law firms are asking is how many other law firms are actually “playing the revenue game” using AFAs to the point of achieving profitability? The short answer is some firms are making more profit, but many law firms continue to make the same mistakes that vastly reduce profits. There are already a large number of firms engaged in large scale AFA pricing, and doing so profitably. However, many of those firms made costly mistakes, and learned from those mistakes.

Firms that have been successful with AFAs understand the economics of their firms and understand the need to monitor

the mechanics of their practices through better planning and managing of their firms and engagements. Law is a business and every firm functions as an economic model. When you plan and organize engagements and leverage efficiently, firms can become more profitable. In 2012, firms will need to get serious about the proper leveraging of attorneys to maximize client value, provide more predictability and minimize firm costs.

In addition to the usual profitability metrics such as fee collections, fee write offs, attorney time write downs and write offs, the most essential ingredient to maximize profitability is to maintain and enforce contemporaneous timekeeping. Whether firms stay with the billable hour or move to AFAs, timekeeping will continue to play a critical role in profitability. Attorney time is your only inventory and product to sell. Clients can perceive the value of AFAs, but law firms must continue to track the time it takes to accomplish tasks. Timekeeping data will become a powerful planning tool, rather than something that gets passed on to the client in the form of a monthly bill. Better timekeeping practices will allow firms to better estimate fees to be charged for services and get a better handle on firm investment and generating profit.

At the end of the day, law firm profitability will hinge a great deal on the law firm’s ability to create value for the client, completing matters in an efficient and cost-effective manner, and the firm’s ability to learn new skills to improve internal behaviors and build success and profits.

Under the new normal, client focus, client value and firm efficiency will drive profitability. For our purposes, project management will be doing the driving in 2012. AFAs and project management are not going away, despite the billable hour vs. non-billable hour debate. With that stated, there is often confusion in the marketplace concerning the definition of the recordable hour, the billable hour and the billed hour. Therefore, it is important to draw the distinction between all three.

The recordable hour is simply the billable time that is recorded by a timekeeper. This hour of recorded “billable” time is the billable hour. Once the billable hour is billed to the client, it becomes a billed hour. Surprisingly, there has been a failure to draw the distinction between the three categories of billable time, so with respect to the billable hour vs. non-billable hour debate, the billable hour as defined, is here to stay, but it will

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Law Firm Profitability

(Continued from page 13)

serve a multi-purpose, mostly as a planning tool. Law firms struggle with the balance of making the practice of law both satisfying and financially rewarding. In 2012, law firm profitability will be a balancing act which now adds client expectations of efficiency, reduced legal fees and added value. The balancing act will become more complicated, but not insurmountable.

Both profitability and project management will drive the “revenue game” in 2012. Law firms that can learn the rules of the road by setting goals and developing processes to keep matters on track, understand their economics, and deliver more value to their clients in a timely manner, at a lower cost, will increase profitability, and will have the competitive advantage in 2012.

Frederick J. Esposito, Jr., CLM, is the Director of Administration of Meyer, Suozzi, English & Klein, P.C. in Garden City, New York. Fred also presented his workshop, “Law Firm Profitability—Navigating the New Normal,” at the NJALA monthly meeting on March 13, 2012.

How Do You See Yourself?

(Continued from page 11)

know which side of the room to go to. That person will often say, “I just don’t know, I see myself there” (pointing to one flipchart), “but sometimes I’m there” (pointing to the other flipchart). This provides the opportunity to ask the colleagues, “Where does this person belong?” Without hesitation, the colleagues always point the way!

Self awareness is at the heart of effectiveness. To the extent that we are self aware, we can be more situationally effective. How self aware are you? Would you want to know if you had spinach in your teeth? And even more importantly, how would you handle it if someone told you?

Natalie Loeb is the founder and lead consultant of Loeb Consulting Group, LLC. Loeb Consulting Group is a management and leadership development company dedicated to cultivating all levels of leaders in law firms, businesses, and youth leadership. More information about the leadership development services provided by Natalie and her team can be found at www.loebconsultinggroup.com.



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UP TO THE MINUTE ...

SUMMARY OF MINUTES OF THE NJALA EXECUTIVE BOARD MEETINGS HELD NOVEMBER TO DECEMBER, 2011

BY ROBBIN DOLAN, CLM

NJALA board members are: Gayle Englert, President; Lisa Cuffari, CLM, President Elect; Mary Ellen Dolan, Vice President; Audrey Serban, Treasurer; Robbin Dolan, CLM, Secretary; Fran Puntillo, CLM, Immediate Past President; Sara Diaz, Trustee; Elli Albert, Trustee; Doreen Marino, Trustee; Michael Harrison, Trustee; Mary Beth Donoghue, Trustee; Sarah Clark, CLM, Alternate Trustee; Jackie Pampinella, Alternate Trustee.

Membership

Mary Ellen Dolan reported membership as of October 31, 2011, as 159 regular members, plus 5 Life Members.

Programs/Workshops

The following programs will be held through the rest of the year:

February 7: Joseph Hannon, Esq. of Genova, Burns & Giantomasi—Compliance with State and Federal family and disability leave laws.

March 13: Fred Esposito, CLM —Law Firm Profitability.

April 10: Natalie Loeb of Loeb Consulting Group, and her colleague, Nancy LoCascio, will present “An Introduction to DiSC Management.”

May 8: Managing Partner Night. David H. Dugan, Esq.—Legal Ethics.

Community Challenge

Sarah Clark reported that the school supplies and gift cards were dropped off at YCS. The 50/50 at the Business Partner Expo raised \$480.

Publicity

Doreen Marino and Audrey Serban reported that photos from our programs and all calendar events were being submitted to the New Jersey Law Journal. Pictures have also been submitted to Rita Thompson for the ALA News.

Newsletter

Elli Albert reported that the Winter/Spring 2012 edition will be titled "A Glance at Finance." Articles will address how finance touches all aspects of legal administration.

Past President's Council

Sara Diaz reported that board nominations will occur in January.

Bar Relations

Sara Diaz reported that the NJ State Bar asked to post our articles and pictures on their website, and that she was working with Elli Albert to send them our newsletters.

(Continued on page 17)

NEW MEMBER SPOTLIGHT

INTRODUCING OUR NEWEST MEMBERS OF NJALA

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SOME PRACTICAL TIPS WHEN APPLYING FOR PROFESSIONAL LIABILITY INSURANCE

BY JACK FLEMING

In recent years buyers of lawyers professional liability (“LPL”) insurance have been enjoying a “soft market” (many competing carriers and lower premium costs due to price competition). But it doesn’t necessarily feel that way when the bill is paid each year. Malpractice premiums are still a large item of overhead for most firms, and with some signs that the market is “hardening” it may be even larger in the next few years.

However, there are some simple practical steps you can take to reduce your malpractice insurance premium without compromising the coverage you need. By presenting your firm in the best light on the insurance application, you may be able to achieve significant savings on the malpractice premium.

There are several important areas asked about, in one form or another, on virtually all LPL applications, including: (1) firm areas of practice; (2) internal procedures the firm uses to track deadlines, check conflicts and ensure effective client communication; (3) whether the firm sues for fees; (4) and, most critical, has the firm reported any claims or is it aware of any unreported claims or potential claims.

There are few things that rival completing an insurance application for tediousness. The temptation is to “get it over with” by copying over last year’s application answers (which may have been themselves copied over from an earlier application) onto the new application or just “guestimating.” This may result in the firm paying a higher LPL premium than if it invested some time in gathering accurate information and in treating the application as a chance to advocate for the firm.

Areas of Practice

Anyone who has filled out an LPL application is familiar with the grids that ask the applicant for a breakdown of its overall practice into the percentages of specific areas of law being practiced (AOP). But you may not have thought about the effect these percentages might have on the firm’s premium. LPL underwriters see certain areas of practice as riskier than others. Historically: plaintiff’s personal injury, intellectual property, securities, environmental, and more recently real estate, and estates and trusts are among the AOPs that are less favored. Others, such as criminal law, insurance defense, administrative law, or immigration are perceived as safer, while the rest are neutral. Some insurance companies will include extensive

AOP factors in their rate filings to reflect these differences while others will file for broad underwriting discretion to adjust the premium depending on the applicant’s practice mix. Either way, overestimating the percentage of riskier AOPs or underestimating the safer ones, can result in a firm paying more than necessary for its LPL coverage.

Also, if the application does not specify whether the percentage is to be calculated on hours worked or gross revenue, use the hourly calculation. This is usually to an applicant’s advantage, because the safer practice areas tend to be straight billable hour work while some of the riskier areas might include contingent fee or bonus arrangements that could inflate the riskier practice area percentages if the firm has a great outcome in a particular matter one year.

Tip: Review the firm’s current practice by percentage every year if it has a mixed AOP profile and make sure it is accurate.

Internal Systems

Most carriers have some minimum requirements for certain internal procedures that will help in avoiding claims. These include dual calendars with more than one person checking the system regularly, a systematic way of checking for conflicts before taking on a client matter, and the use of form agreements and letters that spell out the scope of representation or whether a client’s matter is being closed out or the firm is declining representation. But many underwriters have discretion to assign additional credits for exemplary internal controls. So if the firm goes the extra step and, for example, has a procedure for current files where conflict checks are ongoing when new parties are added or changes to the scope of representation are committed to writing, then the firm should make this known to an underwriter.

Tip: Don’t be reluctant to expound on the firm’s risk management excellent internal controls in a separate narrative that can be attached to the application.

Fee Suits

Suing a client to recover fees should be avoided if at all possible. This has become a serious concern for LPL insurance companies to the point where some carriers are declining to insure firms that sue clients while others are putting

(Continued on page 17)

Some Practical Tips When Applying For Professional Liability Insurance

(Continued from page 16)

endorsements onto their policies excluding malpractice claims that arise out of fee suits. Moreover, an underwriter may charge additional premium to cover the enhanced risk.

The firm should adopt procedures to minimize the need for fee suits: by vigilant billing, obtaining adequate retainers or even terminating the representation. But sometimes fee suits may be a business necessity. If the firm has made a business decision that a fee suit(s) can't be avoided, then this needs to be explained on the application. The firm should have a specific (ideally written) procedure for deciding whether a particular fee suit should be undertaken, and it should involve more than just the billing partner whose fees are unpaid. If the firm has an executive committee or similar steering group, the issue should be brought before them. The file should be carefully reviewed (by a firm peer) to make certain that there are no potential grounds for a claim of malpractice that might have merit.

Tip: If the firm has sued for fees, provide a description of the careful way in which the firm approaches a prospective fee suit, and the steps it takes to minimize the need to sue clients at all.

Claims

Of course, the single biggest impact on what a firm pays for LPL insurance is whether or not it has had claims, how many, and how severe. An adverse claims experience might mean that a firm cannot find LPL coverage in the "admitted" market (admitted carriers are those whose rates and forms are fully regulated by the New Jersey Department of Banking and Insurance). It will then be forced into the nonadmitted (excess or surplus) market where rates are significantly higher and coverage more restrictive.

So the best way to keep your LPL premium down is not to have any claims—but that isn't much help. The fact is most mid-size or larger firms will have occasion to report a law suit against it, or a matter that might ripen into a claim. If you have had a claim, how should this be dealt with on the application?

The first consideration is: Does the matter have to be revealed on the application? If it is a renewal application and your current carrier is handling the claim (or knows of it from earlier applications) then it generally does not have to be included on subsequent renewal applications, which only ask about previously unreported claims. But what if you are with a non-admitted carrier now and trying to reenter the "admitted" market of LPL insurers, in an effort to find a lower premium?

Most applications for a new LPL policy (*i.e.*, new to that company) will have a five year "look back" period for any reported claims. This generally means that claims reported

more than five years before do not have to be included. Some applications may ask about a longer period (seven to ten years). But the important thing to remember is that the measuring point is the date of reporting, not the date the matter was closed or settled.

If you do have a claim(s) within the five-year window, you will have to answer the claims question "Yes" and prepare a Claim Supplement. This presents another opportunity to advocate for your firm. The underwriter will want to know the facts underlying the claim, and will be even more concerned with the remedial steps the firm has taken to avoid similar claims from recurring. So take the time to fully explain the matter and be sure to include any facts that might mitigate the firm's liability or otherwise make it unlikely that the claimant will succeed. And if the claim has closed and money was paid out to settle or even just to defend the matter, **be certain to explain with specificity what the firm has done to avoid a similar claim in the future** (*e.g.*, instead of saying that no remedial steps were possible because the client is "irrational," discuss how the firm has revised its client screening procedures to avoid problem clients).

Tip: If your firm is applying to a new carrier and has to reveal actual or potential claims: advocate for your firm. Prepare a persuasive narrative for the Underwriter telling why the firm is a good risk despite the claim.

These are just a few of the ways you might be able to reduce your firm's LPL insurance costs. There are many others a knowledgeable broker might show you.

Jack Fleming is a Vice President at USI Affinity, a New Jersey level sponsor of the NJALA, with offices at 15 Bergen St., Hackensack, NJ 07601. If you have any questions, please feel free to contact Jack at 201-489-3834 or at jack.fleming@usiaffinity.com.

Up To The Minute

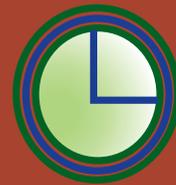
(Continued from page 15)

Website Liaison

Michael Harrison reported that the ongoing email issue of members' emails from the website going into spam folders, is still being investigated. He will eventually send test emails to all members in an attempt to rectify the problem. The "NJALA Discount" requirement was eliminated from the website and an email address added for *secretary@njala.net*.

Robbin Dolan, CLM, is the Legal Administrator of Laddey, Clark & Ryan, LLP, in Sparta

A Quarter Past



October, 2011

The October Monthly Meeting and Workshop was held on Tuesday, October 4, 2011, at the Highlawn Pavilion in West Orange. Mary A. Redmond of Independent Lease Review and Greg Williams of The Master Negotiator presented a workshop on *"Equipment Leasing: The Fine Print Implications."*



An Educational Workshop was held on October 25, 2011, at Day Pitney, LLP. Dana Jenkins, LEED, AP, of Jenkins and Grey, presented a very interesting workshop on *"The Changing Face of the Law Firm."*

November, 2011

The November Monthly Meeting and Workshop was held on Tuesday, November 8, 2011, at the Highlawn Pavilion in West Orange. Michael S. Cohen, Esq. of Duane Morris returned to the NJALA to present *"Hiring and Interviewing Practices: What You Need to Know."*



An Educational Workshop was held on November 29, 2011, at Greenberg, Traurig, LLP. Thomas N. Ryan, Esq. and Ursula H. Leo, Esq. of Laddey Clark & Ryan, LLP, presented a detailed workshop focusing on Wage and Hour issues.

December, 2011

The Winter Social was held at the Canoe Brook Country Club in Summit on Tuesday, December 6, 2011. The social featured great food, music, prizes, networking and milestone anniversary recognition. A great time was had by all.





FINANCIAL IMPLICATIONS OF MARKETING DECISIONS: CASH OR TRASH

BY CHRISTINE S. FILIP, ESQ.

Hard times are exquisite classrooms for analyzing the return on investments law firms derive from their marketing choices. This article prioritizes which ones are positively correlated with generating new matters and new clients, read, revenues, while minimizing expenses.

First Among Equals

Face-to-face encounters with attorneys in educational and social situations yield the best return on investment. Underpinning this statement is this rationale: People choose lawyers preponderantly based on their perceptions of a lawyer being a responsible, knowledgeable, solid citizen whom they “like,” meaning they have no reason to dislike that lawyer. The like factor comprises about 60% of the lawyer selection.

Many attorneys feel that their legal acumen is the decisive factor in client selection, but non-lawyers have no real ability to deeply evaluate legal acumen. When the chooser is an in-house counsel, legal acumen plays a larger role, but the like factor must also be present, because the success of the relationship with outside counsel depends heavily on the ability of the two parties to establish and maintain a good partnership and working relationship.

What then are the choices for face-to-face encounters that are worth the expense? Here is a short list:

- Speaking engagements: at your firm, at a trade, business or community association, or second best via a webinar. Increased returns can be had by sharing the stage with a non-competitive expert from a firm that may also serve the audience, particularly because that expert’s firm can add to the attendees by distributing invitations to their contact database;
- Participation by attorneys in business, trade or community associations, especially where the attorney plays a leadership role like chairing a committee, and, of course, the attorney attends regularly. Barring regular participation and leadership within a group, that membership expense is ripe for cutting;
- Holding association or other type of group meetings at your firm where the attorney member is the host. Bringing clients and prospective clients into your workplace, paired with the lawyer being host, is a strong example of both the attorney and the firm’s standing in her or his profession.

Underscoring the choice of speaking engagements in all its variations is the decision of subject matter, *i.e.*, what should the topic be? Often an industry group or community-based organization has an existing agenda of what its members need to know. However, it is equally important for the lawyer and you to focus on novel topics that the audience **should** know but haven’t considered. For example, consider how the economy drives what clients need to know to lead to attractive topics that will pull attendance.

Secondary Decisions

The second best way to attract new matters and clients is through publication of articles, preferably short and written in clear, non-legalistic. If an attorney has done a speaking engagement, that material should be retread into an article and published to the firm’s contact database. The most economical way to do this is by email using a product like Constant Contact or some other. One means to reduce your marketing expenses is to zero out your postage costs related to marketing.

Publication to a database requires style and timing. The subject line should tell the topic, not “A news note from XYZ Firm,” which does not motivate the recipient to open the email. Better is “Three ideas to minimize taxes from XYZ.” Don’t email when the database is overloaded, *e.g.*, Monday morning or Friday afternoon. Try mid week and late morning.

Finally, if an attorney has tenure in an area or a special topic of interest, he or she needs to be in contact with reporters who cover that area. Reporters need material, and getting an attorney quoted in a publication without having to write is of huge benefit to increasing client awareness of the lawyer’s skills and reputation. If you do not have time to research which reporters are writing on a topic correlated to a lawyer’s practice, at the very least set up a Google Alert on the topic and those results will be in your inbox without sweat.

Paring Expenses

As I mentioned earlier, marketing-related postage costs should have zeroed out at the beginning of the recession, but if they have not, now is the time. Other marketing costs that seem to inflate expenses typically have to do with memberships, sponsorships and ad placements for groups or associations. Be very selective. If the attorney attached to the request for those dollars has not been an active member of the group, there is little reason to spend a thousand or two dollars on an ad for the group’s gala or a renewal of membership.

(Continued on page 20)

Financial Implications of Marketing Decisions

(Continued from page 19)

If you have not already, now is the time to impress a regularly followed return on investment process on all marketing expenses. That means, requests for event, membership or sponsorship dollars should be accompanied by a form or at very least, a discussion, of why the expense is worth doing. Does it relate and support a suitable target market? Is the lawyer involved on a regular basis? Has past participation or support led to fee generation and if so, how much? Is there an imminent client fee backed up by report of activities? I prefer to use a form for this process so that if on the off chance my decision to spend was wrong the first time, it will not be repeated.

Finally, as you review your marketing expenses, analyze which ones have led to fee generation. Tracking through the intake process is best, but few too many firms do that. At least inquire for anecdotal evidence of results with your attorneys. If you are developing a new practice area, that scrutiny time frame is 24 months. If you are spending for an existing practice area, the last 12 months should tell the story.

Law practice is a business that is fueled by generating revenues, which requires wise investments, and harvesting non-productive investments in marketing. Be incisive this year.

Christine S. Filip is an attorney, and the Marketing Director of Greenbaum, Rowe, Smith & Davis LLP. She is the co-chair of the Law Office Management Committee of the NJ State Bar Association and the



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Marketing and Ethics: Maximizing Results while Avoiding Liability

Speakers/Panelists: Carol Johnston, AOC, Raymond M. Brown, Greenbaum, Rowe, Smith & Davis LLP, Moderated by Christine S. Filip, Esq.

Hiring and Firing and Everything in Between

Speakers: Cheryl M. Stanton, Esq., Ogletree, Deakins, Nash, Smoak & Stewart, PC, Ravi Satturaji, Esq., The Satturaji Law Firm, PC

Master Class in Marketing: The Experts Share Their Secrets!

Speakers/Panelists: Susan Reach Winters, Chair, Family Law Department, Budd Lerner, Barbara Kauffman, Executive VP, Newark Regional Business Partnership, Rhonda Maraziti, Director of Marketing, WithumSmith+Brown PC, Kim Keating, Regional Director of Marketing and Communications, Marsh & McLennan Agency, Kate P. Sweeney, Senior VP-Wealth Management, Morgan Stanley Smith Barney LLC. Moderated by Christine S. Filip, Esq.

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