

Risking professional integrity: the conflicting pressures between profit and optimal client service

By Edwin B. Reeser

Lawyers and industry consultants have wailed about the conflicting pressures between profits and optimal client service for years. Yet there has been little appreciable influence upon the rush by law firm leadership to adopt whatever changes in firm structure and operating procedures they thought would drive profits higher. How has the situation changed to warrant renewed discussion of the subject?

This time it isn't the consultants speaking out but the clients. Money issues on alternative fees that clients pressured for didn't break law firm hubris about billing practices, though the movement has overcome inertial resistance and begun to work change in that arena. Now it is professional and other ethics that are impacted, a sacrifice for the sake of law firm profit that drives to the very heart of the attorney-client relationship: loyalty, trust, and professional duty.

Unless and until law firm leadership changes the prevailing trend of the existing business model, variations of this are going to be repeated, possibly with increasing frequency. Inefficient business operations will create even greater pressure on profits, perhaps contributing to episodic failures. There are enough occasions when incredible stupidity, or outright criminal behavior, will occur in law firms of all sizes, just as it does in all business endeavors, professional and otherwise. But the pressure cooker environment of harsher penalties for even smaller failures to meet leadership mandated performance targets in the quest for ever higher financial returns is beginning to squeeze more attorneys, where the weaker of character may bend or break to that pressure and take poor actions. Indeed, instances that may occur, though short of outright criminality, can still seriously harm client interests, firm interests, individual interests, and most certainly the interests of the legal profession.

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But there is something worse than money risk. It is the erosion of the fulfillment of the best professional practices, and of the limitation upon the lawyer and the firm itself in realizing their highest professional potential — being the best they can and should be.

The prevalent acids are known, and here is a list of just a few:

Fear of not making your hours, so the pencil is leaned on heavily to make hours that otherwise would not have been recorded.

Client origination conflicts causing battles with other lawyers in the firm.

Mishandling of client conflict issues in an effort to retain work when actual or potential conflicts clearly mandate withdrawal or non-acceptance of new matters.

Refusal to cross-market opportunities with partners to protect client relationships.

Refusal to work on cases generated by other partners, at least without special consideration for doing so.

Hoarding work to boost personal statistics that are important to compensation decisions.

Not engaging in training or mentoring associates, engaging in firm supportive administrative and managerial tasks or pro bono.

Overworking matters on the pretext of vigorous representation or thoroughness.

All manner of inequities of income distribution among partners, and even staff.

Dishonesty of firm leadership in the accurate reporting of operations to the public, and perhaps to partners.

All of these matters have expanded to the point of being epidemic in their presence among many law firms, and to a toxicity level that is becoming unbearable in some of them. You may ask, "haven't those elements listed above been with us for many years?" The answer is an unequivocal "yes." So why is it now different? The difference is the evolution of these disagreeable behaviors, which was previously rooted in law firm rewards systems for compensation.

However, the carrot of lost reward became increasingly inadequate to shovel the money to the partners that clamor for it, and who are in positions to make the rules. So in addition to rewards, the last decade has seen the development and proliferation of the "stick." For the first time on a broad scale, the outcome is not as focused on the shaving of a few percentage points and thousands of dollars from one's paycheck, as it is focused on being ejected from partnership into the street and unemployment, with potentially severe personal consequences, in a fashion that was culturally inconceivable for many firms only a decade ago.

Have we not embraced questionable methods of forcing conduct to achieve one set of results, without appreciating that those methods weakened the ethical structure of law practice as well as the culture of the firm, and the sustainability and stability of the business?

This is not unlike starving one's mules, then piling extra heavy loads for them to carry while being whipped. The outcome for the mule is rather inevitable. Have we reached a point where we can agree that it is time for law firms to do something about it, and actually do it? If we aren't changing our direction on this issue, both as a firm and as a profession, then we will wind up exactly where we are headed.



Edwin B. Reeser is a business lawyer in Pasadena specializing in structuring, negotiating and documenting complex real estate and business transactions for international and domestic corporations and individuals. He has served on the executive committees, and as an office-managing partner of firms ranging from 25 to over 800 lawyers in size.