COMMON CAUSES OF CONFLICT IN LAW FIRMS

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I launched my seminar "Managing Conflict and Strengthening Resilience" at last year's Solo & Small Firm Section Conference. It has proved to be one of the most engaging and informative presentations in my repertoire. This article conveys information from just a few points on one slide of over thirty in the presentation. Food for thought, hopefully.

Your firm probably has or still experiences tensions surrounding many of the issues which follow. These tensions are inevitable. It's what you do about them that matters. They can become chronic sources of irritation which cause resentment to constantly bubble under the surface, periodically erupting in angry outbursts or defections. Or they can be acknowledged, discussed in the context of mutual business goals, and addressed in a mutually-agreeable fashion.

Practice Groups. It likely comes as no surprise that hourly and contingent fee attorneys usually maintain an uneasy co-existence. Hourly attorneys appreciate the mostly predictable cash flow their work provides. They like that they don't gamble on outcomes. They like that they can make payroll and pay the bills each month thanks to their billing methodology.

From their perspective, every contingent fee case which results in a loss is an indication of poor vetting. They dislike the idea of financing significant cost expenses. Often they resent financing the compensation of contingent fee attorneys who are making long-term time investments in significant cases.

Contingent fee attorneys recognize and appreciate the hourly billing which covers the overhead and compensation. But they recognize that one can only run on the treadmill so long before energy is exhausted. Their perspective is that the risks they take are outweighed by the rewards. A single good contingent fee makes up for a whole lot of lost cases, and provides a cash infusion which can turn a mediocre year into a record-breaking one.

Similar types of resentments and conflicts often exist between high-rate work, such as IP, M&A, employment, commercial litigation, and low-rate / commodity work such as muni, insurance defense or worker's comp. Attorneys doing

low-rate work are able to produce a consistent cash flow which often is relied upon to cover the monthly nut. However, the lower rates mean that much higher hours must be generated to keep profitability anywhere near the level of high-rate work. Often this is reflected in compensation, to the chagrin of the attorneys in these practice areas.

High-rate attorneys are doing work in areas where they can differentiate themselves and charge premium rates. They usually fail to recognize how fiercely competitive commodity work is, and fault the low-rate attorneys for not resolving some of the profit inequities simply by increasing their rates. That is not nearly as damaging as the disregard they frequently demonstrate for the areas of law itself, and the financial contribution attorneys working in low-rate practice areas make to the well-being of the firm.

Tensions can also surround similarly billed practice areas due to other vagaries. For example, family law is often an area, despite being billed mostly hourly, which can differ substantially from other hourly practices. Family law attorneys often can't bill for a lot of the small increments of time spent hand-holding clients. Demands on staff are higher for the same reason, and they need high experience levels to deal with client needs. So they may be more costly employees than in other practice areas.

Family lawyers often wind up last in line for payment, and often don't have the ability to put the pen down and walk away if the bills are past due. This is particularly bothersome to attorneys in other hourly practice areas. They look at all of this in the context of poor business practices. They're not entirely wrong, nor are they fully right.

Generational. We now have four distinct generations operating in the same firm. Each has different work styles, motivators, and demotivators. Ask any baby boomer attorney and they will immediately bemoan the dark hallways at 5:30 and empty office on weekends. They don't recognize work being accomplished unless there is "meat in the seat".

Gen X and younger, on the other hand, can't be paid enough to give up the balance between work and home life. They expect to be able to use technology to get work done remotely when needed, so that they can achieve the balance. Unlike former generations, they are more in need of immediate feedback and particularly immediate reward.

Their outspoken views regarding "entitlement" to the rewards former generations worked long and silently to achieve, is strikingly different. Many don't want the responsibility of ownership, and are accepting and seeking out alternative work arrangements willingly.

Transition / Succession. Lack of transition and succession planning takes a huge toll in loss of the "best and brightest next generation" at many firms. The firms which do not keep an open dialog, and particularly are not actively talking about transition of both clients and firm management, are losing the very people they depend upon to keep the firm going when they retire.

There's a big difference between retiring, and having to close up a firm upon retirement. The former is far easier than the latter. [Send an email request to lawpractice@pabar.org for a copy of "Failed Promises, Failed Plans", which appeared in the April 7, 2014 issue of *The Pennsylvania Bar News*.] On the flip side, unreasonable expectations and demands by the "next generation" are making it impossible for smaller firms to create a reasonable plan. And making the risk disproportionately higher for those which have begun to transition client relationships. It's a "Catch-22" without doubt.

The smaller the firm, the more likely that senior attorneys are holding onto clients and management tightly, far longer than they should. Most of this is caused by firm compensation systems, which largely fail to require and reward succession and transition efforts. However, fear of losing books of business to departing attorneys is real.

The reality I'm seeing in the marketplace is that solo and small firms may have to literally give away the firm to the next generation just to keep from turning off the lights upon retirement. Midsize firms can carefully plan transition, reward it through compensation, and create written retirement benefit plans for senior attorneys which are funded by reasonable buy-in. This supposes there are reasonable buy-out / retirement benefit expectations. **Reasonable** is the key word here. As I frequently say, pigs get fed, and hogs get slaughtered. Just remember that the ideal time to negotiate these terms is not when the first senior attorney is about to retire, although that is the sad reality for most firms.

I will probably write another article not too far in the future exploring some of the additional common causes of conflict. Meanwhile, if you're wrestling with any of those mentioned above at your firm and a solution is not apparent, get some help.

PBA members can arrange a telephone conference with me to discuss your unique situation. If you're not a member, seek help from a consultant. Just don't ignore the issues. They rarely go away on their own.

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