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Innovative Law Firm Management 3.0
Using Dynamic Methods to Drive Quality Performance

I. A new standard is in place

The three E's are no longer enough to ensure a successful law firm / client relationship. Firms have historically been guided by the adage that if you effectively handle matters for your client and communicated with them regularly, were efficient in your efforts and cost conscious, and produced exceptional results and optimal outcomes; the stage was set for long term success. Is this still the case? Is more needed?

Effective handling and communication

Effective handling and communication do not require a status report every 30 or 45 days. Nor does it entail a status report that is a copy and paste of the last six reports, with one new paragraph focusing on developments.

The focus today is on an early case evaluation, an agreed upon strategy with the client or claims professional and a dedicated plan of action based on the joint evaluation. A firm can count on the fact that the client or carrier has made an initial determination whether to settle or litigate the case. The question after the matter has rolled into litigation and into the join initial evaluation is whether the matter falls into the category of settle or try. What information is needed to accomplish either? If the firm's routine answer or plan is to: answer the complaint, serve discovery, wait for responses; subpoena records; review answers and records; summarize for Claims; evaluate again, then mediate; you are looking at a matter handled in a rote fashion that can be handled by any firm. It is also a strategy that takes eight to twelve months to accomplish.

Key for firms is to understand the client or carrier's expectation through regular communication to move the case to its resolution point, typically dismissal, settlement or trial. This requires the active engagement of a senior lawyer and regularly engaging in telephone conversations to discuss developments in the case as they arise.

Efficiency / cost control

Carriers especially, understand that litigation costs money, regardless of how the litigation is financed i.e. hourly, alternative fee agreement or self-insured retention or high deductible. In addition to fees, expert expenses, testing, mass-document discovery/e-discovery all have a huge impact on total litigation costs. Efficiency in defense litigation is not about spending zero dollars on a case; rather it is about spending wisely on cases when needed or when appropriate to effectively advance the resolution philosophy.

Building on effective handling and communication, efficiency is the attorney knowing what needs to be done and developing a strategy on how to get there in the most direct manner. For example, in an assault and battery case in a bar, or a construction work-site injury case; it is typical for counsel to rely on witness statements obtained by the client or carrier, then perhaps retain a separate investigator after the initiation of litigation to re-interview the witnesses to confirm information or fill in some gaps. Perhaps declarations are even prepared, signed and submitted as part of a motion for summary judgment based on duty. In these types of cases, however, summary judgment is never assured. Finally, later in the litigation and much closer to trial, depositions of the third party witnesses are taken. The depositions are taken regardless if they are helpful or not to the case, suffering from witness fatigue after having to engage with investigators or counsel on four separate occasions.

In the above scenario, instead of taking the traditional tack, would it be better in recognizing that after the question of duty, the facts trump all? In other words, would it be more efficient and more cost effective to spend reasonable sums early to take the depositions of the key third party witnesses in order to nail down testimony and have a record for trial or motion; especially when witnesses in these type of cases may be quite transient?

The lesson overall is spending wisely when needed.

Extraordinary results / optimal outcomes

A pilot must land the plane every time! There are many adages in the civil defense legal field proffered by counsel and clients. While this one may not be a mainstay in the legal world, its lesson is pure; defense counsel is called upon to deliver results every time.

The relevant saying for the panel here is: Preparing for trial on every case from the outset will always generate the best result regardless of whether the matter is tried, because the other side will always know you're ready! In less legal terminology, it is expressed simply as 'damn the torpedoes!

There is a difference between 'extraordinary results' and 'optimal outcomes.' When counsel and client find the intersection between these propositions, then the foundation for a long term successful and prosperous relationship is set.

Optimal outcomes are achieved when counsel executes on a legal strategy with Claims in order to resolve a matter in the range that both see as a success, whether the case is tried or settled.

The firm, and the client, then line up the next case for similar resolution and so on and so forth. By being nimble and communicative, counsel is able to shift strategy, when facts or circumstances change in a case; however, the goal of reaching the optimal outcome is never lost.

The bonus for counsel and client is when counsel is able to deliver extraordinary results on top of optimal outcomes. In these circumstances, counsel is able to demonstrate her skill set, which will serve as a differentiator when the client or carrier are in need of value added legal services in the future.

The caveat of course, is that not every case can be a 'win.' Facts change when witnesses testify or a client may make a poor impression on a jury or a plaintiff may make a better impression on that same jury or simply, juries are unpredictable. The more in line counsel is with the clients understanding of optimal outcomes, the more they set themselves up for extraordinary results.

II. Continuous Improvement and Innovation

Law firm management 3.0 integrates continuous improvement and innovation into its law firm business model.

Know your business to advance profitability

Historically, firms designated one of their own to handle the day-to-day business practices of the firm. Many times, this honor was bestowed with little recognition of the time it actually took, requiring the managing partner to maintain a material level of billable hours in addition to the administrative obligations. In other words, the managing partner had to carry a full case load in addition to overseeing the accounting department, human resource issues and associate reviews.

It is more common now for firms to recognize the value of managing the business side of the law firm like the business that it actually is. Many firms are freeing their managing partners from other responsibilities whether it is a reduced case load or having their managing partners work with financial specialists to oversee billing, accounting and receivables. In some cases, firms have brought in business specialist, such as a MBA, so that the attorneys can continue to focus on providing value added legal services. The business specialist, consultant, CFO or COO (who may be a non-lawyer), depending on the duties assumed, works in conjunction with the managing partner or management committee to take on work attorneys have traditionally done on a part time basis.

Whether the firm is of a size that it can allocate one it partners with the skill set to take on a business role full time or retains a part time consultant, the benefit is that the firm can be coached to understand that profitability is not solely about the number of hours billed, the amounts billed vs. collected and what is in accounts receivables. It is also knowing what firm book of business is profitable under its current model and what could be profitable. Profitability comes in understanding what your client / customer wants and if not in place, developing the insight in order to deliver those services desired.

A firm should know more about its operation than the client / customer does

For each client, it is incumbent that the law firm know what type of work it is doing for that client. Is the firm handling: commercial auto; commercial general liability; personal auto and liability; specialty work such as special investigations, employment or intellectual property work; and in what proportion? Is there a singular rate structure in place or several?

In addition to the above, does the firm know its average closed case outcomes, overall; or more importantly per line of business handled? Akin to the realization rate, is the errant rate. What is billed vs. what is adjusted off the invoices for failure to comply with guideline or financial protocols? The firm needs to understand and abide by each client's guidelines as opposed to a generalized compendium. If the client wanted a firm to use generic guidelines, they would have provided a generic set. Not following guidelines is an indication that the firm is not paying attention to a client. If there are legal or ethical issues in a jurisdiction, those should be raised early.

In this modern business era, a firm can expect that most of its clients or customers keep some type of metrics on firm performance. At a base level, it might be annual spend and inventory. In a more significant setting, the metrics may be as detailed as what is noted above. Are the metrics shared? If the firm keeps metrics or tracks its own performance, does the firm share that information with the customer?

Just as important as data, is the firms' self-awareness about its own culture. Does the firm culture match that of the client or perspective client? The cornerstone of many top tier companies is diversity and inclusion. Is diversity and inclusion part of the firm culture? Are there women and diverse lawyers in management positions or up and coming within the firm? Who is doing the legal work or if the firm is making a pitch, who is the firm committing to the work?

Increase process and legal handling efficiency

An engaged account partner dedicated to understanding the client's needs goes a long way to ensuring clear communication and mutual understanding of client and firm expectations. Firms should be open to the realization that the 'key' lawyer for an account (the one trying cases) may not necessarily be the proper or best account partner. Should this circumstance arise, the firm will need to set aside egos and be willing to make a change if one is required. The skill set for a trial lawyer and an account partner are not mutually exclusive, but sometimes they do not take the form of the same person.

Beyond an engaged account partner, a dedicated team should be in place, so the client/claims group and lawyers get to know each other in order to make the most efficient team. The firm needs to ensure any new additions meet the expectation of the client and are brought up to speed on any guidelines or protocols.

Explore software or alternative legal service providers (ALSP) that allow counsel to practice at the top of their license. Two example of ALSP that are developing a following are *Novus Law*,

which allows a firm to outsource record review with a return product that is faster, organized and ready for use on return by attorney and team and *LegalMation*, which scans the complaint and as an output delivers a draft answer, affirmative defenses and contention interrogatories and requests for production in minutes. The firm attorneys still provide their legal expertise in finalizing materials and using them in proceedings. The difference is the firm attorney time spent is on value added legal work. The end result is savings to clients and increased efficiency to the firm with a focus on profitable / compensable work.

Know how your firm is being evaluated and self-audit to that standard

Most major clients and carriers audit their law firm partners. If that is the case, is the firm prepared? Firms should know if a client audits its firms. If the firm does not know, they should ask. The firm should inquire as to the scope and purpose of the audit.

Once the firm understands the goal, purpose and expectations of the audit, it should develop a self-evaluation process that the firm can undertake to ensure that the firm is prepared. The firm can also use its findings to compare its results with those of the client so the two can become calibrated on expectations.

As a bonus, the firm can share its self-audit results with other clients when discussing quality and financial assurance measure the firm undertakes. Currently, when a firm is asked about quality and financial measures, the firm responds that a partner periodically reviews associates files. The expectations have changed.

Alternative Fee Agreements

AFAs have been approved and fully functioning in most jurisdictions. With the increase of AFAs, the pool for remaining hourly work will decrease, as competition increases. AFAs provide predictability for a firm and the client when managing a book of business (not measured on a per file basis). It also allows a dedicated team to work toward the common goal of optimal results.