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NOTE: We published the original of this in April, 2010. In view of recent concerns about “uncertain” prospects for the legal profession, we have made a few edits to update it and publish it again.

PROCEED WITH CAUTION: Addressing Challenges and Making Changes Requires a Thoughtful Approach

Now that the economy continues to recover, forward-thinking law firms are trying to shift from survival tactics to the “New Normal” by addressing, not only the challenges they face, but also the changes they may have to make. However, as discussed in our February and April, 2010 Communiques, the list can be long and there are few precedents for addressing many of the issues.

The issues will vary to some degree for each firm but the first challenge for every firm is to identify those issues it must address and where it should start: Growth? Alternate fee arrangements? Leverage? Firm structure? Management structure? Revise marketing and business development strategies? Client service? Or what?

The second challenge is how to analyze and address each issue. Although these are critical decisions, the temptation will be to act quickly. The danger is that a firm will make significant changes impulsively without strategically assessing its current situation and without understanding all the factors involved in implementing changes.

For example, offering alternate fee arrangements (AFA) is a change every firm should address. However, a firm should not assume that all its clients actually want AFAs. Various surveys and reports indicate that a high percentage of the current fee arrangements are still based on the billable hour and that many GCs continue to prefer the billable hour, although they are more frequently demanding discounted rates.

The reason for this is because the real issue with clients — those who have legal departments and even those who do not — is how to most efficiently deploy all their legal resources, both internal and external i.e., how to get “more bang – or value – for their legal buck”. In some cases this may mean more work should be handled by their in-house staff while, in other cases, it may be most efficient to assign more work to outside counsel and non-lawyer service providers. Therefore, every firm should begin, not by proposing alternate fee arrangements, but by asking clients what their objectives are, listening to the answers and then discussing with each client how to achieve them.

After this review, if there are matters where the client wants an alternate fee arrangement, there are other issues the firm should address before making a proposal.

- How should the work be staffed?
- How can it be managed most efficiently?
- Will it be profitable and what management reports will be needed to measure the results?
- What are the risks to the firm?

Each of these issues is involved in process management, a new area firms must address.

The point to recognize is that a firm should not decide to pursue alternate fee arrangements until it has addressed, not only client expectations and which clients want AFAs, but also the other factors and issues that are involved. All the pieces must fit. To adopt changes in fee structure without the proper due diligence and coordination with other factors could be disastrous.

Another example is growth, a challenge every firm faces if it is to survive in today's changing and competitive legal market. Here again there are multiple issues the firm should address in order to assess its situation, develop strategies and then implement them.

- Should it follow the economic model of being a full-service firm that provides a broad range of services or should it focus on a limited number of practice areas and industries?
- If so, which current practice areas offer the best opportunities for growth?
- Does the firm currently have the required expertise in the practice areas and industries or will it have to recruit lateral entries or seek mergers to capitalize on these opportunities?
- What new practice areas are emerging that the firm should consider developing?
- Should the firm consider opening other offices and, if so, where?
- Can the firm survive or should it consider merging into/with another firm?

In order to properly address the issue of growth, the firm must conduct an external assessment of its strengths and weaknesses in the marketplace. This starts with in-depth interviews with clients to learn their opinions of the firm and its work, its perceived areas of expertise, the clients' operations and plans for the future and the outlook for their industries or fields (See our September, 2009 Communique on Client Audits). These interviews will also provide competitive intelligence as to other firms' activities, strategies, strengths and weaknesses.

The external assessment of the firm's strengths and weaknesses must be combined with an assessment of a multitude of internal issues including:

- Leverage, the role of associates and other forms of leverage
- Firm leadership and management
- Profitability
- Availability of sufficient capital
- Practice organization and management as well as process management
- Firm structure
- Succession planning

Once the firm has completed these assessments and identified what changes it should make, it is then in a position to develop marketing and business development strategies that match its strengths and resources with its opportunities, minimize or correct its weaknesses and address the threats it faces. Here again, "All the pieces must fit." To embark on change and growth without the proper research and coordination of resources and strategies could lead to disaster.

As changes are made, firms will face the challenge of compensation. Reducing the use of the billable hour in fee arrangements or changing how work is processed will require firms to address their partner compensation system and also that of non-equity partners, associates and other timekeepers.

These are but a few of the challenges all firms, regardless of size, face and the changes they may have to consider making. To address them successfully requires careful assessment and strategic thinking. They are not issues to be addressed impulsively or without considerable thought.

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