

## DRAFTING A FANTASY LAW FIRM

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Sports enthusiasts have their fantasy teams so why not a "fantasy law firm"? Like the fantasy sports team, the fantasy law firm is *the* place to work if one is an attorney in private practice (and *the* place to get legal services if one is a client looking for a legal team who will listen to his or her concerns and serve as a trusted and valued adviser and counselor). As discussed below, there are a number of interrelated and interdependent elements to the fantasy law firm, including people, money, technology, time and space.

People are the key element. In the fantasy law firm the people are reasonable, intelligent and articulate. Teamwork is encouraged and actively supported by the firm. There might as well be a bright flashing neon sign posted at the entrance to the firm that says, "No Jerks Allowed." A characteristic of this firm is its focus on fairness ("justice" and "ethics" should not be foreign concepts in a law firm), and so this sign applies evenly to attorneys, paralegals, staff and, yes, even to clients. Expectations are clearly articulated and the firm expends resources in actually helping the individual members of the firm in meeting those expectations. The firm does not condone the building of law practice silos within the firm to benefit the few. Rather, the firm recognizes and cultivates the different skills and talents of everyone in the firm and provides an infrastructure for the individuals to flourish, which thereby results in the ongoing growth and profitability of the firm in the delivery of quality legal services.

Attorneys of the firm represent their clients zealously and with tenacity. Their conduct at the negotiating table and in the courtroom represents the highest standards of ethical conduct, professionalism and civility. This paradigm of ethical conduct and civil behavior is

also reflected in their interactions with clients and with others in the firm — "doing the right thing and doing it right."

The people in the firm are intellectually honest with themselves and with clients. The professionals (attorneys and paralegals) are never afraid to say to a client, "I don't know the answer (or I'm not familiar with the issue), but I will put you in touch with someone who is knowledgeable and experienced who can discuss these concerns." And, yes, even senior partners of the firm are willing to say this to the younger associates and other partners of the firm.

In addition to being reasonable, the people working in the firm are bright and engaging individuals who both work hard and play hard — and have a life outside of the firm. And the individual's life outside of the firm is factored into decisions affecting the individual, not only in work assignments but in other ways as well.

Recruitment of legal talent is not a problem at this firm. Law students, recent law school graduates and laterals want to work at this firm. This is because of the firm's reputation for being a great place to work and grow in the law in a nurturing, but hard-working, environment delivering high-quality legal services in a variety of legal areas for a diverse client population.

Many law firms today have an "eat what you kill" culture, and some have even evolved into cannibalistic behavior among their own members. Because of its team focus and cooperative culture, the fantasy firm is the antithesis of the "eat what you kill" kind of place. An attorney who is hungry for the "eat what you kill" environment will not fit into the culture of the fantasy firm.

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As a general rule, most attorneys go through phases in life (e.g., marriage, kids, health issues, community service, bar service, death of a loved one). The firm recognizes this and utilizes technology and staff to enable the attorneys to seamlessly work from anywhere (e.g., home) and helps to maintain a healthy positive life/work balance. The firm even factors distance to mass transit facilities (e.g., commuter train stations in the larger metropolitan areas) and available parking into determining its office locations. The firm understands that clients are coming to them because they provide high-quality legal services and value to the clients, not because they are in the most expensive office space in the tallest downtown building with walnut-covered office walls decorated with the most expensive artworks.

### Cross-selling

Cross-selling is strongly supported and rewarded by the fantasy firm and the various teams (e.g., practice groups) in the firm. The firm's management and members figured out that having multiple rowers moves the boat along at a steady and even pace — provided everyone is rowing in the same direction. Cross-selling is a win-win opportunity for everyone associated with the firm:

- It benefits the relationship attorney, providing the client with legal services outside the relationship attorney's competency comfort zone and helping to keep the client's legal work in the firm by proactively cross-selling the services of others in the firm.
- It benefits the working attorneys providing legal services by giving them a better understanding of the client and the client's needs.
- It benefits the firm by strengthening the relationship with the client beyond only one attorney and increasing the firm's overall knowledge of the client and the client's business (which, in turn, better enables the firm

to assist the client in minimizing legal risks and to improve strategic planning for the client). Building service teams that communicate well helps to provide coordinated legal services to the client and provides better information to the pricing committee to help prepare budgets for the client's legal work.

- It benefits the client by having more than one person at the firm to contact in case of emergency, and by having a coordinated and well-informed team focused on the client's legal needs, which better enables the client to manage its legal risks in a cost-effective manner.

Indeed, the firm's management team has ongoing programs to improve client development and cross-selling within the firm. Each attorney's compensation is based, in part, on his or her cross-selling efforts. To assist cross-selling efforts, the experience and interests of the individual attorneys are organized and readily available, as are other resources of the firm (e.g., via an indexed and keyword-searchable intranet). For example, for a client with a question about a "source code escrow agreement," the relationship attorney does a quick keyword search on the firm's internal knowledge base to locate the attorneys who have familiarity with these transactions, their level of experience with the issue, articles written by them about the issue and their availability.

Those attorneys who have had some success with client development ("rainmaking") share that experience with others trying to learn or improve client development skills. Attorneys are mentoring other attorneys interested in improving their client-development skills. Mentoring is not based on age in this firm. Rather, mentoring comes from skills and experience developed in the practice of law. For example, attorneys who have learned client-development skills share that experience with other attorneys. The older attorneys mentor the younger and midlevel attorneys in areas where their experience has taught them a

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thing or two that the younger attorneys have not yet learned, and they are also willing to learn new ideas from these younger attorneys. Part of the culture in this firm is that they learn from one another regardless of age. And, teaching (like mentoring) helps develop and hone those skills. On some days one is the student, and on others, the teacher, and in either case, the individuals understand that by helping each other, they help not only someone else, but themselves and the firm.

Metrics are maintained and published for all to see regarding how often each attorney cross-sells or introduces another attorney in the firm to a client of the firm (e.g., goes to lunch with a client and brings along one or more other professionals from the firm to help build relationships beyond just the initial relationship attorney). Cross-selling has been interwoven so tightly into the fabric of the firm that the client perceives representation by a firm, not just one individual who may have been the initial relationship contact to the firm. Further, the attorneys and paraprofessionals on the client's team are kept aware of material developments about the client, the client's matters, industry, business, concerns and payment history.

The secretaries and support staff of the firm, an integral part of the team, help support the individual practitioners in the delivery of high-quality legal services, and are kept informed about the activities of the clients and the firm. Performance feedback is regularly given to all attorneys and staff. This and other things management does encourage everyone working at the firm to help others succeed, knowing that by doing this everyone benefits (plus it promotes loyalty to and within the firm).

The attorneys, paralegals and staff all understand that they need to be productive. The firm is, after all, a for-profit organization that must have productive workers producing a valued work product (e.g., legal services) and positive results for the client, and it must generate revenue to provide those working at the firm with a sufficient income to support

themselves and their families, and make the firm profitable. However, productivity in the fantasy firm is measured by more than just the billable hour. The "productive hour" has displaced the billable hour as a standard metric of productivity. The productive hour includes doing work for clients (e.g., the traditional billable hour), as well as productively working on other infrastructure activities, including marketing, training/research, knowledge-based systems development and administration.

The compensation of attorneys in the firm is based on a number of objective and subjective factors. The fantasy firm recognizes that the firm, in order to operate as a business, must have attorney involvement in many areas that are important to providing the fertile framework from which high-quality legal services can be delivered consistently. In addition to the billable hour, this includes, without limitation, such infrastructure activities as marketing (including writing, lecturing, community service, bar service and client and competitor intelligence), training, pro bono legal work, research, administration, knowledge management systems development and maintenance and firm management. All of these take time (i.e., productive hours), and, in addition to other activities, are investments in the future of the firm.

Clients of the fantasy firm, like most businesses and prudent individuals, want to operate within a budget and manage their expenses. Legal expense is no different. No surprise here: Lawyers are an expense to their clients. The firm realizes this, and most matters are reviewed by a pricing committee that assists the attorneys in helping to evaluate and prepare a budget for legal services for each client matter. Attorneys, accountants and economists employed by the firm work together on new client intake matters and help establish guidelines for pricing commoditized legal services and determine pricing for customized legal services.

**Commoditized legal services**

Many legal services have become or are rapidly becoming commoditized. Various legal services (e.g., corporation formation, wills, real estate closings and intellectual property registrations) are already commoditized. If the firm has the requisite people, knowledge, experience and technology, these legal services can typically be delivered profitably for a pre-determined budgeted amount.

There are two prime metrics in determining the costs of commoditized legal services: time and out-of-pocket expenses (e.g., registration fees and filing fees). The out-of-pocket expenses are predetermined by the market (e.g., title insurance, court reporter fees) or by a government entity (e.g., the court, or the U.S. Patent and Trademark Office). The fantasy firm can make a reasonable profit from commoditized legal services because it invests in knowledge systems that help deliver these commoditized legal services efficiently and in a consistent high-quality manner. In addition, the less experienced attorneys (i.e., fresh out of law school) are able to do and learn real legal work using the knowledge systems under the watchful eye and mentoring of the more experienced attorneys.

By the way, the knowledge systems are developed and maintained with expert knowledge input from the senior experienced attorneys and paralegals, and with process input from the less experienced members of the legal team — and all of the knowledge systems creation and maintenance time for all the team members is productive-hour time. Note that attorneys and paralegals are knowledge workers in this era of the information revolution.

The clients benefit because they receive quality commoditized legal services for a reasonable budgeted cost. The less experienced attorneys and paralegals of the team benefit because they receive training and experience in delivering legal services as they hone and develop their

legal experience and skills. Through the input into, and interaction with, the knowledge management systems by all of the firm's professionals, the firm benefits through increased efficiencies (which translate into increased profits) as the knowledge systems continually evolve and improve through this process. Furthermore, increased information data quality in the firm's knowledge management systems helps minimize the firm's risks for malpractice.

Not all legal services are commoditized. Uncertainty creates risks. Not all risks are of equal weight. Risk analysis and evaluation are aided by experience and can be supported by knowledge systems and technology. More complex transactions and disputes typically have multiple variables that increase the risks. For example, has the client been diligent about obtaining and protecting its intellectual capital? Will the client be prepared in litigation to respond to e-discovery (or will it even know what that means before the litigation hits)? Will the other side in the negotiations or litigation be reasonable? Will the other side, and its attorney, understand the issues or (because they do not understand the issues) see every issue as a risk?

**The perfect legal storm**

The legal profession today is being buffeted by many challenges, including economic pressures, turnover of professionals and staff, increasing client sophistication as consumers of legal services and many other pressures. Is the legal profession traveling along a path similar to that of the accounting profession? Some law firms have more than 3,000 attorneys. (As one managing partner of a large firm said, it's like herding kittens with that many attorneys.) Will the legal profession soon have the "big eight" law firms, then followed by the "final four" as the pressures of the legal profession cause some of the "mega firms" to implode and disappear from the legal landscape? And, how many of the small and midsize firms will survive and thrive to varying degrees?

How do some firms measure their success in these challenging times? Profits per partner (PPP) seem to be, for some, the coin of the realm in today's legal profession. As some lawyers (and pundits) have said, PPP is like the stock value of a company. Interestingly, some law firms appear to have figured out that the quickest way to boost the PPP is to simply remove some of the partners from the firm, thereby reducing the denominator that is divided into the net revenue numerator. For example, \$25 million net revenue divided by 150 partners is \$166,667 PPP, whereas \$25 million net revenue divided by 125 partners is \$200,000 PPP. Get rid of about 16% of the equity partners and watch the PPP rise by nearly 20%. If a public company tried to manipulate its stock in this fashion, bells and whistles at the offices of various state and federal regulators would be going off.

In many cases, the profitability of a firm is due to one or two individuals who bring along others in the firm to help grow his or her practice silo. Frequently those firms lack longevity (one does not have to look too far into the past to see firms that have disappeared from the legal landscape). This is often because when health or other reasons take those individuals away, the firm culture, lacking in many of the criteria discussed above, is not robust enough to be sustainable. The fantasy firm, while being very profitable, is not focused on PPP. Rather it values its "shares" on the overall profitability of the firm. It is a firm built to weather and survive even the perfect storm.

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### **Looking ahead**

The good news is that the fantasy law firm has a long-term vision and is firmly anchored in fertile and friendly soil for long-term growth and profitability of the firm, the individual practitioners and the staff. The culture of the firm is robust. Loyalty is high and turnover is low. Experienced laterals are welcomed and provided the support to be productive members of the team. The lateral attorneys are quickly introduced to clients, not only by a letter or e-mail, but also through actual face-to-face meetings (e.g., breakfasts, lunches, etc.). Likewise, the contacts of the lateral attorney are offered opportunities to meet with other attorneys in the firm. Everyone works very hard at helping others succeed, which in turns helps the firm and the clients of the firm succeed.

Does the fantasy firm actually exist? Examine the characteristics of the firms that disappear during the next five or 10 years. Do they meet some or any of the criteria of the fantasy firm described above? Or, since it is said that hindsight is usually clearer, look at the firms that are in existence as of the writing of this article and are still around near the end of that time. Where did they fall in the spectrum of the various metrics described in this article? How many lawyers will be working at a fantasy firm, enjoying life, family and a productive private practice of law, and how many will be working in private practice at a firm that lives in a fantasy until it vanishes?