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An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements

By Susan Saab Fortney

PART TWO

The first article in this two-part series appeared in the December 2001 issue of the *Texas Bar Journal*.

The first article (December 2001, p. 1060) in this series discussed the results of a mail survey of associates in Texas law firms (the Associate Survey). It was sent to a random sample of 1,000 associates who (1) had been licensed for 10 or fewer years as of June 1999 and (2) who were identified on the State Bar of Texas membership files as working in private law firms with more than 10 attorneys. The questionnaire was designed to obtain objective data on billing practices, the effects of hourly billing pressure, and firm culture.

The December article reported the empirical information garnered from the survey. This article discusses what the data means and how it *might* be used to improve the outlook for attracting and retaining good associates.

Where Do We Go?

The discussion of the effects of increased billable hours expectations and related study findings reveal how

the hours derby has transformed law firm culture and economics, adversely impacting individual attorneys, firms, the legal profession, and the consuming public. Given the multifaceted and complex nature of the problems facing individual attorneys, and their firms, some attorneys and firm managers may be resigned to working in a “broken” profession. Rather than assuming that little can be done, creative and dedicated attorneys should explore changes within firms and within the regulatory and competitive environments in which firms operate.

Reengineer Firm Economics and Culture

The study results that should most capture the attention of firm managers are those related to the respondents’ interest in reduced work arrangements and those related to respondents’ view on billing pressure causing ethical attorneys to leave private practice. As revealed in Table One, the survey find-

ings reflect the widely reported claim that many associates are interested in making less money in order to work less.

Possibly the most noteworthy percentage is the 18 percent of respondents who reported that they would exchange lower compensation for fewer hours, provided that it would not affect their treatment, even if it affected their advancement. These associates may be willing to accept future "advancement" consequences of reduced work arrangements, but they do not want to be treated like "second class" attorneys.

Although many firms offer alternative positions such as staff attorney positions, attorneys in such positions appear to have less status and job security than full-time attorneys on the partnership track. Rather than forcing attorneys who are willing to make less to work less into a category of permanent associates, firms should explore alternatives to the all-or-none promotion to partnership model.¹

In exploring alternatives firm managers might consider mixed compensation systems that consist partially of money and partially of time and non-monetary rewards, such as leaves and flex-time.

Emphasize Quality and Ethics

In examining associate compensation systems firms should not award bonuses based on numerical billing benchmarks. In lieu of rewarding "heavy handed" billers, supervising attorneys should scrutinize the work of associates who regularly bill an extraordinary number of hours.

Firms should also recognize and reward ethical conduct. For example, firms could expressly include ethical conduct as a criterion in evaluating and compensating associates. Such moves would send a strong message to firm attorneys and clients that the firm values quality over quantity.

Adopting clear billing guidelines and providing training on billing also communicates the firm's commitment to

TABLE ONE

Willingness to Make Less to Work Less

	MALE RESPONDENTS	FEMALE RESPONDENTS	ALL RESPONDENTS
Yes, regardless of its impact on my treatment or advancement at the firm	4%	12%	7%
Yes, provided that it would not adversely affect my treatment or advancement at the firm	28%	20%	25%
Yes, provided that it would not affect my treatment, even if it affects my advancement	6%	38%	18%
No, because inevitably such an arrangement will affect my treatment and advancement	29%	14%	23%
No, because I'm interested in maximizing my income	33%	16%	27%

ethical practice. Firm managers take an "ostrich approach" when they require associates produce a high number of billable hours without giving associates specific guidelines on how to bill ethically. The survey results suggest that the failure to implement and enforce clear billing guidelines hurts ethical associates who refuse to engage in questionable practices.² As discussed above, approximately half of the respondents indicated that they "agree" or "somewhat agree" that "billing pressure causes ethical and competent attorneys to leave private practice." Furthermore, those attorneys who stay in private practice may rationalize questionable practices. Firm managers can counter these serious effects of billing hour pressure by implementing and monitoring clear billing guidelines.

An in-house ethics counsel or com-

mittee could take responsibility for providing training and monitoring billing practices. Designation of an ethics counsel or committee provides a channel for ethical attorneys who have questions and concerns related to billing and ethical problems.

Create Incentives For Mentors and Supervisors

Firms that compensate partners for mentoring and training time will both improve the quality of associate work and the retention of associates. Partner compensation systems that do not recognize supervision time punish supervisors in different ways. First, supervisory attorneys do not receive the short term monetary rewards from billing and generating business. Second, supervision time may actually hurt the supervisors' mobility if time devoted to supervision

competes with the time that supervisors spend building their own portable client base.³ A compensation system should not punish supervisors and mentors, but should adequately compensate them for their valuable contributions to their firms.

Law Firms Should Change Billing Practices

Firms can avoid some of the traps of billable hour practice by using alternative billing methods such as value billing. More controversial changes involve eliminating high minimum billing requirements or even limiting the number of hours that attorneys work. By voluntarily limiting the number of hours billed firm managers send a powerful message that the firm values quality over quantity and revenue. Long-term such a move could impress new clients and solidify relationships with existing clients.

Short of limiting hours, firms could at least abandon high annual billing requirements and rewarding "high billables" with bonuses. Another modest step would be for firms to give full credit for pro bono work up to a certain annual limit. Such initiatives would positively change firm culture and address various problems created by the hours derby.

Attorneys Should Change The Regulatory Environment

Various regulatory steps can be taken to deal with abuses and problems related to hourly billing practices. Changes can be made to the rules themselves and the mechanisms for enforcing the rules. Clarification of rules on billing can help eliminate questionable practices and the ability of attorneys to take advantage of the current lack of clarity in disciplinary rules. Understanding the role that firm compensation, organization, and culture plays in leading to over billing and other questionable practices, states should follow the lead of New York in imposing discipline on firms.

Because billing abuses may be difficult for regulators and clients to detect, the regulators must enforce the state rule equivalent of Model Rule of Professional Conduct 8.3.⁴ To protect those attorneys who act properly, courts as regulators of the legal profession should fashion more protection for whistle blowers. Without such protection for whistle blowers, associates as well as partners feel as if they are committing professional suicide to report misconduct by superiors.

Conclusion

Although some of these changes may appear to be radical, they do not call for the restructuring of the way in private firms deliver legal services. Rather, the recommendations urge attorneys to modify organizational assumptions and regulatory mechanisms, while reaffirming attorneys' commitment to quality and service. Firms managers who take bold steps may counter the trend to measure professional success in quantitative and monetary terms. Bar and firm leaders who address the deleterious effects of high billable hour expectations will improve both the quality of work for clients and the quality of life for firm attorneys.

Notes

1. For a number of recommendations for improving work environments and organizations, see Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering*, 44 CASE W. RES. L. REV. 621, 656-62 (1994).
2. Seventy-one percent indicated that they agreed or somewhat agreed with the statement that "clear billing guidelines would help attorneys who want to practice ethically."
3. "Top lawyers may also be unwilling to devote considerable time to management, recognizing that they stand to benefit more from portable assets like client relationships and substantive legal skills than from firm-based assets like efficient man-

agement structures and sound financial practices." Holmes, *supra* note 11, at 404.

4. Model Rule of Professional Conduct 8.3 and Texas Disciplinary Rule of Professional Conduct 8.03 require that attorneys inform "the appropriate professional authority" when a lawyer has knowledge that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer.

Susan Saab Fortney is a professor at Texas Tech University School of Law, where she teaches professional responsibility and ethics. Prof. Fortney wishes to thank Dr. Cynthia Spanhel and her staff at the State Bar Department of Research and Analysis for their valuable assistance in conducting the Associate Survey. A lengthy version of this article was originally published as *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 U.M.K.C. L. Rev. 239 (2000). © U.M.K.C. Law Review.