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Professional Staffing in the 21st Century

By Arthur G. Greene and Sandra J. Boyer

There is a sense of unease among some lawyers. They are reading about how change in the global marketplace has begun to affect lawyers throughout the United States and in the far corners of the world. While they take comfort in being somewhat distant from the front edge of the curve, they also know there are no barriers at the state line that will protect them from the inevitability of change.

For most lawyers, the foundational issue of staffing has always been of paramount concern. One of the toughest decisions for the solo practitioner is whether to hire an associate. It can be an expensive move, and one not to be taken lightly. For the small firm, the question is whether to grow. Most firms of fewer than 10 lawyers will not grow absent an affirmative decision to do so. Firms of more than 10 lawyers tend to grow naturally unless an affirmative decision *not* to grow is made. And, for the midsized or large firm, the issue is whether the pyramid structure still works.

The question in each of these situations, of course, involves the degree of support required to provide the necessary level of service to the firm's client base. In light of changes in legal relationships, however, there are new factors to consider before making any hiring decisions.

Client Trends

In the past 10 years, the legal profession has gone from a supply industry to a demand industry. This means clients are now in control; they are insisting on quality service at a competitive price. They are taking a more active role in the management of their cases and are controlling both the practice methods and the billing practices of their lawyers. These are some of the emerging trends:

- Clients are choosing individual lawyers and not law firms when placing their business.
- Clients will pay high fees for a lawyer's expertise and experience.
- Clients are not willing to pay for associate training at client expense.
- Clients are not willing to pay for routine research.
- Clients expect their lawyers to be technologically proficient and to bring savings to their case through the use of technology.
- Clients expect their lawyer to develop a team of lawyers and paralegals that will bring efficiency and expertise to the work at a reasonable and competitive cost.

Hiring Decisions

Lawyers must recognize that there is a substantial overlap in the roles of associates and paralegals. The overlap was specifically highlighted by the original American Bar Association definition of the term paralegal (then referred to as legal assistant), adopted in 1992, which read, in part, that a legal assistant's function

involves the performance, under the direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts such that, absent the legal assistant, that attorney would perform the task.¹

Partners must hire skilled lawyers who can become leaders and owners of the firm.

The paralegal cannot "practice law," which means accepting cases, setting fees, giving legal advice, planning strategy, making legal decisions, and appearing in court. Under the supervision of a lawyer, however, a paralegal can perform most other work.

Any hiring decision involves answering a threshold question as to whether to hire an associate or a paralegal. In making such a decision, consider the respective skills and talents of each professional.

An associate:

- knows the law or how to find it;
- desires to learn from the partner;
- may lack experience;
- wants to be a valuable associate;
- may want to be considered for partnership; and
- can become a future leader of the firm.

A paralegal:

- has practical skills;
- knows office procedures;
- knows legal procedures;
- has case management skills;
- provides good client service; and
- understands partner expectations.

There are some key differences between associates and paralegals. Most associates are in training to become partners. They will serve in a support role for a limited period of time. A paralegal will never be a partner and career paralegals will provide long-term support. Associates will be able to cover court hearings or conduct complex legal research. If those services are needed, an associate should be hired. If the support role does not involve court hearings or complex research, however, a paralegal may be the more appropriate choice. They tend to be more thorough and detail-oriented, which means they excel at case management and client relations.

Associate Career Development

The recent associate salary increases – to over \$160,000 in major metropolitan law firms – affect all firms. Financial realities require firms to provide better associate training and career development. Firms that have studied associate turnover consider the cost of a lost associate to be over \$200,000. The analysis includes the cost of recruiting, unprofitability in the first year or two, time partners spend in training and losses involved in getting a new associate up to speed. Firms will need to focus on:

- meaningful mentoring;
- fast-track training;
- client development skills;
- case planning and budgeting; and
- career development and planning.

It is increasingly clear that firms must make associates more profitable, more quickly than in the past, and must avoid or at least reduce turnover. In some settings, these goals may be accomplished better by hiring fewer associates, paying them at higher levels and giving them more training and practical experience early in their careers.

It is important to understand that for the long-term continuation of a law firm, partners must hire skilled lawyers who can become leaders and owners of the firm. Many firms have become much more selective in moving associates to partner status, because the overall compensation pie may not allow it. Therefore, hiring standards, orientation, training and retention are, and will continue to be, an essential part of associate development. Effective associate development requires commitment from partners to be successful and is essential in the succession planning of a law firm.

Expanding the Role of Paralegals

The need to pay higher salaries and provide better training for associates argues for an increased role for paralegals. The highest level work should be performed by associates, but associates will be more productive with the support of well-qualified paralegals who can perform the majority of the routine work on most files. The combination can be profitable.

Expanding the role of paralegals makes sense, yet many lawyers have trouble doing it. Unfortunately, most lawyers tend to be set in their ways. They resist change. For many, their inability to break with habits of the past has prevented them from making good use of paralegals.

Lawyers who have enlarged the role of paralegals have changed the practice of law; they have also expanded their own horizons. They have become managers and supervisors of work. They are able to work at a higher level, spending a larger portion of their time counseling clients and arguing in court.

Some firms have had enormous success in the utilization of paralegals; others have struggled and question whether paralegals are in their best interest. An examina-

tion of successful firms demonstrates that the following key ingredients are always present in their paralegal programs:

- The lawyer and client have confidence in the paralegal.
- The lawyer assigns the proper work.
- The paralegal has full involvement on the files.
- The lawyer properly prices the paralegal's work.
- A set, billable hour expectation is established for paralegals.

Confidence makes all the difference. If the lawyer has confidence in the paralegal, all things are possible. If the lawyer lacks confidence, very little is possible. And clients will take their cue from the lawyer. Clients can tell whether the lawyer has confidence in the paralegal and will act accordingly.

Hiring Paralegals

Training is essential. The problem in many firms is that some individuals have been hired or elevated to the position of paralegal without the proper background or without the proper credentials. Nothing can harm a paralegal initiative more than having unqualified individuals in some of the positions.

The firm should look for individuals with good analytical abilities, good written and oral communication skills, maturity, judgment, common sense, initiative, dedication, a professional attitude and a willingness to learn and expand their skills. Lawyers need to look for qualified and mature career individuals who will inspire confidence and will get along well with the supervising lawyer.

This last is very important. The paralegal must be a good match for the supervising lawyer. Some lawyers have difficult personalities; some have large egos. When putting together a lawyer and paralegal team, some combinations will prove to work better than others. Finding the right personalities is not easy but, in the last analysis, it will have a large effect on whether the lawyer develops the necessary level of confidence in the paralegal.

If the paralegals are expected to perform "lawyer work," they must have involvement on files much like the lawyers who would have otherwise performed the tasks. The paralegals need to establish a rapport with the client, understand the issues in the case, understand the client objectives, and be generally informed of what is going on at all times. Only with a complete understanding of these matters can the paralegal effectively take on this high level of responsibility.

To achieve this, the lawyer needs to be able to accept the paralegal as a colleague. The lawyer must open up to the paralegal and share concerns and problems, which may include admitting not knowing all the answers. The lawyer needs to understand that it does not take a law degree to make a significant contribution to a case.

Unfortunately, if the lawyer does not have a receptive attitude, the effort will fail.

Profitability

Properly managed and properly priced, it is possible to generate significant profits from the work of paralegals. However, it takes more than simply hiring paralegals. Make sure that the law firm manager runs an analysis and prices paralegal work at the appropriate level. It would be a mistake to expand the role of paralegals and move a greater portion of the work to them if they are operating at a loss.

While there are a number of complicated formulas that can be utilized to determine whether paralegals are returning a profit, the simplistic "Rule of Three" is a good starting point. Under the Rule of Three, the paralegal's revenues from billable hours worked should represent three times their salary. Under this concept one-third represents salary, one-third represents overhead and fringe benefits, and one-third represents profit. Consider the following:

<u>Rate</u>		<u>Hours</u>	<u>Revenue</u>		<u>Salary/Profit</u>
\$80	times	1,500 =	\$120,000	divided by 3 =	\$40,000
\$100	times	1,500 =	\$150,000	divided by 3 =	\$50,000
\$125	times	1,500 =	\$187,500	divided by 3 =	\$62,500
\$150	times	1,500 =	\$225,000	divided by 3 =	\$75,000
\$150	times	1,650 =	\$292,500	divided by 3 =	\$97,500

Law firms start by making a profit on paralegal hours; but, in addition, to the extent a paralegal can take on a larger portion of the more routine work on a file, the lawyer can justify a higher hourly rate for his or her own work. The lawyer has a more limited role, thus there is no increase in cost to the client. The concept is significant. By shifting more work to the paralegal, the lawyer can handle more files and focus his or her time on a higher level of work at a higher hourly rate.

Better Practice Management

The management skills of the lawyer and the quality of paralegal work product are directly related. The lawyer with a talent for delegating work and motivating and supervising others will have success working with paralegals. Although there will be differences due to the varied roles of paralegals, there are important work management concepts that have general application. They include

- selecting the right team;
- avoiding excessive layering;
- balancing associates and paralegals; and
- providing adequate supervision of the paralegal.

A Five-Step Plan for the Better Utilization of Associates

A firm that makes a commitment to hiring associates always wants to get the most out of these neophyte lawyers, and to prepare them to be productive members of the

firm. This does not happen by accident. However, if the firm follows an organized plan, as described below, it can significantly improve the likelihood that associates will attain the expectations of the firm when it hired them.

Step 1: Establish Criteria by Which to Hire Associates and the Number of Associates

Firms must understand the type of associate who can be successful within their firm culture, the skills needed to practice within the firm and the expectations of associates once they are in the firm. Firms must decide on their growth strategy prior to hiring associates. Will hiring be driven by need because the workload within the firm demands it? Will it be driven by the need to fill office space and the work developed once the associate joins the firm? Or will it be driven by an established firm growth plan? Agreed-upon skills criteria and a growth strategy are both essential to long-term associate retention.

Step 2: Provide Effective Orientation and Training

A strong orientation and training program is vital, if associates are to hit the ground running earlier and more effectively and develop their productivity and profitability at an early stage. Most firms are developing and implementing a thorough lawyer orientation program that provides

- an administrative overview;
- a firm overview;
- a financial overview;
- a professionalism overview; and
- a career development overview.

The key to the success of the associate orientation program is to implement it consistently, update it as needed and communicate regularly. An effective training program should follow the orientation program. An organized training effort should be developed. All associates should participate in the effort to insure they become quality, skilled lawyers who can become productive and profitable partners. When new lawyers are deciding which firm to join, they quite often are interested in the orientation and training program. They want assurance that if they join the firm, they will have the opportunity to develop professionally.

Successful associate development is a win-win for both the firm and the associates.

Step 3: Provide a Meaningful Mentor

Whether a mentoring process is formal or informal, it is important that somebody is responsible for insuring associates develop appropriately. Successful mentoring provides several benefits, including but not limited to

- developing associates who are able to build strong practices long-term;
- developing associates who can be integrated effectively into the firm;

- assisting associates to develop practice skills and knowledge more quickly;
- building future leaders of the firm;
- building loyalty;
- enhanced client service from associates; and
- an understanding of client development and its importance.

Successful mentoring programs incorporate (1) organization and structure; (2) a mentoring manual to serve as a guide to the process, including a position description created for both the mentor and the mentee; (3) an effective pairing process; (4) regular communication; (5) regular evaluation of the process and the pairing; and (6) identified goals and objectives of the process.

Step 4: Provide Client Development Training

Associates must develop a “client development mentality” early in their careers. Their future may well depend on their ability to develop clients, not only to serve them. Many lawyers believe they are incapable of developing clients or marketing skills; however, this is not true. Firms can help associates develop these important skills in a number of specific ways:

- Teach the associates about the firm, including services offered, practices within the firm, the client base, who the lawyers in the firm are and what they do, core specialties, what type of clients to develop and areas of growth within the firm.
- Share the expectations of associates in regards to business development.
- Understand the client-development skills and abilities of the associates and focus on how to use them to develop business.
- Teach associates what clients expect from lawyers.
- Develop and use individual practice plans and base them on years in practice.
- Use internal and external resources to assist associates to develop a client development mentality early in their careers.

Step 5: Provide a Career Path for Associates

Associates want to join and stay with firms that provide a clear career path that benefits them and the firm. Create a culture where associates understand the progression toward partnership; where they can learn, develop and gain knowledge in their practice area; where they can have client interaction; where they are evaluated regularly and effectively; and where they can become part of the team.

A Five-Step Plan for Expanding the Role of Paralegals

The steps involved in expanding the role of paralegals in a firm parallel, but are different from, those required for associate development. It may seem obvious that a

generic staff development plan will not be as effective as one targeted to the special needs of associates and paralegals, but many firms do not focus on this important distinction.

Step 1: Establish Hiring Guidelines

Start by having the lawyers agree upon certain minimum standards for the hiring of paralegals. This will tend to elevate the paralegal to a higher competence level than an ad hoc hiring program. Whenever possible hire an experienced career paralegal. And, as part of the process, give attention to whether the lawyer and the applicant will make a good match.

Step 2: Provide Lawyer Education

A key to developing strong paralegals is assuring that lawyers in the firm understand their supervisory and leadership roles. To the extent necessary, firm should educate lawyers about

- the role of the paralegal as permitted under the Rules of Professional Conduct;
- the client service advantage of using paralegals;
- the cost savings to the client from expanding the paralegal role; and
- the firm profits possible from paralegal work.

Step 3: Develop Practice Management Standards

Have each practice group establish practice management policies and standards. The policies should describe how files are to be handled, including the relationship between the roles of the paralegal and the associate. In the right circumstances, it may promote the experienced paralegal as a resource for training new associates.

Step 4: Establish Written Guidelines for the Utilization of Paralegals

The firm should develop and publish written guidelines for the proper usage of paralegals. The standards can include appropriate functions and should also cover levels of involvement and communication. The firmwide standardization of the guidelines is essential to an effective program.

Step 5: Set Goals

There should be annual goals for the paralegal program, upon which progress can be measured. Without goals, it is impossible to keep momentum going for annual improvement.

Other Professional Staffing Considerations

Associates and paralegals are not the only support staff at many firms – there are secretaries, receptionists, filing clerks, and others whose jobs may vary according to the type of practice. The common thread for associates and paralegals is that they are directly involved in the deliv-

ery of legal services to clients, as opposed to performing purely clerical or administrative functions. Two other common staffing arrangements deserve mention.

Contract Attorneys

Many firms employ contract lawyers to whom they pay a salary and who have a set amount of hours to be billed. Some contract lawyers do not have a billable hour expectation but are used on an as-needed basis. Many times contract lawyers fill a need in a specific practice area. Contract lawyers can enter the partnership track if their performance substantiates it and the firm's growth plan calls for it. Work is delegated to them from partners and associates. They are not expected to develop business, but if they do, they can be compensated based on an agreed-upon amount. Some contract lawyers are permanent; others are used on an as-needed basis such as if the firm has a large litigation case or a difficult merger/acquisition.

Outsourced Support

Some firms believe that outsourcing legal work offshore is the wave of the future, and some believe that as much as \$5.8 billion in wages will be sent offshore by 2015. Is this a serious consideration for law firms? There are several things to consider, such as the following:

- Will communications be an issue?
- Will clients accept that their work is being shipped out of the United States for processing?
- Can outsourcing enhance firm profitability?
- Will the time zone differences provide a benefit in turnaround time and will it outweigh the risks?
- What kind of document review will be needed by lawyers in the United States?

At this point, there may not be enough information available to make a final decision regarding the use of outsourcing, but one thing is for sure: research carefully before implementing outsourcing practices.

Conclusion

Although staffing needs for law firms have evolved over the course of recent decades and will continue to change in the future, certain fundamental principles are not likely to change. Lawyers and law firms can leverage their productivity by hiring and training qualified associate attorneys and paralegals. Moreover, the success of these staffing decisions will be enhanced by a good staffing plan. Developing a professional staffing plan will assist law firms to better meet client demands, enhance profitability and provide consistency in the growth of the firm. ■

1. ABA By-Laws § 21.12, as amended Sept. 1, 1992.