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COMMON SENSE APPLIED

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# Definitely Mabey

## Compensation systems under siege

*By Stephen Mabey, CA*

While never having actually timed it with a stopwatch, it is fairly quickly after two lawyers begin chatting that the topic of compensation comes to the forefront. Rarely is it about what they are being compensated for, but rather about their contributions that are not being compensated by their firm.

While the scrutiny is somewhat cyclical in nature, currently there seems to be a heightened focus on compensation systems. This increased focus arises for myriad reasons including:

· A change in the weighting of a firm/partner value—for example, firms wishing to place more emphasis on "firm mindedness" than individual autonomy;

· An attitudinal change in how and when to compensate—more recent generations being perceived to be unwilling or unable to wait the same time that was experienced in the past to achieve certain levels of incomes or older partners having suffered wealth losses unwilling or unable to step down at a normal career stage;

· A change in the external marketplace—when files were plentiful and getting the work out was as important as getting the work in, business development was respected but not "valued." In a flat marketplace, superior business development skills are increasingly highly valued; and

· A change in the emphasis of the internal business focus of the practice—client value propositions and retention, alternative fee arrangements, project management, fee discounting, talent retention, etc., all have placed increased importance on managing for profitability which in turn means effective delegation is a key driver. Many compensation systems play "loose lip service" to this aspect of the practice.

The range of compensation systems runs the gamut from totally objective systems, where numbers are the only input into the setting of compensation, to totally subjective systems, where no numbers are looked at as compensation is set by a subjective valuing (small committee) of each partner's contribution to the firm.

***Objective or subjective—there is no best system. The only way one compensation system is better than another is if it more closely aligns with what the partners are attempting to achieve as a firm.***

For example, partnerships wanting their partners to act in a more firm-minded manner are clearly misaligned with a totally objective compensation system that emphasizes individual productivity. Vice versa, partnerships wishing to raise productivity of their lawyers are likely misaligned with their compensation system if it is totally focused on subjective criteria.

One side issue irrespective of the compensation system you design is whether it should be open or closed. By this I mean

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whether every partner knows what every other partner makes (open) or only what he or she makes individually (closed). In a closed system, perhaps a watchdog or two on what the folks setting compensation make so as to avoid any potential Dewey & LeBoeuf scenarios! While not impossible, it may be there are better hills to die on if you are an open compensation system and want to go closed.

Why would you want to do this you might ask? Experience has shown that in most firms it is a relativity issue that causes unhappiness with the results of the compensation deliberations. Many partners are happy with their own compensation when viewed in isolation but increasing levels of unhappiness arise when they see what the other partners are making and they see them as a peer or even less than equal.

If you have the prerequisite level of trust and could write your own script, a closed system will avoid a lot of head and heartaches and lost unproductive time.

Many have written of partners' disengagement in the past and the negative impact it can have on a firm. A firm's compensation system has the ability to contribute to both engagement and disengagement, depending on its and the partnership's alignment. As the writer Henry David Thoreau is attributed as having once said:

> ***"If we will be quiet and ready enough, we shall find compensation in every disappointment."***

So what elements should a compensation system in today's world address? Each firm will have to assign their own weighting to the various elements so that it most fully aligns with the partnership's goals, but it needs to pay more than lip service to the following:

1. **Productivity:** law firms are businesses that exist, among other things, to make a profit for the partners and while too much of any element is dangerous, underperforming firms are at a greater risk of implosion, disengagement and partner abandonment then those that are producing healthy results;

2. **Business generation:** in the flatter market-place law firms now compete in, successful generation of profitable work has become almost as important as doing the work, resulting in an almost chicken-and-egg scenario;

3. **Effective work delegation:** while important to both generate and do the work, leverage is still a powerful tool to creating higher profits for partners. Pushing the work out to the lowest-cost resource qualified to do the work only serves to increase profitability as it frees up higher-cost resources (partners) to do the mission-critical tasks of client relationship management, work generation, and quality assurance;

4. **Firm-mindedness:** in light of alternative fee arrangements, fee discounting, consolidation of clients, alternative service providers, lateral opportunities, etc., the willingness to put the firm's interest ahead of one's personal interest is of increasing importance and such behaviour needs to be demonstratively reinforced as being valued;

5. **Client relationship management:** while always important, in a flatter market the non-direct billable time spent managing client relationships and ensuring that the firm is delivering on its implied value proposition (the client's weighting of quality, price, and service) is extremely important; and

6. **Firm values:** unless firms enforce and reward the values that they hold out as the

underpinning of the partnership, these values are just smoke and mirrors.

I expect readers will add a number of other compensable items like involvement in firm management, training and development of associates, etc. Thomas Clay of Altman Weil Inc. authored an article in 2002, titled "What are the obligations of partners?", that is as relevant today as it was then. In this article, he speaks to the obligations of a partner and I would paraphrase it by saying not everything you do as a partner should have a direct compensation attached to it but rather should be done because that is your job as a partner.

Remember as Cary Grant is quoted as having said,

***"Do your job and demand your compensation—but in that order."***

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