PMBR Working Group #6

Managing the Law Firm/Legal Entity and Staff Appropriately

Risk Management Assessment Tool

Example for a Small Firm
(2-5 Attorneys)

- Structure
- Compensation
- General Counsel
- Manual
- Reporting
- Supervision
- Hiring
- Termination
- Accepting New Engagements

Managing risk starts with the law firm’s ownership. The partners, shareholders or members are the ones who will benefit most if problems are anticipated and mistakes reduced. It is up to the owners to shape the firm’s culture in ways that promote the firm’s long-term profitability.

❑ Structure

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Compensation packages that encourage taking on questionable clients in order to maximize billable hours in the near term may later result in unpaid accounts receivable or, even worse, a lawsuit against the firm. When conducting client intake, the desire of the lawyer introducing the client to increase his or her book of business must be balanced against the best interests of the firm as a whole. Compensation should be structured so that the firm can say “no” to an unsuitable prospective client.

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To protect the firm from problems, it may make sense to appoint one of the owners as "General Counsel", in charge of risk management. This lawyer must be given the authority to implement, maintain, monitor and improve policies and procedures that reduce risk, *e.g.*, a comprehensive conflicts-checking system. General Counsel should be given enough time in his or her schedule to accomplish the necessary tasks and compensation for hours spent on them.

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A written manual of firm policies is an important tool for managing risk, because it enables senior lawyers, associates, and staff alike to know of and put into action the necessary preventative and curative steps. The owners, or General Counsel if one is appointed, should ensure that each employee receives a copy of the manual. New hires should be trained to follow each procedure that applies to that person's position.

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Risk cannot be reduced unless problems are timely identified and reported. The sooner problems are disclosed, the more likely they can be resolved without serious adverse consequences. The firm's culture must foster an appreciation that each employee owes his or her loyalty to the firm's clients and the firm' reputation, not to an individual who might prefer to hide a mistake. The owners, or General Counsel, must assure employees that reporting problems is appreciated and will not result in retaliation.

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Colo. RPC 5.1 and 5.3 mandate supervision of lawyers and non-lawyer staff to ensure professionalism. But on-going monitoring and mentoring of employees also makes sense from a business standpoint. Clients are attracted to and retained by success. Successful lawyering requires proficiency and efficiency. To achieve those goals, managers must require that employees perform well. The employment of those who cannot meet firm standards should be terminated.

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For the same reasons, the firm must be careful when hiring to avoid employees who will create problems down the road. In addition to the interview, the hiring manager should thoroughly investigate the applicant's background, particularly problems during recent employment. If a lawyer is transferring from another firm, the owners, or General Counsel if one is appointed, should troubleshoot the new lawyer's cases.

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If a lawyer or staff member must be terminated, the firm's priority should be maintaining security and confidentiality. This means return of all firm property and cut off from all access. If the firm will be continuing as counsel for the departing lawyer's clients, transition of the files should include introduction of the clients to the new lawyer assigned to their cases.

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