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MARKETING THE LAW FIRM

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Undercutting the Cost of Underperforming Attorneys Is Your Responsibility

By Sharon Meit Abrahams

As a firm leader it is your fiscal responsibility to address underperforming attorneys. Altman Weil reports in their Law Firms in Transition Survey 2019 that 84.2% of firm leaders say they have “chronically underperforming lawyers.” With COVID-19 are your underperformers flying under the radar? The cost to a firm is not only to the bottom line, but to your reputation as a leader.

It became apparent to me, while doing 10 years of exit interviews that partners in their 15th to 20th year of practice leave because of underperformers. These partners felt stifled. They questioned their ability to move into better client relationships or leadership roles. Associates see and hear these grumblings and wonder how this will affect their future career.

The first step in addressing an underperforming attorney is to look inward to determine if your firm has written expectations so the attorneys know the standards to which they are being measured. It is hard to hold an attorney accountable to an intangible idea of success.

In my experience I see three main reasons attorneys begin to underachieve: situational issues, practice issues and age-related issues. Situational issues are events or changes to the attorney’s standard operating procedure. If the attorney does not have a plan to address an obstacle they can begin to flounder. COVID-19 is an extreme example of a situational issue that no one had a plan to address. One client I work with had never worked from home, so his hours took a hit while he adjusted. After getting organized and with guidance on how to talk to his family about “work time,” he has been able to get back on track.

Practice issues come about when the attorney fails to stay on top of their own career. They look up one day and see that they are not practicing in the area they want, or they are not at the level in the firm that they desire. While I was working with an underperforming partner, we were able to uncover his desire to do research and development work on legal products the firm could sell. Once we were able to tap into this his performance improved and he got backing from the firm to pursue product development.

The third area, age-related issues, rear their heads later in someone’s career. The statistics show 50% of partners in law firms are 55 or older, but with ego and self-identity driving many attorneys to stay in the practice longer these issues can affect firms. When addressing this concern be sure to avoid any

conversation or action that can be characterized as age discrimination. With the virus changing the practice of law, all attorneys, not just partners and of counsel, need to start making plans as the new normal will see some practices flourish while others perish.

Each of these can be a blow to an attorney's career and the firm's bottom line. If attorneys are not equipped to manage the problem, they can fall victim to a downward spiral. Without the firm's support, training and guidance, attorneys who are suffering might not know how to proceed. As a firm leader it is your responsibility to determine the root cause of the poor performance and help the attorney address it.

Many firms handle the underperformer in a punitive fashion. The Law Firms in Transitions Survey points out that 90% of firms will reduce compensation followed by 39% of firms who de-equitize the partner to address the issue. Further, the survey reports that 61% of firms end up removing the partner from the firm in the end. It should be noted that these firms opt to shed unproductive partners to feed more money to high performers and prevent other firms from poaching their most valuable talent, according to a story in *The American Lawyer*. (See, "[Big Law Firms Are Forcing Out More Unproductive Partners as Recession Stalls Profits.](#)") There is another more benevolent way for firm leaders to address this issue.

There is a lot of talk about coaching in the workplace and this is one circumstance that it is a best practice. However, you as the managing partner or practice group leader may not be the best person, as you might have a personal relationship with the underachiever. Determining who should be the coach depends on the firm's culture and your relationship.

Before you start coaching begin with gathering information. When I am asked to help, I talk to the attorney's colleagues, supervising attorneys, direct reports, and, if appropriate, clients. This is all to determine which of the above situations we are dealing with. Obtaining financial data is next followed by learning about any prior communications the attorney may have received about performance. Finally, identify resources you can offer to give the attorney support in making improvements.

Consider the following when you begin the coaching process.

1. **Be a good listener.** The coaching relationship starts with listening. Once you have explained the firm's point of view, listen to the attorney's explanation of their performance.
2. **Ask the partner to look for ways to solve their own problem.** By brainstorming ideas with the attorney, they might come up with an approach they can implement to affect their own change.
3. **Share resources.** Create a list that includes well-being resources, professional development, business development training, etc. If outside coaching is an option give them names of vetted coaches and allow them to select the one that is the best fit for them.
4. **Help the partner set targets/goals.** We all know when you write down a goal you are more likely to commit to it. These should be specific and measurable so there is no subjectivity.
5. **Hold the partner accountable.** The entire effort of reversing underperformance hinges on the assumption that the attorney will do what has been asked of them.
6. **Celebrate successes.** A good coach reinforces behaviors and applauds outcomes along the way.

It can be stressful to coach your own attorneys, but it can also be rewarding. Once an attorney has successfully turned around their practice, they will be invigorated. You might see them begin to excel and have more energy to put back into the firm. This is how you can move an underperforming attorney to a productive attorney.

Dr. Sharon Meit Abrahams is a legal talent expert who has coached hundreds of attorneys over the past 25 years some of which used to be underperformers. A member of the Board of Editors of

Marketing the Law Firm, she can be reached at sharon@legaltalentadvisors.com.

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