

Into action

Law firms left reeling by the past year's recession now need a strategy for the recovery. As the number of professional-liability claims continues to mount, a due-diligence exercise on client-acceptance procedures is just one aspect of practice that could be overdue.

By Thomas Berman, Principal, BERMAN & ASSOCIATES

The legal economic landscape may never have looked like this before. Certainly, most of us have never seen anything like it. Some firms are still doing well, but others have simply disappeared. Some firms have made adjustments, while others were not able to do so soon enough to forestall

difficulty. Lay-offs have beset a very large number of firms, but others have (thus far) resisted the temptation or the need to cut staff and lawyers. It's a variegated landscape to say the least.

Who's on the other end of the phone or computer? The world of the client.

To say "we're all in this together" would be an understatement. Obviously,

the reason for the difficulties felt by the law firm community is directly related to the economic straits of the client community. The prospects for recovery may be slightly more optimistic than a few months ago, but the unfortunate reality is that it will take years to come back from this downturn. Therefore, it is incumbent upon law



firms to respond to the needs (and circumstances) of those clients who themselves are having difficulty and/or making their own adjustments, while still protecting the interests of the law firm. This objective truly redefines the definition of a conundrum. It is fair to say, however, that firms that are able to make appropriate changes and respond to their clients and those clients' environments, while still retaining the firm's overall security, will be those firms that survive this period of time and emerge stronger on the other side.

Part of the analysis (due diligence) required to proceed relates to the economic viability of the firm. In order to determine the economic viability of a practice, certain information is required. The most basic of issues – the ratio of realized income to the expenses in running the law firm – is impossible to attain without certain vital information. Without this, it is difficult to determine whether or not there is real profitability in the practice.

1. Members (partners or shareholders) of the firm must perform, or have performed on their behalf, a due-diligence exercise to determine a realistic appraisal of the practice in its entirety. This should include the economic position of the firm; debt ratios, credit requirements and obligations; banking relationships; leasehold terms and legal requirements; individual ownership and other lawyers' economics; a qualitative evaluation of the level of the practice; the marketplace and marketing opportunities for legal services; and a neutral examination of both legal and non-legal staffing;
2. The entity agreement itself should be evaluated for its efficacy at protecting and furthering the interests of the law firm entity itself. Protective elements include the way in which lawyers might depart the firm (for example, the question of notice for departure); the critical manner in which fees may be

can have broad legal and economic repercussions), as well as salaries and bonuses to associates and non-lawyer staff. Controlling the firm's cash outlay, however – particularly in the short term if the firm is having difficulty – may mean the difference between survival and dissolution.

Of course, the findings derived from this effort and its corresponding appraisal must be acted upon. The origins of a strategy for handling the issues raised should then emerge, both for short periods of time (12 months) and in the long term. Some of this will be very difficult indeed, but it may be necessary for the very survival of the entity. Once the plan is decided, specific responsibilities must be given to selected individuals, and their performance must be a focus of regular meetings in which various steps towards realizing the strategies are discussed by the partners or shareholders.

Notwithstanding the plan itself,

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Practice and risk management strategies

If it has not done so already, it is important that every law firm develops a strategy, or strategies, to manage their affairs, both in the short term and over a longer period of time. It is easily argued that in more difficult times, when appropriate economic strictures are included, risk management attributes and controls might be considered to be a law firm's saving grace. In more difficult times, unfortunately, it is also far more difficult to manage elements of risk. Even in the more economically-prosperous times past, risk management has not been at the top of most law firms' agendas. In harder times this can receive even less attention. Here are some of the basics for the development of a workable plan of action:

- divided at the time of departure; the ownership of files; and the intellectual property involved in developing forms and processes while the lawyer is engaged in the practice of law at the firm;
3. Draws and other pay-out requirements should also be analysed, as well as flexibility factored in to those pay-outs in case the cash is unavailable. The impact on partner revenue and pay-outs to current and former partners or shareholders is the reason for most law firm dissolutions. One of the most difficult decisions to make when a law firm is having economic difficulties is reducing partner draw, reducing or eliminating pay-outs to former partners (which of course

any obvious weak spots in the firm's practice regimen must also be addressed immediately. This includes issues such as case evaluation, case management and case reporting, and the management of billings and receivables.

Strategies that follow should then include specific plans for dealing with the most immediate concerns as well as concerns in the near future and over the next three to five years. All of these will have different requirements imposed upon them. Some firms may have done this already, but many law firms can be fairly deficient at making plans beyond the tenancy of their lease for space.

Overall professional-liability implications

The professional-liability ramifications of an economic downturn can be

summed up in one phrase: more professional-liability claims against more law firms. The reasons for this are numerous, but lawyers are all aware that even in the best of times, when clients are unhappy with the result of their lawyers' efforts, often times professional-liability claims will result, even simply as a means to regain fees paid. In stressful economic conditions this effect is multiplied many times. Ironically, it is not the plaintiff law firm community that is hardest hit by the increase in claims. Based upon our experience over the past 12 months, it is the non-contingency, 'general practice' law firm community that is seeing the greatest increase in claims proportionately. This includes practices dealing with ordinary business (contractual) issues; commercial, as well as individual, bankruptcy (up 30 per cent in the past year alone); domestic relations; and real-estate law involving transactions as well as litigation. Generally, however,

It also behooves the firm to place additional emphasis on the evaluation of new clients and new cases, as well as the acceptance of new matters from clients who are in arrears in payments for previously accepted assignments. This statement is made with the understanding that controlling the process of new client or case evaluation is far more difficult when a law firm is having economic problems. When there isn't enough work and partner or shareholder draws are uncertain, it is particularly hard to turn down new business, but this is precisely the time that the firm must be most critical in its evaluations. Today, in fact, an initial examination of a potential client should be made to determine whether or not that potential client is itself a viable entity. It does not now, nor has it ever, served any purpose to take on new business from an entity that cannot afford the firm's services. It is especially important that another, neutrally-centered individual is involved

Retainers must be determined that positively affect the economic outcome of the transaction for the firm, and work in progress (WIP) must be overseen by the partnership or corporation through the good offices of an individual partner or shareholder. In this vein, it is also important to remember that law firms cannot afford to file lawsuits for their fees. It almost always means an automatic counterclaim for professional liability against the law firm, regardless of the quality of the services rendered.

Whether a law firm is currently having economic difficulty or experiencing positive cashflow, there are certain requirements that should always be met to manage the practice in an efficient and positive economic methodology. The truth is that none of this really varies from what should be accomplished in an ordinary managerial stratagem, and many of those, such as effective fee agreements, calendaring and data

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it is safe to say that no law firm practice is really safe when the client community is going through this kind of economic trauma.

The practice-management imperative

Specifically to address the current economic climate, law firm management today needs to take on a sharper focus and include additional responsibilities.

There must be more control over the individual practice of each lawyer, exerted by some form of central authority whose responsibility it is to oversee the safety of the entire law firm entity. The oversight of lawyers, including partners (shareholders), as well as supervision of associates, must be given a greater emphasis.

in the case intake for all the lawyers in the firm. That way there is a greater assurance the matter will bring value to the individual lawyer as well as the law firm.

Potential conflicts of interests must be controlled, and the same measuring sticks that might apply in better economic conditions must apply in the environment in which law firms find themselves today.

Law firms must also manage and control their billings and collections. Again, a central authority has to be involved and engaged in managing the billings of individual lawyers. This includes the issue of receivables, and certainly the issue of 'past due' balances, even from 'old friends'.

management, are not covered in this article. However, it is said that in good times, lawyers make a living in spite of their management, not because of it. To that, it might be added that in a difficult economy law firms must manage the firm in the way they should have managed in good times. Law firms that can make this adjustment to more effective and realistic management should prosper. Those that cannot make the necessary adjustments are destined for hard times indeed. ■

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