Managing Partner Performance: Strategies for Transforming Underperforming Partners

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Chapter 1: What constitutes acceptable performance?

By Nick Jarrett-Kerr

Introduction and trends

Law firms are primarily people businesses and rely on the brain power, acumen, and performance of their lawyers to gain results. Correspondingly, law firms and professional service firms place less importance on tangible assets such as plant, machinery, and inventory. The maximization of a law firm's productive capacity is therefore a key element in profitable and sustainable long-term performance.

For many years it has been perceived that, in any people business, a version of the Pareto Principle – the 80/20 rule – applies, with ten to 20 percent of the firm's people making by far the largest contribution to the firm's success. Managers such as Jack Welch, the famous former leader of General Electric, used to apply this principle in segmenting employees into three bands in terms of their performance – the top 20 percent, the middle 70 percent, and the bottom ten percent. The top 20 percent are the firm's stars. The middle 70 percent are enormously valuable to any organization, providing the backbone of skills, energy, and commitment without which the organization could not survive. In the case of some corporations such as Microsoft, and in the world in which Welch used to work, the bottom ten percent have to go. As Welch says:

> *"It's awful to fire people – I even hate that word. But if you have a candid organization with clear performance expectations and a performance evaluation process – a big if, obviously, but that should be everyone's goal – then people in the bottom ten percent generally know who they are. When you tell them, they usually leave before you ask them to. No one wants to be in an organization where they aren't wanted."*[1]

Partners of law firms used to think that they formed the premier cadre in the firm's hierarchy, automatically forming Jack Welch's top 20 percent. It is

now accepted that the 20-70-10 rule applies as much in the partnership layer as in the rest of the firm. This was reflected when, more than 25 years ago, David Maister[2] coined the expressions "Dynamos", "Cruisers", and "Losers" to describe the three categories of partner in professional service firms. The term "Cruiser", however, may be unnecessarily pejorative as it implies a bunch of partners who are working in comfort zones, when in reality they form the backbone of the firm. It may therefore be better to think of partners as A partners, B partners, and C partners. In most firms, B partners form the heart and soul of the organization. As Delong, Gabarro, and Lees[3] point out, "The bulk of any firm's talent is its B players – the 70 percent who are neither stars nor failures but consistently solid performers. They are the firm, and the firm is only as good as they are."

In most firms, it is rare to find more than 20 percent of the partners falling into the A or Dynamo category and it is clear also that, in some firms, at least ten percent of partners are underperforming against the firm's agreed standards.

In the early part of the 21st century, research[4] started to show that forced ranking approaches can result in lower productivity, skepticism, reduced collaboration, damaged morale, and mistrust in leadership. This does not mean that an approach that contains elements of forced ranking is in any way invalid. Nor does it mean that all partners have to be equally treated. There should be status tiers in every firm where it is clear who deserves to be at the top and the bottom of the pecking order. But, in any approach where partners are comparatively graded, great care has to be taken to ensure that the perception does not grow in the firm that there are a very few stars at the top and everyone else is somehow inferior. Indeed, there is an implicit forced ranking that takes place in every firm as it develops. The disappearance of some underperforming partners automatically results in other partners falling into the bottom performance tier. As Ed Wesemann explains:

> *"In part, this is because law firms are grading their partners on the curve. The act of removing significant numbers of 'underproductive' partners from a law firm's equity ranks has the effect of raising the average for the remaining partners. Lawyers who used to be viewed as solid service partners find themselves slipping toward being considered underproductive."*[5]

By 2006, even General Electric had abandoned formal, forced ranking and by 2015, it was reported that the company had started to abandon "formal

annual reviews and its legacy performance management system for its 300,000-strong workforce over the next couple of years, instead opting for a less regimented system of more frequent feedback via an app".[6]

It is, or should be, a golden rule of any partner performance management system that it should not be just a tool for managing underperformance. Equally, the partner remuneration and compensation system should not be used as a tool to punish under-achievement. However, partners who are working hard and making real contributions to the development of the business find it difficult if the problems of consistent underperformance are not addressed. This issue has become harder for the older partner. In former times, partners would tend to ease off as they approached retirement, and, with the disappearance of goodwill, a gentle decline towards retirement whilst maintaining a full profit share was often felt to be a fair trade-off for years of hard work and loss of goodwill payments. With shrinking margins and increasing competition, however, most modern law firms realize that they simply cannot afford to carry any passengers, and the older partner finds himself or herself in the position of having to work harder in later years than in earlier times in order to justify their profit shares. Sadly, some find this difficult, not least because their client base tends to be made up of individuals and professionals of similar age and can often shrink as their clients reach retirement age and no longer have a need for legal services.

Even if not underachieving, at most law firms, partners can be found who are drifting along, just doing enough to escape scrutiny. Whilst this can be the case at every level, it can particularly be true of the more mature partner. Some senior partners retain huge amounts of energy, but some also may be in decline, with waning productivity and fading appetites for work. Some partners even appear happy to settle for a lower tier of compensation on the basis that lower tiers of compensation or profit share will expect a lower level of hard work and contribution and hence will put them under less pressure to perform. The problem can be exacerbated by the reward system if it fails to have mechanisms in place to achieve a fair but sensitive approach.

Defining underperformance

Underperformance used to be thought of as synonymous with under-productiveness but it is clear that any definition has to go much further than adherence to billing and financial targets.

Underperformance can therefore be defined as the consistent failure of a partner to meet the firm's reasonable expectations or standards for produc-

tivity, profitability, quality, technical proficiency, client service, or interpersonal relationships. Underperformance includes poor managerial competence and behaviors (such as bullying, emotional abuse, discrimination, and uncontrollable anger), which are inimical to the firm's values and agreed cultural norms.

How to set standards and manage performance

It is crucial from the outset to clarify the minimum expectations that a firm demands of its partners and then to define what roles and responsibilities it requires them to perform in order to make a sustained and valuable contribution to the firm. Hence, before deciding how to deal with underperforming or underproductive partners, it is important to be clear about what the firm expects of its partners and what roles and responsibilities it needs them to perform. Partners equally need to be clear how they are to discharge their various roles as owners, managers, and producers. The current trend away from the more revenue and formulaic systems of partner compensation is no accident. Firms are increasingly responding to the growing realization that such revenue-driven systems reward only a very restrictive set of behaviors and at times actually serve to penalize longer term entrepreneurial activities.

To recognize the wider contributions and expectations of partners, firms usually identify and define four, five, or six specific areas in which they expect partners to perform well. These come with different names from firm to firm but generally cover areas such as financial and business performance, people management and team development, business development and rainmaking, client relationship management, contributions to the firm as an institution, and self-development and professional expertise. Several steps are needed to build the right model. First, and most obviously, the firm needs to agree the performance areas that are important for them. The trick here is not to have too many – four seems to be a minimum and more than six usually leads to duplication and unneeded complexity. Second, it is important for every partner to know how to succeed in the firm and a useful start is to define the parameters for star partners on the highest possible tier or grade and for newly appointed equity partners just starting on their equity careers. Then the intervening levels can be created so that partners are clear as to what they have to achieve to stay on their existing grade or level or to move up to the next level.

These critical areas of performance can then be built into the firm's written system and processes for managing partner performance. The trend towards a written and explicit set of partner performance management guidelines is a relatively recent one, but firms have found that – whether they

prefer to be lightly managed or are heavily centrally controlled – that some degree of oversight and performance management is useful and necessary. The framework for a successful performance management system should meet a number of objectives that go far wider than issues of underperformance or partner discipline. The main thrust of any performance management system should be to encourage and support behavior and performance, which contributes towards the profitable development of the firm towards its strategic goals.

In summary, there are seven essential elements that are necessary for a successful partner performance management system. First, it must identify the criteria – the critical areas of performance or "balanced scorecard" against which partners will be evaluated. Second, it must lay out in some detail the processes and systems for partner review and appraisals. It must thirdly clarify the evidence, metrics, and data that the firm will employ to inform the firm's evaluation procedures. It should fourthly contain the firm's requirements for each partner to compile some form of personal business or contribution plan, containing goals and objectives that are directly related to the firm's overall strategic objectives. As a fifth element, the expectations of partners and the firm's leaders should be firmly set in identifying the methodology and frequency by and with which the partners and their teams will be actively managed on a day-to-day basis. Sixth, it must set out the firm's processes for dealing with underperformers. Finally, the performance management system should contain the firm's methodology for partner promotion, progression, and development.

This extract from the chapter 'What constitutes acceptable performance?' by Nick Jarrett-Kerr is from the title Managing Partner Performance: Strategies for Transforming Underperforming Partners*, published by Globe Law and Business.*

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