# Your Compensation System Isn't Necessarily The Only Answer,

# But Let's Make Sure It Isn't The Problem

THIRD IN A FOUR PART SERIES

In this second series of articles on alternative fee arrangements, the four of us have attempted to explore how a progressive firm might deal with one of the great impediments to adopting any new change – your firm's compensation system. And while there is no one standard framework or precedent to follow, each of these articles is attempting to provoke you to look at this challenge through a slightly different lens.

It might be very useful to have the lawyers in your firm engage in a thought experiment. What we need to do is imagine that our firm, suddenly, could no longer rely on billable hours to determine any partner's compensation. So here's the question for your next partner's meeting or retreat: "If we never billed another client by the hour, how would we compensate our fellow attorneys?"

Now to set the stage for your discussions, it might be valuable to just explore with the group, the many ways in which our traditional systems for compensating professionals have had some rather perverse side effects.

The perversity of billable-hour based compensation: For example, according to the reports of many spouses, they have had a noticeable effect on the self-worth of those lawyers who take immense pride in what they think they are worth (by what they can charge) on an hourly basis. Can't you just hear the typical conversation at home when some attorney says to their spouse; "What do you mean take out the garbage? Do you realize how much I charge clients for my time? I'll hire someone to do that job if you think it's so important."

Billable-hour based compensation has had an effect on what we perceive to be camaraderie, as colleagues take congratulatory pride in working to all hours of the early morning, night after night, week after week, and year after year (all to be billed to some client). This traditional emphasis for relying on the billable hour as our primary metric has also caused many firms to weigh different contributions in a rather pertinacious manner. There are countless examples of where we reward work done (grinders), more than we reward those who invest non-billable time to cultivate and build long-term client relationships – work managed (minders).

In a similar manner we reward the volume of work processed over the profitability of that same work. We have partners who log incredibly long hours doing work that if we dared to really analyze its value, would be marginally profitable at best. We focus almost exclusively on short-term revenue such that we compensate the work-horse who generates 2500 billable hours of 'commodity' work more than the attorney who is developing a potentially lucrative new frontier practice where the engagements are highly complex, but the client demand is still emerging and the attorney's billable hours barely exceed 1500 hours. Rarely do we ask ourselves who is more valuable to our firm in the long-term.

Finally, irrespective of what we might say, we value those attorneys who are production driven over those who are charged to invest time managing a group and helping each of the group members become even more successful at what they do. Consequently, we get pseudo leaders who at the end of the year tell us, “Yeah, I guess this practice group is pretty dysfunctional, but hey, look at my hours!”

Some performance metrics worth rewarding: There is a philosophy regarding compensation nicely articulated in Alfie Kohn’s great book <I>Punished by Rewards. Kohn suggests that the best system is to pay people well …then do everything you can to get them to forget about the money. He warns us that any incentive systems can be disastrous, because they can always be gamed (which lawyers love to do). Many believe that any reward system must be judgmental, with nothing that even smacks of a formula. The minute you give lawyers a formula, you give them all permission to ignore anything that's not in the formula. But life is subjective and so is partner performance. It cannot be reduced to a simple formula. So, with respect to specific performance measures, here are six factors that affirm should identify, track and measure:

Profitability

Your primary goal should be to inspire profitable performance and we’ve already reviewed that in detail in the first two articles of this series. However, in addition and as a signal to discourage your attorneys from simply chalking up hours, consider setting a ceiling such that it is clearly understood that no additional compensation will be paid any attorney who exceeds that ceiling. Such an action will also send a clear signal that time invested in other important activities like mentoring, business development and personal skill building will be considered value at compensation time.

Client satisfaction

Using a specific questionnaire or client feedback interview, survey every client at the end of every major transaction or lawsuit.. Survey each client annually. And (here's the key point) every three months publish the average client satisfaction scores for each group within the firm to all lawyers in your entire firm – high or low. In that way, everyone can easily see which groups are stellar and which groups are less so at serving their clients.

Systematic evaluations of quality

There are two levels upon which you might internally evaluate the work quality being delivered to clients – first by determining whether there is proper delegation and supervision on engagements and secondly, by whether there is career-building and people development feedback provided for those working on the engagement at the conclusion of the matter.

Here again, you should have every group or client team rate the responsible partners effectiveness as both an engagement manager (does this partner delegate and supervise work effectively?) and as a people developer (does this partner provide feedback that allows me to learn and do a better job on the next assignment?) You could then publish the results to everybody in the firm so that all can see who is judged to be effective at delivering quality.

Contribution to business development

This is an important factor and should purposely NOT be quantified so that joint marketing can be encouraged, and activities like seminars, speeches and articles can be recognized.

Personal skill development

The question within the group becomes: Is this professional working to develop and build their knowledge, their substantive skills, and make themselves more valuable and special (read that to mean: meaningfully differentiated) to their clients? The question for each individual member to reflect upon is: What is it that I can meaningful do and contribute to enhance value for my clients now, that I couldn't do for them a year ago? And if your personal answer is zilch, then I think we have a problem.

Contribution to the success of others

These contributions should also be judged by your peers and could include recognizing individual team members who contribute value, who follow through on executing their projects for the team, and who come to the aid of others, above and beyond the call of duty. It should include recognizing those who make substantive contributions to the firm's knowledge bank and help the group avoid reinventing the wheel in serving clients. It is useful to utilize three -year moving averages on all of these performance metrics, so that you cannot obtain the full reward for top performance until it has been demonstrated for three years.

What weight should you give to these factors? As indicated earlier, you should work very hard to say: "there are NO weights." No portion of compensation can be "locked in" by doing well on any subset. You've got to do well on all. You judge the whole professional and the full range of performance in deciding whether high or low compensation is deserved.

Having said all that, many prefer systems based on points or share of the coming year's profits. That way, in any given year, the only way for someone to get more cash is to improve their particular practice group's performance or firm-wide results.

As you explore this issue of compensation without relying on billable hours, remember that you need to involve everyone in the diagnosis and design—get their input. Involvement is absolutely essential. We often say, "no involvement, no commitment." AND, keep it simple. It's quite easy to make any compensation system more complicated than it needs to be.

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