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Work-Hoarding Propels Firms Toward Disaster: Experts

By **Erin Coe**

Law360, New York (November 11, 2009) -- Rattled by an unprecedented wave of layoffs in the legal industry and a slowdown in business, more lawyers may be tempted to keep work for themselves instead of passing it off to other attorneys.

But work-hoarding can pose a bigger problem for law firms during difficult economic times, and it not only runs the risk of driving clients out the door, but can damage law firms' reputation and subject them to costly malpractice lawsuits, according to legal experts.

For attorneys who have seen their colleagues get the boot and fear another round of cuts may be coming, it seems only natural that they would want to keep their heads down and stay off the radar, according to Jim Rhyner, a legal professional liability insurance product manager for the Chubb Group of Insurance Cos.

"Everyone feels the pressure of job security. When you feel threatened, you may subconsciously take steps to protect yourself," Rhyner said.

However, these steps may include keeping one's billable hours high by laying claim to work that should be delegated to an associate or a lawyer with a different area of expertise, and that can be detrimental to the firm, experts said.

Lawyers who hoard work may also be less inclined to ask for help if difficulties arise in a case or if a client becomes dissatisfied, turning what may be a minor problem into a serious mess for the firm, they said.

Rhyner said he recently counseled a law firm that defended and settled a malpractice suit for hundreds of thousands of dollars after an attorney failed to notify management of a challenge he was having with a client, and the problem was compounded when the firm discovered the client's receivables had been outstanding for the past six months.

“The attorney had been with the firm a long time, and the management of the firm did not think the attorney wouldn’t come forward if there was a problem,” he said.

Getting hit with a malpractice suit is not only a financial burden on the firm, but it also sucks time and resources away from focusing on much-needed business opportunities and could leave a black mark on the firm’s reputation, experts said.

“I always recommend to law firms the need for good supervision to make sure lawyers realize that someone is looking over their shoulders. While many lawyers don’t need supervision, there is a percentage of those who do, and those are the ones who can cause a nasty malpractice suit that can bring down a firm,” Rhyner said.

While work-hoarding can occur on an individual basis, law firms may also find that certain practice groups are taking ownership of matters that would be better suited for another department, according to experts.

Russ Haskin, a director of consulting services at Redwood Analytics, said he assisted a law firm that discovered its business transaction group advised a client on intellectual property matters instead of referring that work to the firm’s IP practice.

“The group’s lawyers got counseled by the IP department, but because they did the work themselves, it took longer and cost the client more money,” Haskin said.

The business transaction group also lost out on a key opportunity to cross-sell and build a client relationship across the firm, he said.

“When you hoard work, you are working against the firm,” Haskin said.

Firms are increasingly likely to retain a client when work is sent to more than two practice areas and more than two partners are significantly involved in the management of the client’s matters, according to a study on client attrition at Bryan Cave LLP and four other major law firms by the Redwood Think Tank.

While more than 35 percent of clients that used a firm for one area of law left by the end of 2005, less than 15 percent of clients using the firm for three areas of law left the firm and less than 5 percent of clients that retained the firm for four or five areas of law stopped using the firm, the study found.

“The more spread out a client’s work is across a firm, the more likely the client will stay with the firm,” Haskin said. “If lawyers build a brick wall and don’t push work down, the client is going to walk.”

Law firms also risk losing an entire department if they fail to ensure their teams are doling out work, experts said.

“If a practice group hoards a lot of work, it’s so easy for the lawyers to leave and take their clients with them,” Haskin said.

The pressure on lawyers to meet billable hour quotas is contributing to the problem of work-hoarding, and partners are not going to change course unless new incentives are put in place, such as using a scorecard that rewards those who cross-sell and who bring in more for the bottom line, he said.

“The issue starts with the compensation system. If lawyers don’t have an incentive to leverage down or cross-sell, they are not going to do it,” Haskin said.

Haynes and Boone LLP is particularly sensitive to this issue, noting that its compensation system is “focused on teamwork and finding the best lawyer for the job, rather than encouraging work-hoarding.”

“Our clients like the fact that we don’t compensate directly on personal hours. We hear from clients that when they have worked with some other firms that emphasize personal billable hours, it tends to have an impact on the size of their bills,” said Terry W. Conner, managing partner of Haynes and Boone.

Haynes and Boone has a subjective partner compensation system that reviews a lawyer’s “all-in” performance, not just billable hours, said Conner, who has been with the firm since 1975.

“A partner with a lower amount of billable hours in a single year is not automatically going to result in a reduction in compensation. We also look at whether the partner has brought work in and properly delegated it. We highly value that,” he said.

The firm also tries to articulate and reinforce its cultural values to new hires, but Conner acknowledged that its focus on teamwork does not always come naturally to all laterals and some may need a little extra coaching.

“We have had some rough edges, and sometimes we have to spend more time with laterals before they see how we operate. If laterals have an inclination that they own a client, we have to reinforce that this is the firm’s client. We say, ‘Whatever was rewarded at your prior firm, you need to forget that. This is what we reward,’” he said.

It is also important for law firm management to stay on top of account receivables, Rhyner said.

If clients stop paying because they are dissatisfied with the service they are getting from an attorney, the sooner a supervisor gets involved and reaches out to them, the more likely the firm can resolve a problem before it snowballs into something bigger, he said.

Management can sometimes detect hoarding if attorneys have high billable hours but a low realization rate on a recurring basis, indicating that they may not be collecting as much billable time as they should be, Conner said.

Ultimately, work-hoarding will continue to pose problems for firms unless senior management sets up a compensation system that looks beyond billable hours, according to experts.

“If you want people to behave a certain way, you need to reward it and demonstrate it yourself,” Rhyner said.

And lawyers should never lose sight of the client’s interest, Conner said.

“How do we get the best result for the client in terms of work product and fees? Who can we push the work down to and still get a great job done for the client at the lowest possible cost? That’s the mindset you have to have,” he said.

Firms should also emphasize a commitment to teamwork and encourage an open dialogue with management, Rhyner said.

“Being a safe haven for lawyers to bring up challenges is critical for a law firm to keep a strong foundation underneath it, so that when times change, a law firm can grow instead of getting involved in a malpractice suit,” he said.