



DIVIDING A SHRINKING PIE

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In good times, even a seriously-flawed compensation system seems fair. In bad times, even a perfect compensation system seems unfair. The simple truth is that when there is not enough pie to adequately fill everyone's plate, the manner in which the pie is cut and served comes under close scrutiny. Everyone wants to make sure that they get every crumb they feel they're entitled to.

Entitlement is subjective, and often created by an emotional need to have one's self-worth validated. It is rarely constructed by a thoughtful comparison of value relative to others.

By the time you read this, many of you will have already licked your wounds from the year-end carnage over the last scraps of the 2013 pie. It was a particularly difficult year for many. Chances are good that many of you are still in heavy debate over how the 2014 pie will be sliced. The truth is — and you probably don't want to hear this — that when the pie shrinks you can change the way you slice it, but that won't make more pie. It can only take from one to feed another. That isn't necessarily a bad thing, except, of course, from the perspective of those who are going hungry.

One of my past articles, which I am most proud of to this day, appeared in the June 4, 2007 issue of *The Pennsylvania Bar News*. In "Living With Integrity" I stated,

Probably one of the defining aspects of integrity is the manner in which individuals and organizations deal with adversity. It's easy to do the right thing in good times. But doing the right thing in the worst of times shows what people and organizations are really made of.

I cannot imagine a more relevant thought to keep in mind as we discuss compensation systems. Let's begin by acknowledging that there is no perfect compensation system. No matter how unique, how simple or complex, how objective or subjective, there is no perfect system. What matters is whether it is perceived as

fair, helps the firm to retain talent, and whether it enables the firm to motivate attorneys to do what is required to improve the firm's well-being and achieve its goals.

Firms face real risks when the compensation system fails to meet the benchmarks noted above. When top rainmakers feel they are not getting a fair share of their production, they may take their clients and leave for another firm where the same book will put a greater return in their pocket. Even one departure of a top producer can trigger the "run for the door," as those next in line quickly assess the financial impact of the loss on their own compensation.

Rising stars in the associate and junior partner ranks are paying close attention to how firms are dealing with underperformers. They want to see that firm management has the intestinal fortitude to make difficult decisions. They want to see that firm management is consistent in the message it delivers about what the firm values, and what it actually rewards.

The time to make adjustments has been compressed. Unless your firm has developed an culture with an unusually high degree of loyalty, you must make course corrections more quickly than in the past. And speaking of past, recent performance now matters a lot more than past accomplishments. I have always felt that lawyers evaluated everyone on a "what have you done for me lately" basis, but that has not impacted compensation in a meaningful way in the past. That's because lawyers want to avoid difficult conversations and decisions, and that includes those who are tasked with managing the firm. Reflective of this are compensation system changes which eliminate the "origination for life" measurement. I think that's a positive change.

As you seek to improve your compensation system, take these suggestions into account:

- Your system must clearly establish and communicate minimum acceptable standards on a multitude of factors. Failure to meet those standards must call for a written plan for improvement, a limited duration for implementation, and consequences for failure to achieve stated goals.
- Your system must establish a continuum upon which everyone is fairly placed in comparison to his/her peers. I am a firm believer in peer review systems. Law firms have resisted this concept for too long.



- Your system should measure what it rewards, and reward what it measures, whether objectively, or subjectively. Both economic and non-economic factors contribute to a firm's success, so all must be considered. This is yet another area where peer review can be invaluable.

The following criteria should be considered by most firms, although individual firm cultures will determine how heavily each criteria should weigh:

- Business origination – new clients
 - Cross marketing – existing clients / new business
 - Client retention / relationship management
 - Professional expertise & reputation
 - Production – hours worked, hours billed, and dollars collected
 - Marketing efforts – community and bar activities, speaking, writing, being “out there”
 - Firm citizenship – leadership, management, observance of policies and procedures, teamwork
 - Mentoring
- Your system should hold practice group leaders accountable for the profitability, effectiveness, and client satisfaction rating of their group.
 - Leadership charged with maintaining your system must have credibility and trust. They have to “walk the talk,” even when that means unpleasant discussions or actions.
 - Your system must recognize and reward those who support the attitudes and values of the firm's culture. And it should provide accountability to those outliers who do not.
 - Your system should not be left to “speak for itself.” Compensation only has meaning when the determining factors are openly conveyed, and where need for improvement is explained in clear language.
 - Your system has to keep marketplace competition in mind. Yes, you have a continuum, but the marketplace should be your guide in determining



how large the differentiation should be between those on the continuum. Remember, you need to hold onto your key rainmakers. At some firms there may be little or no spread between owner compensation. At others, the spread may be as steep as 20:1, meaning that some owners will receive compensation 20 times greater than other owners.

Remember, your compensation system should be a tool which enables the firm to address its needs and priorities. It should encourage and motivate. It must also provide accountability for those who are not performing at an acceptable level, or who are more focused on their own goals than on the goals and objectives of the firm.

In order for your compensation system to function as desired, owners must substantially agree on the culture and mission of the firm, as well as the desired direction and goals of the firm, and make sure they design the system to reward efforts which support it. All must agree to respect and abide by the firm's goals, and compensation system as a whole, even though there may be some individual aspects they do not agree with. Remember, folks, that being in a firm is like being in a marriage: without compromise and a willingness to put the needs of the whole ahead of yourself once in a while, you are doomed to a quarrelsome existence, and eventual separation.

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