



GET YOUR HEAD OUT OF THE SAND

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I must admit that when I discussed this upcoming column with a few of my attorney friends, they had way better suggestions for the title than I had in mind. If nothing else, there was a lot of laughter as various iterations were proposed. Fortunately, the small measure of common sense I possess kicked in, and I chose a title with a bit more decorum. But feel free to allow your imagination to wander to far more amusing versions. What's prompted this particular topic has been a decided uptick in calls of a similar nature on both the PBA hot line, and on my private consulting practice line. Add to that some of the attention-grabbing headlines of late, and this topic became compelling.

So folks, I want five minutes of your time right now, before you read the balance of the article. I want you to close your door and put your phone on “do not disturb” if you're at the office, or turn off the TV if you're at home. If you're at the computer, open a blank document. If you're not, grab a blank sheet of paper and a pen or pencil.

Now, I want you to think for a few minutes about your office, and write down between one and three “issues” you are concerned and/or annoyed about. They may be long-standing and persistent, or relatively new but daunting. I don't want to put ideas into your head, but let me give you some ideas of the types of issues which have increasingly been brought to my attention recently, which would certainly apply:

- no partnership agreement, an outdated partnership agreement, or an inability to reach agreement regarding the terms of a partnership agreement
- an inability of partners to agree on some critical aspect of firm management
- one or more "problem" partners who: 1) do not contribute equally to the marketing efforts of the firm; or 2) think the rules do not apply, whether that relates to time recording, billing, collections, firm management, or utilization of firm resources; or 3) demonstrate a lack of willingness and/or ability to create a strategic / business plan

- a compensation plan which creates dissension, expressed or silent, and/or fails to reward the behaviors the firm desires
- failure to successfully implement and utilize existing technology and/or inability to agree on the level of technology needed to support the practice
- an anticipated retirement with the sudden realization that there is no plan to deal with client files, active matters, return on sweat equity, and so forth
- staffing issues including any of the following: killer bees; sacred cows; low morale; high associate turnover; lack of teamwork; inability to achieve growth; poor internal communications; lack of codification of procedures and/or policies; no clear partnership track or criteria; other people-related issues
- a lack of trust in the abilities and/or motives of one or more partners
- a lack of cross-marketing
- increasing debt, with an accompanying decline in the revenue stream or level of profitability the firm needs to pay it off
- one or more clients with a significant past due receivable for whom you should probably stop working or at least have that discussion

Ok, if you haven't stopped to think about the state of your firm yet, and listed your one to three items, this is the time to do so. Sorry if I distracted you. I'll wait. (Background music: theme song from Jeopardy TV show). Done? Ok, let's take a look.

I'm not normally much of a gambler, but I'd be willing to bet that there is more than one item on your list. I'd also be willing to bet that there has been a high degree of avoidance involved in dealing with the issue(s) listed. Yes, I knew you'd catch on quick. That's where the title comes from.

I get it that each and every stress-filled day of a lawyer's working life typically involves handling conflicts and difficult situations for others. I get it that there is always too much work, too little time, and very little opportunity to work family and friends into the mix. I know that there is often less compensation or profit resulting from your efforts than seems appropriate from your perspective. And I totally get it that the last thing you want to do is willingly add a soupcon of additional trouble to the boiling cauldron which is your life.



Although I get it, there's a problem that we can't deny. Ignoring issues doesn't usually make them go away. In fact, ignoring issues usually results in not only perpetuation, but in escalation of the severity and immediacy of the issue. Wishing something will go away if we ignore it long enough is not a business strategy that produces desirable results.

Lots of platitudes have been written in the business world to address this simple management truism. "An ounce of prevention is worth a pound of cure." "Fire prevention is easier and less risky than firefighting." And so forth. The simple truth is that although at the moment it may be easier to just ignore whatever the issue is, in the long term it will fester and become even more difficult to resolve. And some day lawyers *will* learn that being *proactive* in the management of the business aspects of their practice will always produce a better result than being *reactive*. My life's goal is to make you one of them.

It saddens me when firms come to me for damage control, when the damage could have been avoided altogether. I see firm explosions, implosions, loss of good talent at every level, loss of top-level clients, and all manner of other law firm "boo boos" laid before me for my magical "kiss and make better" guidance. But often by the time I become involved, I know there will be scars I cannot heal. It is too late. There is too much damage. The bell cannot be un-rung.

It saddens me because there is often a visible history of some length of time in which the issue could have, and should have, been resolved. What is unfortunate is that what may have appeared at that time to be an unacceptable resolution in terms of cost, compromise, change, whatever, is in retrospect viewed as small cost to have avoided the end result. What is most unfortunate, and is more usual, is that often the end result could have been avoided entirely if the people involved had simply chosen to act, despite the unpleasantness or difficulty, rather than ignore or defer.

Have you been following the sad news about the implosion at Dewey LeBeouf? Of course you have, since just about every national legal news publication and most national business news publications have had daily or weekly articles about it. If you're a solo, small, or mid-size firm, you probably think there are no lessons to be learned from this event. I think you're wrong. And it seems that marketing and business development consulting guru Dustin Cole feels the same way. In his Resipsalawyer Blog post of April 30, 2012 entitled *Dinosaur Dewey Teaches the Profession Some Simple Lessons* he lists four lessons we should take away from this debacle:

1. Law firms are businesses, and need to be run like one.



2. Most lawyers, like doctors, are crappy business people.
3. Today ain't yesterday. It's more like tomorrow.
4. Success comes from looking UP from your client's perspective.

There was a point in time where this large firm found its debt rising and revenues flagging. The firm's options were many. The downturn in the economy could have been reflected in an attempt on the part of the firm to become leaner and more efficient, to embrace changes which would have buoyed its profitability and enabled it to avoid increasing its indebtedness even further. It would have no doubt involved some difficult analysis, unpleasant conversations, and even more difficult and maybe even painful decisions. As Cole writes:

Great legal skills don't equate to great business skills. The Dewey head cheese blithely gathered in other big-ego and big-reputation people like it was 2005 and the boom was on. He made outrageous promises that sank Dewey when they couldn't deliver. The Executive Committee was even worse. They thought their role was to be the sounding board and implementer of the head man's grandiose ideas, instead of what they were supposed to be: protectors of the corporate finances and manager of the CEO, not the other way around. A surfeit of bad business people.

Put another way, reporter Peter Lattman writes in an article entitled *Once an Ambitious Law Firm, Reduced to Grim Dispatches* that "For many in the legal industry, Dewey's turmoil is a sobering lesson on unchecked ambitions."

I have yet another perspective. I think this is a lesson about what happens when attorneys choose to take the path of least resistance and avoid difficult conversations or unpleasant decisions. All with the hopes that the issue will resolve itself if ignored. You can't tell me that members of Dewey's Executive Committee weren't alarmed by pay guarantees on packages worth \$5M a year for some lateral partners. You can't tell me that they weren't concerned by a rapidly rising debt which one source states now stands at \$125,000,000 in privately funded debt, plus \$75,000,000 outstanding on its line of credit, plus \$300,000,000 due on pensions, not to mention leases and accounts payable.

Take a deep breath, Ellen. Ok, let's put this into some perspective for you. Take another look at your list. It really doesn't matter how major or minor the issues. All that matters is that you realize that ignoring these issues is not going to



resolve them. All that matters is that you realize that by ignoring these issues they will in all likelihood become more difficult to resolve later, if that's even a possibility in the future. All that matters is that you make a plan of action to deal with these issues sooner rather than later or not at all.

I know this will sound self-serving, but what I see too often is that firms which are incapable of dealing with difficult issues on their own are unwilling to reach out to those best able to help. Depending on the issue(s) on your list, there are people available with the expertise to help you reach resolution. CPAs. Lawyers with various areas of expertise. Consultants. Technologists. Behavioral psychologists. Lawyers Concerned for Lawyers. The PBA Ethics Hotline and Law Practice Management Hotline.

These people and organizations will assist you confidentially. They will bring an objective perspective, and lots of industry experience regarding what works and what doesn't, to your firm. They will even help you uncover issues you didn't know existed, and help you deal with them when they're smaller, rather than wait for them to fester into something larger and more difficult to deal with, or explode into something which can't be undone.

To get started, take the short list of issues you have created, and select the one which is of highest priority to you. It may be highest because it has persisted so long, or because of its annoyance factor, or because of its possibility of severe consequence downstream. Set a target date for resolution. Be realistic. Now, list the steps which you will take to reach resolution. For example, financial or technology issues usually begin with solid analysis, and then mapping out options, estimating possible results and associated costs, followed by discussion, decision, and implementation. People issues usually start with documentation, directly addressing the matter with involved parties, attempting to reach consensus, formulating a plan for improvement, documenting decisions, and following up to hold people accountable. And so forth. If you find that you really don't know where to get started, or lack the expertise to fill in any of the steps, that's where outside help comes in.

I can tell you from experience that often I am brought into firms to have difficult "conversations" which are necessary, and are easier coming from an outsider. I am often brought aboard to do analysis which confirms what people already know, and to make recommendations for improvement. That's money well spent when it eliminates self-doubt and enables the firm to act on the information. Many times I am called upon to help attorneys "think through" issues. A lot of hot line calls fall into this category. Having a sounding board who has a wider



perspective than your own firm can be essential to move you from thought to action. And particularly helpful in establishing a step-by-step action plan.

Every firm, from solo or small to the largest megafirms, have unresolved issues. Issues which are unpleasant and no one really wants to address. Whether it's deciding when to put the pen down for a client who is not paying, or whether to make an offer of partnership to an associate, or how to go about planning for your inevitable retirement, or how to resolve the stalemate in differing opinions you and your partner have about some key management issue, you need to recognize that simply putting your head in the sand and ignoring it will **not** resolve it. It will probably make it worse. If you can't make your own action plan to address it, then reach out to someone who can help. If you're not sure who to call, start with me. Your dues dollars at work!

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