

# OF COUNSEL

*The Legal Practice and Management Report*

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## In This Issue

**Cause to Celebrate.** The vital signs are strong one year after Buchanan Ingersoll merged with a substantial contingent of Burns, Doan lawyers and leapfrogged into the front ranks of IP law. One lesson to learn from this success is that the best mergers are sometimes not mergers of equals. As Burns Doane was going out of business, both sides could focus more on how their practices would fit together and less on the myriad institutional stumbling blocks that challenge other marriages . . . . . **Page 3**

**Termination Quandary.** Law firm managers may not infrequently find themselves terminating an employment agreement for breach of contract. Or, they're advising clients on same. Be advised, even the clearest breach can land them on the losing side of a wrongful termination suit. James E. Smith offers a pointed example in an NCAA rule-violation case. While a coach did indeed violate his contract, the university could not establish materiality, and materiality was the linchpin . . . . . **Page 5**

**Hit List.** Many law firms have less trouble taking tough steps with unproductive partners, and more trouble identifying who they actually are. Even when they do know, they hesitate to act without airtight objective measures. Ed Wesemann's metrics-based solution compares partners in four categories: revenue generation, business development, non-billable management and training time, and entrepreneurial zeal. Simply cross-reference the data and there's your list of problem partners . . . . **Page 7**

**Diverse Demands.** Whether you're selling ice cream or legal services, the sure sign of a maturing marketplace is segmentation. For law firms, that means greater differences between practice areas along with new specialties and sub-specialties. Each segment compels a separate approach to practice management and marketing. Alan Olson discusses the opportunities and the stress factors that accompany such growth, with best practices to mitigate potentially demoralizing internal effects . . . . . **Page 10**

**Change Agents.** It's no secret that, as businesses, law firms are conservative in outlook and risk-averse by instinct. Yet there's usually enough discontent at most firms to catalyze serious discussion of fundamental change. The harder part is making it happen. David Freedman offers a paradigm based on three distinct character types, each with their own separate perspective on the status quo. The art of change requires that each type be perceived insightfully and managed effectively . . . **Page 13**

**Renaissance Man.** Add the name of Tom Ajamie to the list of stellar litigators based in Houston. Considering the high-profile lawsuits he fights and wins, and the passion that he brings to the social issues driving those cases, it's no wonder he's a media favorite, both print and broadcast. Ajamie, who says that he decided to become a lawyer when he was five years old, is a throwback to an older breed of practitioner for whom public education as well as client service is a defining priority. . . . . **Back Page**

## State of the Practice Area Report . . .

### Environmental Law Attorneys Adjust to Changing Patterns within the Practice

As with most professions, the legal field has its ebbs and flows. One year a particular practice area attracts loads of attention and herds of law school graduates, and three years later it's virtually forgotten like a flash-in-the-pan fashion trend.

Sometimes, of course, the economy dictates what area of practice picks up at a given time. The recession earlier this decade, for example, saw bankruptcy practice leaders scrambling to

hire attorneys to meet hectic work schedules prompted by demanding client needs.

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## Making Organizational Changes Stick

Individuals, families, organizations: We are all creatures of habit. We all have consistent ways in which we act and react on an ongoing basis. Witness the routines that we engage in between awakening and going to work. Look at the consistency of a tennis player's forehand or a runner's movements. Observe the recurring behaviors between family members.

We all have patterns of operating that help us make our way in the world. But just because we have habits doesn't mean that they are the best habits. The awkward runner and the dysfunctional family can move and act in ways that hurt themselves and others around them.

Law firms, like other organizations, are the sum totals of the actions and interactions of people, systems, and processes. If a firm has been in existence for any period of time, many of its day-to-day actions function on a kind of autopilot. These repeatable, predictable patterns of behavior are important operational elements that serve to increase the speed, quality, and profitability of the delivery of legal services.

The quality of these patterns, these habits, helps determine the success of a firm. Those of you who have worked in more than one firm can readily attest to that fact. Two firms may deliver exactly the same services, but while one may have an unusually collegial culture, loyal clients, an energized staff, and less associate turnover, the other may have operational habits that constantly undermine revenue and profit expectations.

They may have leaders who can't lead, 800-pound gorilla partners who terrorize their partners, compensation systems that do not drive desired behavior, and laterals who are never fully embraced and integrated into their new firms.

Why does any of this matter? We're making money, so why should we care?

You should care because studies of recent law firm dissolutions have shown that firm breakups have less to do with money than with failures of culture. It is the responsibility of our leaders to

take a deeper look at our organizational habits, our cultures, to see which are good and which should be changed.

### A Five-Step Approach

We must ask, and answer, some very important questions. Do we have financially responsible practices? Do we deliver the appropriate standard of client care? Do we operate internally in an efficient and effective manner? Are our people properly trained and motivated?

In order to address your firm's organizational habits, you can take a five-step approach:

1. Articulate your goals.
2. Identify your organizational habits.
3. Evaluate whether existing habits move you toward achieving your goals.
4. Keep what you like and change what you don't.
5. Make, and maintain, the necessary changes

The first four steps are the easiest. Bright people with benefit of a solid process can usually analyze and diagnose their situations, good or bad.

The hardest part is that last step, which is the doing and not the thinking: Instituting changes and making them stick. Let's take a look at some of the dynamics that affect this key stage of the change process.

We all know how hard it is to achieve change, both personally and organizationally. Change-focused leaders must overcome and harness the collective attitudes and energy of individuals in the firm to make the process succeed. To understand how to work with major constituencies in the firm, you first need to know who they really are.

Let's try breaking them down into three overall categories:

1. Habit-Stakers
2. Habit-Breakers
3. Habit-Makers



## Habit-Stakers

These people are the keepers of the existing culture. They are the ones who are invested in maintaining the status quo. If the habits they embrace are productive ones, they are valuable resources who keep the ship on course. If, however, they cling to antiquated or dysfunctional habits, they can block the firm's ability to achieve higher performance.

How do we deal with these people? It depends who they are. If they are entrenched senior leaders and are unshakeable in their postures, it may be best for you to simply find another home as these powers may be guiding the firm in a direction that does not serve your needs. In firms where the habit-stakers are not in complete control, there are ways to break what grip they have. Here is where we need to find and deploy our habit-breakers.

## Habit-Breakers

These people can range from renegade rabble-rousers to introspective observers, all with the common goal of wanting things done differently. They are valuable members of our firms who keep us from blindly repeating old patterns of behavior. As in any open, democratic, vibrant society, they offer fresh perspectives that force us to look at systems that may be better than what currently exists.

We need to allow these people the freedom to at least explore new methods. One way to harness their ideas, while ferreting out the weird from the worthwhile, is to engage them in facilitated discussions with the firm's leaders and with other partners. In these discussions, old patterns are analyzed and new options developed.

Another approach is to create task forces populated with habit-breaking change agents. They can be the early adopters, the pilot groups, who blaze a trail and test out new ideas. If the new ideas make sense and show results, others will come to acknowledge this success and be more willing to jump on the bandwagon. If the trails they blaze are off the reservation altogether, their ideas can be diplomatically rejected, without discouraging them from continuing to posit new institutional directions.

## Habit-Makers

The hardest part of change is not the lighting of the initial fires. There's usually enough discontent in any organization to gain support for a hard look at existing practices and policies.

The greatest challenge is in burning new organizational grooves, embedding new patterns of behavior into the DNA of the firm. We need highly aware, patient leaders who are responsible for shaking people out of their old patterns and establishing new ones.

They can begin by helping to clearly articulate, over and over, the reason for change, their vision of what the firm will look like after the change, and the specific steps for achieving the change. They need to involve a wide variety of people, drill down into the details, assign action steps, and create accountability.

They need to be upbeat and lead by example. They need to communicate, celebrate, and reward progress and success, and lobby other segments of the firm to support and acknowledge their contributions.

They must be vigilant in their commitment to keep the change initiatives top-of-mind, and to not allow the black hole of billable work and old habits to pull them away from achieving new, improved patterns of behavior.

Organizational habits are powerful forces. We need to be clear about which habits serve us and which are outdated legacies from a bygone era. Living in the past is obviously no recipe for staking out a strong position in the future. Those who engage in a process of analyzing, evaluating, and adjusting their methods of operating will reap significant rewards. ■

—David H. Freeman

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