Featured Employer Article for This Month

Why Alternative Work Arrangements Make Sense for Law Firms

Since the Mayflower Compact, the law has had a substantial presence in America. It is grounded in precedent; adherence to the doctrine of *stare decisis* is an attractive, if not paramount, value. The law itself creates tradition; it should not be surprising that the legal profession represents a bastion of tradition. Most lawyers accept the traditions of the profession or at most give fleeting thought to challenging them. Today, however, a new generation of lawyers is breaking traditions and, as a result, redefining the practice of law.

American legal institutions traditionally have been resistant to change. But for decades American society has been changing, and not surprisingly this evolutionary process has slowly infiltrated the practice of law. Many of the traditions of law practice are on a collision course with the demands being placed on individual lawyers by family and with those lawyers' desires for personal health, happiness, and mental satisfaction.

Tradition-bound law firms are experiencing dissatisfaction with inflexible work arrangements and a system that treats human resources as commodities. They cannot continue to overlook the cost of dysfunctional relationships and terminations or, conversely, the long-term benefits of alternative work arrangements. Nonproductive traditions must be shed in favor of modern attitudes that foster dialogue, awareness, work satisfaction, and joie de vivre.

Until the 1970s, the traditional bench and bar were small in number, clubby by nature.

Because individuals could effectively police their peers, trust, respect, and professionalism were prevalent. Societal values, well defined, were reflected in the predictable arrangements and attitudes of private law firm members, corporate counsel, and government employees. Lawyers could "be at the office" during normal working hours and much longer thanks to spouses who cared for the children and a generally less frenetic pace in life. Associates who

worked diligently became partners; partners who worked diligently moved up the seniority ladder. Firm loyalty almost always superseded an individual's craving to open a shop or advance through lateral moves.

For the most part, clients paid their bills for law services without question; after all, clients knew the lawyer personally and/or were charged for the value of services rendered.

Though it has never been easy to practice law, 40 or even 50 years ago it was at least predictable that a lawyer would

- be fairly content practicing law;
- have a supportive network of family, professional colleagues, clients, and friends;
- be acquainted with adversaries and friends of adversaries;
- remain at the same place of employment for many years;
- make a good salary; and
- be respected in the community.

The practice of law was well fortified by the traditions of precedent, predictability, and partnership. Then came the 1960s—and along with them a push toward activism, the advent of the computer, and, later, the fallout of an incident dubbed "Watergate."

The activism of the era produced large numbers of young people with a questioning nature. Some may have been drawn to the law as a vehicle through which to effect societal changes. Less altruistic individuals may have perceived a law degree as a ticket to financial security or political power.

Women opened the doors of a previously unavailable profession with the support of a national movement and the key of nondiscrimination. Two-career couples emerged; children came later; blended families resulted from divorce and remarriage.

With the computer came "billable hours," efficiency, effectiveness; better, faster, cheaper services; and the management tools to quantify, measure, and generate reports about every reported activity of every participant in the legal services delivery team. The billable hour

acquired its reputation for tyranny; “non-billable” activity was not recognized or rewarded. Lawyers became slaves to the hours required of them by supervisors or by the sheer economics of running the law practice.

In their drive to remain economically competitive, law firms have raised the annual required billable to 2,000 or 2,500 hours, almost a third more than a decade ago. Generally, firms have been unable to look beyond the purely economic solutions of requiring greater billable hours and raising hourly rates.

Partly as a result of Watergate, American society, including lawyers, became disenchanted with lawyers. The social glue of peer pressure disintegrated in the urban practice environment that emerged. Clients began to demand more services with less turnaround time. Lawyer-client relationships were often impersonal and frequently adversarial. Less value was placed on the lawyer’s contribution to a project. (After all, if the computer could whip out a document in record time, why involve the lawyer at all?) Experienced but burned-out or disenchanted lawyers began to exit the practice of law in increasing numbers. Some estimates suggest that more lawyers a year are leaving the profession than new law students entering law school annually. What has been happening, and why?

Changing demographics in the United States over the last several decades have created a need for alternatives within the practice of law. Responsibility for the care of children and elderly parents has mandated that women create flexible arrangements; men also have either assumed or been forced to take on such responsibilities. Cognizant both of the trends toward flexibility in other professions and in government and of the additional options about where and when to work afforded by technology, staff, lawyers, and potential recruits are demanding that law firms and other employers offer flexibility in operations and management.

Societal values have also changed immensely over the last few decades, contributing to the need for change within the practice of law. Concerns about health, fitness, and quality of life have made us into a nation of emerging “life-stylers”—people with interests beyond the immediate demands of our profession. Psychological testing and self-awareness tools also have enabled individuals to determine their own talents and needs, and they are acting on

this information by creating or seeking work arrangements suited specifically to their personal situations. It is now possible to identify the physical and behavioral symptoms of burnout, the causes of stress, and the steps necessary to overcome our addictive office and personal behaviors. The result? In the last several years an industry has sprung up to counsel lawyers who are less than content with their situations.

Workaholism and "being swamped," the traditional flagships of success, have created automatons who may realize that what started out as a young lawyer's dream soon turns into a bleary nightmare of long days and stressful nights. These lawyers frequently see no way to reduce the level of commitment without "losing face." Many lawyers are reacting by dropping out, frequently because they see no opportunity to accommodate their particular needs within the law profession or because they are unable or unwilling to ask for alternatives. With greater frequency in the past few years, individual lawyers have begun to see the benefits of leading a balanced life, and both men and women are insisting on options within the work environment or are moving to careers in other fields.

As with any significant societal movement, a solitary individual often initiates the event or circumstance that gives rise to eventual change. The same is true in the practice of law, where the circumstances befalling individual lawyers—such as pregnancy or unexpected illness—have either forced a complete departure from the job site for a period of time or have forced both management and the individual to plan ahead, anticipate the results of the alternative arrangement, and adjust both expectations and rewards accordingly. Women lawyers of childbearing age have been the catalyst for many recent changes and initially have done the lion's share of breaking tradition within the practice of law.

Until very recently, women or men seeking parental leave were the first in their firms or offices to do so. Parental leave was discussed only when absolutely necessary to accommodate an imminent delivery; most firms had no formal policy until there was a pregnant lawyer. Most policies concerning leaves of absence were unwritten, privately discussed among the parties involved, certainly not broadcast to the rest of the legal population, and practiced on an ad hoc basis.

As a matter of practice, most policies and decisions are still left to the last minute before the planned leave commences. Frequently lawyers have no time to deal with the issue, and few model policies have been available.

Without the benefit of written model policies, mothers who are on leave have been expected to be back in the office within as little as two to eight weeks and must frequently be available by telephone or telecommunications. More frequently than not, men are discouraged from anything but a few days off for parental leave. Quite often no lawyers or support personnel are assigned to handle the full responsibilities of the lawyer on leave. There is no encouragement to take the full time allowed, without interruption or responsibility.

In sum, progress has been instigated by individuals seeking to accommodate their personal lifestyles. Although employers have been making some accommodations, many do not realize that men might also want or need an extended leave of absence for parenting or other obligations, nor have the firms become convinced that flexible arrangements are acceptable, measurable, manageable, and profitable in the long run.

Tradition Breakers

Whether descriptive of a firm or an individual, the challengers of tradition perceive the need for change and see the benefit to themselves and others in not only accepting but also encouraging flexible arrangements. These lawyers are not afraid to reflect on what is best for them; they perceive the benefits in making an objective self-assessment of talents and career satisfaction factors, and they act on the results.

They are not afraid to ask for or grant alternative arrangements. One of the greatest impediments to change in any field of endeavor has been that people withdraw from a situation rather than ask whether there are alternatives within which they can work and prosper. Successful alternative arrangements in law practice result from the willingness to diverge from the norm.

These challengers perceive a benefit from the avoidance of routine and predictability. They may view time away from the office as necessary to avoid burnout and remain productive.

The challengers are friendly with computers, the newest software, and related technologies. As such, they can always be in touch with clients and colleagues. They are capable of understanding and performing at peak levels by using the techniques of leveraging and delegation rather than by working themselves personally to a level of frustration and nonproduction.

Finally, they perceive that the value of an individual is best calculated on something beyond money collected and hours written on a time sheet.

These attitudes are not typically descriptive of the majority of lawyers working in older, larger firms. Frequently, therefore, smaller or newer firms, or firms with a majority of personality types amenable to change, are the most willing to create flexible arrangements.

Emerging Work Arrangements: Reduced Hours

Within the context of a law practice mandating 60 billable hours per week, the concept of reduced hours makes a lot of sense. Many people talk about lawyers who are working "reduced hours" as "part-timers," but these terms have yet to be defined. Perhaps reduced-hours is best compared, for purposes of definition, to obscenity. Paraphrasing Justice Douglas, most of us believe we know it when we see it, but it is difficult to come up with a precise definition. Obviously the meaning will depend in significant measure on what is considered "full time" at any given time or within a particular firm.

Whatever billable hours they are now being expected to produce, many lawyers are sharing jobs (caseloads and/or office space and benefits) and are creating arrangements based on schedules (e.g., three days a week) or reduced number of overall billable hours (e.g., 1,300 hours a year). The latter is sometimes referred to as flextime. The designation part time encompasses all these forms of arrangements.

Project Lawyers

Another arrangement that has become very popular is generically described as project lawyers. When employed on a short-term basis, these lawyers are referred to as temporary

lawyers. When hired to handle specific longer assignments, they are called contract or contractor lawyers. These lawyers can work with several lawyers or law offices, choose the projects of interest and convenience to them, and control the amount of time committed. The ABA's Standing Committee on Ethics and Professional Responsibility in Formal Opinion 88356 not only has cleared the way for firms to hire project attorneys, but also has provided specific guidelines for avoiding conflicts and fulfilling obligations to the client.

Reduced Responsibility

To preserve job security, some lawyers are opting for usual hours but nontraditional status. Voluntarily forgoing the opportunity to increase their level of responsibility within the employment setting, they are instead choosing to be permanent associates, non-equity partners, or of counsel to a firm.

Lawyers are successfully implementing alternative work arrangements in every type of private, government, and corporate law department or legal setting. Here are notable examples:

- Numerous women partners have worked on a reduced-hours basis (60 percent of target) and become partners during that time. They may bill 1,200 hours per year and put in 200 to 300 hours of administrative time. In some months they may work six days per week; in other months, only three days per week.
- Litigators have successfully implemented reduced-hours arrangements by working long and hard during trials and then cutting back substantially between trials. Because civil litigation matters are paper driven, this type of practice is particularly adaptable to a flextime arrangement.
- Real estate practitioners, estate planners, and other transactional lawyers can easily take their computers and form files on the road, conducting business at home, at their client's place of business, or at the site of the subject property.

In this age of the bottom line, profitability arguments may be the key that will open the door to many more nontraditional arrangements within law firms. An example of the economic support

for alternative arrangements from a recent U.S. Bureau of the Census study supports the conclusion that maternity benefits pay off when offered to female associates at about their fourteenth month at a firm. Based on the data, a firm that establishes maternity leave benefits can expect to retain three childbearing associates out of four. Using this assumption and the predictable percentage of women lawyers that are likely to return to work, the cost of time-off benefits can be weighed against the hard dollars expended training a new associate to replace the experienced one lost.

Perhaps the greatest hurdle facing challengers who want to continue breaking tradition within the practice of law may be in convincing management that the alternative arrangements are, indeed, manageable. Management must deal not only with individuals who have an anti-regulation mentality and who buck the norm but also with how to promote harmony among people with different arrangements and how to ensure continuity and accountability. Law practices that increase the number and variety of alternative work arrangements create a diversity that could lead to chaos if not well managed. Implementation of innovative forms of performance review and evaluation, however, can lead the way to ensuring predictability of the system in spite of diversity. In the management of diversity, both the process of evaluation and the creativity of underlying assumptions may combine to be the chosen ingredients for a successful work arrangement.

Conclusion

There is a growing trend within the legal profession to accommodate flexibility in work arrangements. Attractiveness of alternative arrangements is spreading from parent/lawyers to life-stylers. These arrangements can be very productive—not only in the intangible respect of producing happier workers, but also in terms of the bottom line. If left to chance and not well managed, though, the diverse arrangements can produce chaos.