Your Partner’s Keeper

Peer review can avoid malpractice disasters in the making

BY HARRY H. SCHNEIDER JR.

Partner peer review is a fairly recent but somewhat controversial method of detecting work habits that may create malpractice problems for the entire firm.

Somehow, the idea of evaluating partners is much less palatable than the rather commonplace practice of reviewing associates. There are several compelling reasons, however, to initiate peer review processes in your firm.

First, most malpractice claims are created by the conduct of partners, not associates. Failing to evaluate the lawyers who cause most of the claims is a mistake.

Second, if you avoid only one malpractice claim through the process, the effort is worthwhile and outweighs any awkwardness associated with it.

Third, the techniques used in partner peer review will improve the quality of your firm’s legal services and enhance client relations.

The goal of peer review is to obtain critical, candid, and informed assessments of the legal work performed by partners. Three sources of information are available:

- **Ask the client.** A simple method of obtaining a candid assessment of any partner’s performance is to ask the client. Some firms have implemented “client audits” in which clients are interviewed regularly to provide an honest evaluation of services rendered. It’s essential, however, to have the client interviewed outside the presence of the lawyers who perform the day-to-day work. Topics of inquiry should include timeliness of responses to client needs, adequacy of communication, sufficiency of billing information, and possible areas for improvement.

  You will be amazed at how much you can learn from the client, if you only ask. While no one wants to hear bad news, it’s infinitely better to learn about it this way than when the client hires new counsel or allows a client-relations problem to degenerate into a malpractice problem.

- **Ask the associates and staff.** The persons in the firm most knowledgeable about any given partner’s behavior probably are those who not be limited to substantive law practice issues. Given the frequency and severity of malpractice claims arising out of conflicts of interest, any firm considering a partner peer review program should include a mechanism to monitor and approve (or disapprove) partners’ activities that involve “business” with clients, particularly director and officer positions or other entrepreneurial activ-

  A substantial amount of malpractice liability also arises from the activities of lawyers who practice outside their areas of expertise. Partner peer review should include an assessment of whether a partner has veered outside his or her areas of expertise without sufficient support or training. Of particular concern here is the lawyer who handles the “occasional” divorce for valued firm clients.

  Finally, partner peer review should include an evaluation of new client screening. As a general rule, if a partner never declines a new client, he or she is doing something wrong. Often the only real opportunity to avoid a malpractice problem is at the client intake stage. Structure your partner peer review program to include how diligently the receiving lawyer has attempted to assess the quality and reliability of the new client, and whether or not the lawyer has applied a “smell test” to the prospective representation.

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