

# HOW MUCH IS A GOOD LAWYER WORTH?

by S. Meyerowitz

How *should* law firms today compensate attorneys for bringing in new clients?

"It's the number one issue" in law firm growth and marketing today, says Kenneth L. Lowe, a San Diego management consultant who has worked with a variety of firms. "Nobody is going to go out and help develop a firm unless there's an incentive to do it—or at least no disincentive to do it."

At many firms, the money trees are taking new shapes: "Firms today are changing their compensation systems," says Susan Raridon, chairperson of the YLD Young Lawyer Economics Committee. "The change is from being based primarily on seniority, billing and business origination," says the Ardmore, Pennsylvania, lawyer. "That's good for young lawyers, because law schools don't teach those things."

How important are law firm marketing and compensation issues? Joseph D. O'Connor III, a young lawyer from Bloomington, Indiana, says he became "involved in the Young Lawyer Economics Committee to see what we should be doing in the area of compensation." As vice-chairperson of the YLD committee and a partner in his firm, O'Connor adds, "We want to start to determine how to properly give consideration to lawyers in our firm for office management time, rain-making, and marketing."

Traditionally, neither marketing nor other activities not chargeable to clients have been important considerations in law firm compensation systems.

The three most traditional kinds of standard compensation programs,

according to law firm consultant Robert W. Denney, are "lockstep systems, based on seniority; those based purely on billable hours, and formula systems, where partners are paid a percentage of the fees of the clients they bring in."

A "lockstep" system, strictly assigning compensation to partners on the basis of seniority, is disliked by many younger lawyers. Moreover, notes Ward Bower, a principal with Altman & Weil legal consultants, "there is a trend away from lockstep systems because they don't reward superstars."

Compensation based solely on billable hours doesn't offer incentives for lawyers to market their firm. "If you make the compensation decision based on the number of hours I bill and collect, I won't do marketing," Kenneth Lowe says. "Why should I? I'm not getting paid for it."

On the other hand, a compensation system using a formula weighted to new business brought in has an opposite effect—but that doesn't make it the best system.

The formula approach is the "most divisive compensation system," Lowe says. "It may work for a while, but you get an overemphasis on new business." He says that when partners "see big bucks for bringing in business, they will *all* try to be finders. They'll forget about keeping existing clients, training young lawyers, and ensuring quality controls."

Deborah J. Addis, vice president of Addis & Reed, Inc., a Boston management consulting firm, agrees: "While I advocate compensating for work being brought in, compensating solely on this is like having a salesman on commission. The danger is that the lawyer will bring in *any* client, even one who may not be appropriate to advance the greater interests of the firm."

How devastating can a system be that primarily promotes new business

development? One hint may be evident from the recent breakup of the giant national firm of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey. One theory about the firm's demise, says Altman & Weil's Ward Bower, is that the firm "wasn't able to withstand from an economic viewpoint the huge premiums it paid to people who brought clients in."

An increasing number of firms are revising their compensation structure to recognize and reward attorneys who help market the firm. The trend is real; "Those who say that this is crass and not professional are fast dropping into the minority," claims Robert Denney.

The growing tendency toward including marketing activities in compensation decisions is very good for young lawyers, says Susan Raridon, because it encourages attorneys to market. "This will help their law firms survive and prosper in a more competitive environment," she says. "Many young lawyers are in law firms where senior lawyers are saying, 'Why change?' But the young lawyers want to market because they see their future on the line."

One firm that recently altered its compensation system is Boston's Warner & Stackpole, and it did so with business development firmly in mind. Robert Cushman—whose title is Executive Director of the firm—says the changes were made to "insure that our ability to compete is maintained. Part of that is sensitizing people to the need to develop clients." Now, at Warner & Stackpole, "partners with higher levels of new business generation receive a greater percentage of the firm's earnings," Cushman says. The extent to which a partner engages in marketing activities is "one of nine factors that drives partner compensation." For junior lawyers in the firm, the amount of associate bonuses now reflects associate involvement in marketing.



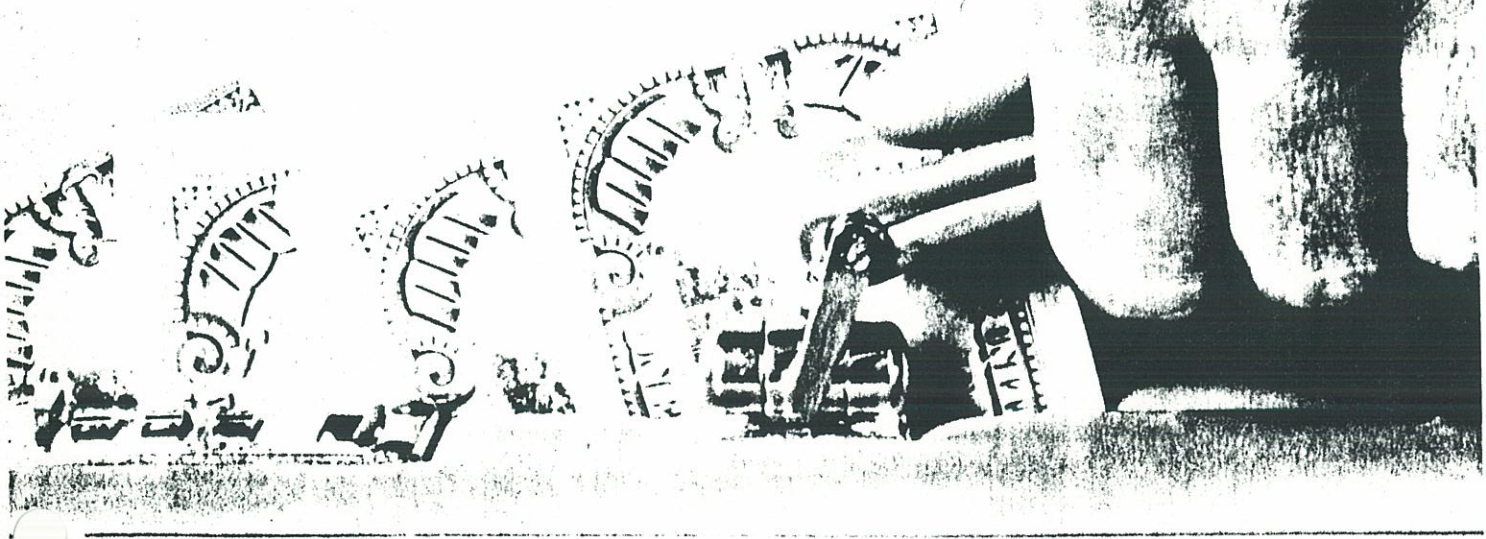
Similar changes have taken place at the Phoenix firm of Jennings, Strouss & Salmon. Year-end distributions to partners, and the division of points for the following year, are determined by the firm's management committee after a subjective analysis of each partner's contribution to the firm. The system is flexible, according to managing partner Thomas Finke, but one factor is the amount of new business a partner has brought in. Although an associate's involvement in marketing is not the most important item in that evaluation, it is counted. Marketing involvement, however, carries more weight for a partner.

Not everyone believes that associates should be urged to bring in new clients. "The mistake I've seen more than any other," says consultant Deborah Addis, "is putting junior lawyers under the impression that they should drum up new work. They'll often bring

in work that is really not right for the firm, and the firm suffers. Associates should first of all be taught and trained to give high quality legal service. I would make sure that associates are well versed about a firm's goals, and compensate them for contributions such as writing articles."

The compensation systems of Warner & Stackpole and Jennings, Strouss & Salmon are similar in one crucial respect: They use a subjective approach, analyzing various factors to determine how to compensate their attorneys. A subjective approach offers "the most effective kind of compensation system," says Kenneth Lowe. "The question these firms ask," says Deborah Addis, "and that other law firms should ask, is: 'How can a lawyer's *overall* performance and contribution to the firm be judged?'"

Says the YLD's Susan Raridon: "Lawyers contribute to a firm when





they spend time on associate training, recruitment and management," as well as direct marketing activities. These activities, she believes, should be included among the compensation factors: "A firm must have good people if it expects to bring in new business."

By focusing on partners' total contributions, a subjective compensation system allows a firm to work as a team rather than as individual lawyers merely located in the same office. As a consequence, lawyers "don't have to compete to see who can bring in more business, which can hurt a firm," says Addis.

How should this kind of compensation system be developed? There are no strict rules. There is usually a central compensation committee determining each partner's compensation after "collecting and analyzing quantitative data such as billable time, new business brought in, number of clients, billing responsibility, the time put into managing the firm, and a partner's effectiveness," according to consultant Robert Denney. "The committees who make compensation decisions should sit down with each

individual partner, set goals for the year, and then at the end of the year review their performance."

Firms should establish clear guidelines about the marketing activities they want their lawyers to engage in. Those law firms who have traditionally compensated lawyers on the basis of new clients brought in—but which are changing their compensation systems—may want to include compensation for new business as well as for "efforts spent that did not pan out," says Raridon.

"But not everything that a lawyer does should be given credit as a marketing activity," she says. "I can't think of a situation where going to church every Sunday would count—but leading a church discussion on estate

planning should qualify." What about counting "going to Rotary meetings" as client development? "Only firms which have not engaged in any new business development activities would want to allow lawyers to count such activities," Raridon says. "And then only initially."

The "new business brought in" factor does not have to lead to inter-ecine battles. One way to resolve the issue, says Ward Bower, is to allow all partners to claim credit for up to 10 or 20 new clients a year—so long as they have some connection to these clients. If more than one partner claims the same client, the compensation committee resolves the dispute. Or clients could be surveyed on why they came to the firm.

## CHILDREN AND THE LAW TODAY: YLD PROGRAM FOR PRACTITIONERS

The Juvenile Justice Committee of the Young Lawyers Division is co-sponsoring a CLE program, "Children and the Law: An Advocate's Guide," on March 31 in Durham, North Carolina.

The program is designed to inform practitioners about a wide variety of topics in the area of juvenile law. Judges, psychologists, children's law experts and practitioners from across the nation will share expertise on procedural aspects of practice in the area of juvenile delinquency, as well as addressing controversial aspects of substantive law in the field. The goal of the program is to provide practical assistance to lawyers entering the field and to alert experienced practitioners to changes in the law affecting children.

Topics to be covered include:

- "Ethical obligations of attorneys representing children accused of crime."

- "Recurring evidentiary problems in the testimony of children."

- "The psychology of delinquent children and treatment alternatives."

- "State liability: Must state government protect children?" This discussion will focus on *Deshaney v. Winnebago County*, a major case involving state liability.

The March 31 program, co-sponsored by the North Carolina Bar Association (NCBA) Young Lawyers Division Committee on Child Advocacy, will be held at the Washington-Duke Inn in Durham.

CLE credit for 5.5 practical skills hours and 1.25 ethics hours will be given to attendees. The tuition is \$85 for NCBA and ABA members, and includes course materials and a luncheon. For further information about program registration, write: North Carolina Bar Foundation, North Carolina Bar Center, P.O. Box 12086, Raleigh, NC 27605.

Future seminars presented by the YLD Juvenile Justice Committee will include topics relating to alternative dispute resolution in justice-related areas, victim-offender reconciliation programs, parent-child mediation, and school-setting mediation. Committee chairperson is Melanie D. Bragg, P.O. Box 61245, Houston, TX 77208 (713/651-0025); vice-chairpersons are Nancy E. Gordon (course planner for the March 31 program), P.O. Box 1691, 104 E. Main St., Durham, NC 27702 (919/683-1002), and Patricia C. Riepel, 1704 W. 18th St., Sioux Falls, SD 57104 (605/335-4242).

In addition to the March 31 seminar, the Juvenile Justice Committee is co-sponsoring a program with the ABA Criminal Justice Section to be held at the 1989 Annual Meeting in Hawaii. The program, "Not for Adults Only: Alternative Dispute Resolution for Children In (and Out Of) Trouble," is scheduled for Monday, August 7, 1989, 9 a.m. to noon (check Annual Meeting preview materials and meeting program books to confirm all activity dates, times and sites).



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How much weight do compensation committees attribute to a partner's new client development activities? Robert Denney is consulting with one firm that "counts it as 40 percent." The goals of a firm are crucial here: A firm emphasizing growth would give client development a greater weight. Tying the compensation system to the marketing program in such a manner "can help the firm meet its goals and give lawyers an incentive to do marketing," Addis says.

Of course, a lawyer who spends much time on one activity for the firm should not necessarily be compensated more than a lawyer who spends less time on the same activity—whether new client development, office management, or training.

Although there are almost as many variations in compensating lawyers as there are law firms, one point about compensation schemes, Deborah Ad-

dis says, applies equally to all firms: They must be equitable, and must be seen as equitable. "Consensus here is important. You don't need a consensus on a law firm brochure. But you do on compensation because it can be so destabilizing. Doing the wrong thing can result in partners breaking away and firms splitting apart."

An equitable compensation system goes a long way in keeping peace within a firm and in resolving new problems as they arise. For instance, a growing number of firms are beginning to recognize that a partner's ability to develop new business from existing clients should be included as one of the factors to be reviewed by the compensation committee. "But if the compensation committee does not enjoy the trust and respect of all of the partners," Robert Denney says, "handling that and other new issues could be virtually impossible."

## CORPORATE LAW DEPARTMENT MANUAL GUIDELINES OFFERED BY YLD

*Guidelines For A Corporate Law Department Manual*, published by the Young Lawyers Division, presents guidelines for the preparation of a corporate law department manual. This second, revised edition contains textual guides, suggestions and a framework for organizing a manual.

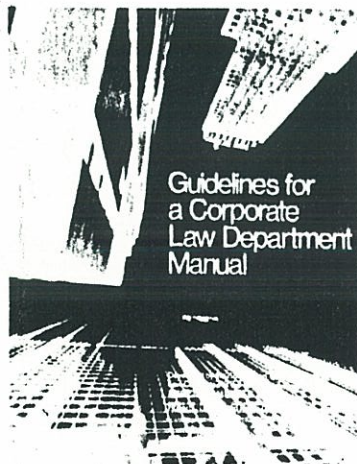
"While the manual will be used primarily by new company attorneys," according to the preface of the book, prepared by the YLD Corporate Counsel Committee and Corporation, Banking and Business Law Committee, "its development should not be restricted to such use. The very process of pre-

paring a law department manual that conforms to the needs of the particular company will necessitate review of all of the law department's existing policies."

The format of the manual is designed to correspond with the layout of a corporate law department manual. The book is divided into nine sections, each providing detailed information about what should go into a corporate law department manual, including:

- Organizing a department, and uses of an organization chart.
- The scope of law department activities, including the function of general counsel, the company's operations, law department assignments, specific subject matters and procedures, litigation, security and criminal matters. This section also discusses federal and state antitrust laws, contracts, real estate and tax laws, corporate political activity, discovery proceedings, and legal assistance to employees.
- The role of outside counsel.

For a copy of *Guidelines for a Corporate Law Department Manual*, send \$35.00 plus \$2.95 for postage and handling to Order Fulfillment, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611 (312/988-5555).



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