

## Having Performance Standards

### QUESTION:

*I'll take you up on your LAB group's offer as a resource. We're considering adopting performance standards (including billable hours, effective rates, billings / business development contributions) for shareholders. While we have fairly precise standards for an associate to become a shareholder, and we really only have one class of shareholders, we don't have standards to remain a shareholder.*

*I'm wondering if:*

- *you have a feel for the percentage of firms our size (say, 100-300 or so) which have performance standards; and*
- *you have any advice for me on this subject.*

*Assuming we adopt written standards, I'd think the next two key items are:*

- *implementing them, including dealing with shareholders who consistently under-perform and perhaps creating certain exceptions; and*
- *deciding if there will be specific means to deal with those who don't meet the standards (e.g., not eligible for bonus, must give up equity and go to Of Counsel, or other status.)*

### RESPONSE:

There are many different roles that a shareholder or an equity or capital partner (referred to in this piece as "shareholder") should play. These roles distinguish shareholders from other non-equity lawyers and associates. In this connection, it is helpful to think of the firm's shareholders as having to **leverage** themselves through some **combination** of the following contributions:

- The fundamental role of a shareholder is to bring in work for others. Only a few law firms generate business as an institution. Most work comes to the firm, and clients stay with the firm, because of relationships with individual lawyers. For the firm to survive, shareholders must generate sufficient work to fill not only their own plates, but also those of the firm's other professionals.
- The second role of a shareholder is to lead teams of professionals who do the work for clients.
- In connection with the above, another distinct role is to be an individual contributor (a working attorney) – but that alone does not a shareholder make. With proper delegation the firm's work can be done by any number of attorneys with different levels of experience, without having to rely on a shareholder.
- Some firms expect shareholders to be recognized as outstanding experts in key fields that facilitate discharging other work. For example, some lead tax shareholders in key lines of business do not generate much work directly, but they are so important to the firm's ability to do transactional work, that they are viewed as valuable shareholders.

- A critical role for any shareholder is to manage client relationships - through a client team - formal or informal.
- Shareholders also should serve as leaders in your firm - practice group, office, industry team, etc. (and of course the always essential and truly priceless role of managing partner).
- Firms often look to shareholders to serve the role of leading special projects / initiatives for the firm.  
Here, the individual contributor's role of assisting with firm matters is useful and important, but it is more good citizenship than a qualification to maintain status as a shareholder.
- Finally, shareholders most often represent the firm in useful ways in the community or with the profession.

The role of shareholder is an amalgam of the many possible contributions that the firm should expect them to make. Shareholders, as part owners of the business, also should be expected to help the firm make key business decisions, but in this day of specialization, this skill is not shared by all shareholders.

With all of these important roles to be filled, trying to set forth written standards can be very limiting. Be cautious about trying to set rigid standards that do not allow the firm to maximize each shareholder's contribution. Shareholders make their contributions in many different ways. This is not only inevitable, but healthy.

There is a delicate balance required here. On the one hand if you are observing that your firm's numbers, in total or on average, are not what you want, then some core messages about productivity and ranges of acceptable performance are not being clearly received or sufficiently applied.

On the other hand, experience has demonstrated that if people have numbers or definitive written standards placed before them, they will play to those numbers and standards, mostly to the exclusion of everything else. Ultimately, the firm will get what it pays for. If there is a disproportionate focus on billable hours or bills sent, the firm will get these to the detriment of less quantifiable, but perhaps even more valuable, contributions. This is even further complicated by the fact that more and more work that is worth doing is hunted or harvested in teams and not by lone wolves, and therefore, the firm has to figure out who is contributing what to these results.

Some firms have tried written standards, and the standards often have devolved to 'guidelines.' It is the experience of these firms that there are many different mixes of contributions that large organizations need, and these firms have come to recognize successful partner performance by reference to Justice Potter Stewart's well-worn phrase, "I know it when I see it."

### AN EXAMPLE:

*I think when a firm gets to a certain size it is very useful to have a document setting forth the expectations partners have of each other. Size and multiple geographic locations make it difficult to have a common understanding of expectations unless it is committed to writing. Several years ago we went through a process of documenting the expectations we have of each other, most of which had been handed down over the years. These expectations were generally known to lawyers who had been with the firm for years, but were not so familiar to newcomers. It was not an easy process. The document addresses our expectations of lawyers in all categories from associates to equity partners. It covers things such as (1) quality of work, (2) contribution to firm profitability, (3) business development, and (4) commitment to the firm's core values. The expectations are different depending on the category of the lawyer. Much of it is subjective and framed as expectations and not requirements. So there is still plenty of room for management discretion. The document was not intended as a tool to identify lawyers who are not performing at expected levels. It certainly does this, but those partners are usually pretty obvious anyway. It has been helpful to have the document as a reference and resource in evaluation, compensation and promotion decisions for all lawyers.*

The firm cannot expect to cover all bases with written standards. Further, once the firm has written standards, it is not inconceivable that it will find one of its lawyers who meet most or all of them nonetheless should be moved out of the firm for other reasons. With written standards, the conversation with such a lawyer and his removal from the firm will be all the more difficult. In the experience of veteran leaders, it is easier to tell someone that they simply aren't meeting their obligations as a shareholder, and aren't the role model your firm is trying to project, than it is to try to deal with performance issues based on failure to meet a written standard. In those instances, the firm can expect the highly intelligent colleague to come up with a seemingly sensible rationalization, and probably some comparison or reference to others who don't meet the same written standard, but whom the firm is not treating similarly because it thinks that the other individual makes up for the deficiency in some other way.

Another way to look at this question is to think about what a median shareholder should look like in terms of the amount of revenue and net income he helps generate for the firm – not billable hours or billings. In other words, without some special reason, assignment, role, etc., how much revenue and net income should a fully engaged working / business generating shareholder "be around"?

We should add that another problem with tight numeric standards is that, in our view, they cannot be applied rigidly to the up-and-comer in your partnership. We believe that the hurdle for an up-and-coming shareholder should be lower than for a fully formed 20-year shareholder.

At a minimum, shareholder should have an understanding that they are to bring in work for others, do substantial amounts of quality work themselves, be a good role model for associates and younger shareholders in terms of work, character, professionalism, and participation in the firm and community. Not all shareholders will succeed at each of these,

but to the extent that an individual is failing to meet enough of them, it's time for you, as the managing partner, to have the tough conversation.

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