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Coming Out Strong from the Economic Downturn

By **Tim S. Leonard**

A generation ago, Ronald Reagan famously asked America, "Are you better off now than you were four years ago?"¹ Asked today, most Americans would answer with an emphatic "no," although there are signs that this may be changing.

We are now more than a year into an economic crisis of global proportions. When its history is written, September 2008 will undoubtedly be remembered as the darkest hour when the troubled subprime mortgage market finally overwhelmed the U.S. financial system. Within weeks, the federal government was forced to take dramatic and unprecedented action, including rescuing mortgage giants Fannie Mae and Freddie Mac; forcing the sale of, or simply killing off, storied investment banks; and pumping billions of dollars into other financial institutions and businesses deemed "too big to fail." While many believe that the government response has lessened the severity of the collapse, there is no doubt that the crisis has left a trail of victims in its wake and the country awash in uncertainty as to how to survive financially.

The legal community has not been immune from the recession, and the recent downturn appears to have hit the private legal sector extremely hard. Century-old institutional law firms have dissolved, and firms teetered on the brink, just a client or partner defection away from failure. The current difficulties have largely been attributed to a

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steep drop in transactional work. This has been exacerbated for many by the fact that practice areas that traditionally served as counter-cyclical buffers, such as litigation and bankruptcy, have not been sufficiently robust to balance the decline. In responding to the downturn, law firms have reacted in much the same way as the business sector. Standard operating procedure has been to go into lockdown mode by curtailing spending, eliminating travel and marketing, imposing a hiring freeze, and reducing staff and overhead. The nation's top 250 law firms have collectively shed over 5,000 lawyers during the course of the downturn. This is not the first downturn the legal

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economy has faced, but it is the steepest. By percentage, this decline is four times larger than any other decline since the *National Law Journal* first began collecting data in 1978.² Similarly, in a survey in *The American Lawyer*, 40 percent of the surveyed firms had reduced starting pay for new associates, 60 percent had deferred associate start dates in 2009, and 72 percent expected their 2010 first-year associate class to be smaller.³

Cost curtailment certainly plays a role in any survival strategy. However, a prudent manager, whether of an individual practice or as part of a larger firm, would do well to consider what other steps could be taken to control damage and strengthen the practice going forward. A plan based solely on cost reduction or containment makes no provisions for continued momentum, flexibility, preservation of legal talent, or capitalizing

on the opportunities created during times of economic turmoil. The legal environment is in the process of dramatic change. In a play on words on the famous quote of Baron Rothchild, *The American Lawyer* has called it "a paradigm-shifting, blood-in-the-suites" future.⁴ Firms will fail or downsize, thereby creating vacuum and market share. Lateral moves will also create opportunities. Client needs and priorities will continue to change. Those that adapt and reengineer their practice will not only survive but will also prosper. What follows are some suggestions that lawyers—young and old—may wish to consider in attempting to address these changes.

Develop a Plan

The best way to come out of the recession in a strong manner, whether you are a first-year associate or an experienced partner, is to begin by doing those things that you should have been doing before the recession. The first step is to prepare a business plan. This is the process whereby you identify your goals and the best methods for achieving those goals. It should include short-term and long-term strategies. If properly executed, it will be a collaborative effort that enables you to reach a consensus about shared goals and an action plan that includes benchmarks, timetables, and lawyer accountability for performance. The issues to be addressed in preparing a plan will vary by practice, but, in a generic sense, should include preserving and expanding existing client relationships, whether they are internal clients, such as supervising partners, or external clients; marketing and business development; increasing efficiency and profitability; and billings and collections.

Preserving and Expanding Existing Client Relationships

Now more than ever you need to focus on your existing clients. Young lawyers would do well to realize that the partners and supervising attorneys in their firms are their clients. It is important to remember that not only are your clients

facing economic challenges of their own but, when business is slow, the competition will also be aggressively looking for ways to attract their business. Show your interest by giving clients your personal attention. Meet with them face-to-face, at their place of business or over lunch, dinner, or a social event. A good personal relationship goes hand in hand with a solid business relationship. Whatever else you do, make sure that you find out as much as possible about what steps your clients have taken or are planning to take to ride out the recession. Make certain that you are part of their plan, and make equally certain that your plan is compatible with theirs.

Cost reduction and accountability will undoubtedly be a major driver in any plan your clients adopt. Faced with tightened budgets and heightened managerial scrutiny, you can also be certain that your cost-conscious client will be attracted to proposals that achieve favorable outcomes while aligning cost to value and improving budget predictability and accountability. Be prepared to offer proposals that can achieve these results, and remember that you will be graded on your performance.

The Association of Corporate Counsel (ACC), which has more than 25,000 in-house counsel members worldwide, has recently announced an initiative for a shared database for members only that ranks law firms on a scale of 1 (poor) to 5 (excellent) in the following six service areas:

1. Understands objectives/expectations
2. Legal expertise
3. Efficiency/process management
4. Responsiveness/communications
5. Predictable cost/budget skills
6. Results delivered/execution

ACC members are also asked to answer the question "Would you use this firm again?"⁵ Whether your clients are ACC members or not, this initiative provides clear directions on where your focus

should be in preserving and expanding client relationships. Evaluate the legal services you provide according to these criteria and consider asking your clients for the same type of feedback.

Marketing and Business Development

There is a second part to the Baron Rothchild quote mentioned previously, which is “Buy when there is blood in the streets, *even if the blood is your own.*” We are truly in an environment where contrary actions can reap rewards and gain clients. While your first inclination may be to forsake all marketing and focus solely on revenue, this strategy will likely cost you in the future. Research shows that firms that market through a recession stand to gain tremendously over competitors that cut back. Moreover, when demand is flat, the only real way to increase business is to grow market share. With careful planning and attention, you can develop a focused strategy that is both effective and cost-effective. For a law firm, this may involve avoiding an “all in” approach and determining which attorneys are best able to carry a heavier work load of billable hours and which attorneys may be most productive by devoting part of their time to marketing efforts. The reality is that we are not all equally talented at working a room or making a presentation. Hand in glove with this approach is the notion of partner accountability for the time devoted to marketing activities.

For an individual (as opposed to a law firm), it involves at a minimum developing your own network and reputation. Marketing legal services is a relationship business. It’s about being known, liked, and trusted by the people who purchase legal services. Find out the trade or industry associations your clients (or potential clients) belong to and get involved in those organizations. Reputation and credentials are equally important. Instead of just promoting your services, promote your knowledge by educating prospects. Prospective

clients view published articles, speaking engagements, and bar/industry activities as a validation of your skill, judgment, and experience. Education-based marketing gives prospects what they want (i.e., information and advice) and avoids what they do not want (i.e., a sales pitch). Finally, consider improving your lines of communication through your webpage, client mailings, and electronic newsletters. Oftentimes the engagement may depend simply on having your name in front of the client at the right moment.

Business development can also occur through developing your practice laterally. Look for ways to complement existing practice areas or add new areas that make sense in the current environment. With the chaos in the current legal market, you can be sure that there are many talented individuals available in the marketplace.

Increasing Efficiency and Profitability

As a service organization, a law firm’s biggest asset is its human and intellectual capital. It is the basis of both the revenue stream and the firm’s largest cost center. When a crisis occurs, people naturally become anxious, uncertain, and nervous. As a manager, you should consider moving quickly to identify your irreplaceable talent and take the necessary steps to lock it up. Most importantly, you should acknowledge the situation and make known that there is a plan to get through the difficult times ahead. It is also a time to reexamine operations as a whole, including staffing, expenses, compensation, and performance monitoring and accountability. While you want to resist the temptation to cut personnel simply to reduce overhead, now is the time to weed out underperformers who do not produce results and who irritate clients and coworkers.

Throughout this process, you should provide constant updates to the partners and staff who will be retained. Regardless of your firm’s particular situation,

keeping everyone informed about issues that could affect them personally will pay dividends in productivity in the short term and loyalty in the long term. Let your staff know that they are important to you and that you are committed to keeping them. If they know that they are perceived as an active part of the solution, they will act accordingly and

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may even identify sources of savings that never occurred to you.

The same critical analysis can also be applied to your other cost centers. Is there discretionary spending that can be deferred or eliminated? Are there vendor contracts or leases that can be made more cost-effective? Finally, it may seem counterintuitive to increase spending in any area, but like marketing, technology is an area where investment can pay off, enabling you to deliver legal services better, faster, and cheaper.

Billings and Collections

One of the most important determinants of your success as a lawyer is not taught in law school. You may have all the technical knowledge you need, but you will not be successful until you have a client (or senior partner) who is willing to pay you for your services. It all starts with a trusting relationship, and the moment of truth is the presentation of your legal bill. Are you accounting for your time and sufficiently explaining your actions for the block of time you are requesting the client to pay? Are you demonstrating credibility and personal integrity? Are your charges reasonable?

Clients have become more cost conscious and tech savvy. They are

examining legal bills more closely and employing a variety of applications to sort and analyze billing data. You will collect your bills more easily and quickly if you create prompt and accurate time entries. In preparing your bills, you should craft detailed billing descriptions that describe not only what you did but also why you did it. You should avoid block billing, which is the practice of listing a number of tasks under one time entry. This is especially true for young attorneys whose time descriptions are often vague and repetitive. When reviewing a time entry, ask yourself, "Would I pay for this?" Often times, the only tangible manifestation

of an attorney's work is a bill, so make certain that it is worth paying for the services reflected on it. Be cognizant of and in compliance with the client's billing policies, including task-based coding. If your bill does not comply with the client's policies, it increases the risk of delayed payment or non-payment. You should also remember that your audience may include individuals other than the in-house counsel assigned to the file and prepare your bill accordingly.

Once your bills are transmitted, stay on top of collections. Don't wait until year-end to follow up on outstanding bills. Statistically, a bill that is 60

days overdue can still be collected 89 percent of the time. After six months, you only have a 67 percent chance of collection, which is reduced to 45 percent after a year.⁶ For clients who want to pay but are struggling, consider alternative payment solutions, such as credit cards, installment payments, or security on deferred fees. Billing and collection is a significant client issue that can strengthen or undermine a client's relationship with the firm. As the lifeblood of the firm, timely collection is also essential to survival.

Conclusion

It has been said that during periods of prosperity, law firms and lawyers are successful in spite of the management skills of its members. During a recession, good lawyering is not enough. Sound management practices are required to ensure cash flows and maximize the firm's resources. Successful lawyers will be those who have analyzed their practice and their business and who have charted and stuck with a sound plan to navigate these stormy times. ■

Tim S. Leonard is a partner in the Houston office of Jackson Walker LLP.

Endnotes

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