

BILL'S FIRM: A STORY AND, PERHAPS, A TEMPLATE

I received a phone call a while back from Mick, a law school classmate, former partner and long-time friend. He is a senior partner in Bill's firm, having practiced there for almost 15 years, who was very concerned about the future of the firm. He knew that I was now doing conflict consulting and coaching as part of my ADR practice. He wasn't sure if I could help him, but he didn't know what else to do. I wasn't sure either, but I told Mick that I would be happy to discuss it with him. Basically, he said that the firm was "stuck".

I was somewhat surprised by Mick's concerns, because I was fairly familiar with Bill's firm, having been involved in cases both with and against it. The firm was 90 years old and had about 60 lawyers, with a main office in the largest metropolitan area of the state and smaller offices in the state capital and a major metropolitan area of an adjacent state. The founder was a revered federal appellate court judge and three of the firm's lawyers had ascended to the federal bench in the past 20 years.

The firm's lawyers were excellent and had an outstanding reputation. Their new associate hires only came from Law Review or Order of the Coif graduates of solid law schools. A number of the firm's lawyers were adjunct professors in several of the state law schools. The firm represented some of the wealthiest people in the state and seemed to be involved in many complex litigation cases, as well as complex business and real estate transactions. Bill, the current senior partner, was an iconic figure in legal circles who was still going strong in his mid-80's. I had known him for years and thought very highly of him. The only negative information I had ever heard about the firm was that they were viewed as too expensive for routine matters by the business community; and, that the firm on several occasions had lost very talented lawyers due to

the "lockstep" compensation system for partners. As a result of all this, I was very curious about Mick's concerns.

When we met several days later, my curiosity was satisfied and I was somewhat stunned by what I learned. The firm had not grown at all in spite of its stellar reputation over the past 10 years. It has the same number of lawyers in 2018 as it had in 2008, but the partner-to-associate ratio had become worse. Of a total of 60 lawyers in 2008, there were 35 partners and 25 associates, compared to 45 partners and 15 associates in 2018. In 2008, there were only four partners age 60 or older, compared to 21 partners in 2018. The average gross income over the past five years was only 2.5% higher than the average gross income over the previous five years. This was true even with annual increases in hourly billing rates over that period, as well as a higher average billing rate due to the aging of the partners and the change of the partner-to-associate ratio over that period. The average net income over the last five years was actually 3.5% less than the average income over the previous five years. The main office averaged \$1 million a year in gross income less in the past five years than it had in the previous five years. In 2018, 67% of the fees were originated by partners age 60 and over, compared to 38% in 2008. Only 20% of the partners met the annual billable hours requirements set forth in the Operating Agreement, and almost no associates met the annual billable hour requirement.

Operationally, the firm still operated as it had for the last 20-25 years. It was managed by a committee of seven partners elected from the membership to serve overlapping terms. Each of these lawyers has a full-time practice as well. One member is elected by the committee to serve as its chair. The management committee meets once a week and communicates its actions to the membership by somewhat limited minutes. It has significant authority to run the business of the firm.

The supervisory staff working under the management committee include an executive director, a human resources manager, a financing and accounting director, a business development director and an IT director. The supervisory staff had limited responsibilities for the work at the specific direction of the management committee. This is not a C-suite situation. Innovation, unless asked for by the management committee, is not a focus.

A membership meeting of all partners occurs once a month for an hour. Financial updates are given and items of the moment are discussed. During the course of the year, the partnership conducts reviews of all the associates and special counsel in the firm. This review process usually consumes more time than any other discussion item. The membership can overrule the management committee, but it usually takes a simple majority which changes upon the subject matter of the vote. Such an overrule rarely occurs.

Partner compensation is based on a lockstep system which primarily utilizes seniority as the determinate. There is a floor level for new partners and a ceiling level above which no partner can climb. Numbers are assigned to each level. A partner's number is the numerator and the total partner number is the denominator to figure the partner's percentage of the firm's net profit. Typically, partners move up one level (or point) a year, unless the partner had an unusually bad year. There are requirements for certain amounts of business origination levels to reach the top two compensation levels. Interestingly, the firm does not even measure how much work a particular partner provides for others in the firm as part of the evaluation. The most important criteria for evaluation historically has been a partner's "billable hours" (described by a former partner/now a federal judge as "hours for power"). A small percentage of the net profit is distributed according to a productivity pool which is determined annually based upon that year's

performance by the particular partner. The partners are paid by draws and a year-end distribution normally constitutes between 20% and 30% of the partner's annual income.

Partner draws are scheduled for the first of the month from February to December. Additional draws are given whenever money is available. Most partners budget based on two draws per month because the firm consistently hands out at least 24 draws a year. However, there have been a number of times during the past several years when two draws per month did not occur for a several-month period. This is particularly true at the beginning of the calendar year. On occasion, more than two draws were received in a month. The uncertainty impacts individual partner budgeting.

The firm has an aging policy that had mostly been honored in the breach. Once a partner turns 67, their point total was to be reduced by a certain number per year until age 70. At that point, the partner relinquished equity in the firm and became a special counsel with whatever agreement could be made with the management committee. This was designed to provide more percentage ownership (and income) for younger partners and to address the aging issues existing in the firm. The management committee retained the right to defer the reduction and had done so on a number of occasions at the request of partners who were still sufficiently productive. In fact, Bill is in his mid-80's and is still a deferred equity partner.

Recently, the management committee composition changed, with a number of younger members taking positions. These partners were more interested in and open to change. So this past year, the management committee without discussion or prior notice, became more aggressive in refusing deferrals and applied the reductions in points. The lack of prior discussion and the seemingly high-handed manner of the decision caused resentment, even though the overall goal and method of dealing with the aging issue had previously been approved.

Mick further indicated that the firm's reputation and work product were still exemplary. For example, the firm successfully defended the patriarch of one of the wealthiest families in the state in a nasty and public family dispute. The firm successfully obtained a major award against the state for a \$200 million contract termination. The firm also successfully obtained regulatory relief and consumer refunds from the major utility provider in the state. The transactions side closed numerous large, complex matters as well. While these examples did not occur as often as they had in the past, they still came to the firm on a fairly regular basis.

Finally, Bill was still alive and active daily in the firm, even in his mid-80's. He was beloved and respected by all. He was a major component of the glue that held the firm together. He had no intention of retiring or quitting voluntarily.

Even so, Mick was concerned about the future of the firm. Bill had to stop practicing at some point in the fairly near future. Additionally, there was no strategy or vision moving the firm forward that would hold the firm together, particularly with net income decreasing. The firm seemed to be squandering opportunities to address the issues which must be addressed in order to grow and prosper. While there had been no specific blowup or acute incident, there had been an undercurrent of dissatisfaction at the most recent partner meeting that was stronger than Mick had ever experienced in his time at the firm. He simply did not know what to do about the situation and that is why he made the call to me.

My initial reaction was that these problems were a bit out of my swim lanes. There was no specific conflict to address, counsel or coach. I told Mick that I thought they needed an experienced legal management consultant to address their issues and increase firm profitability. Such an increase would help solve some of the dissatisfaction. Further, I knew several such consultants I could recommend.

While Mick agreed with the need for a legal management consultant, he believed that the problems with the firm were deeper than just management processes. In fact, he related that they had already hired a top consultant to help develop a strategic plan and vision for the firm to move forward. That process bombed. Many of the senior partners were skeptical about consultants generally and one of them severely derided this consultant in the general caucus meeting, believing that no one would know the firm's business better than the partners themselves and that the consultant was simply wasting their time and money. The process fell apart after that occurrence.

This experience left Mick very frustrated with what he saw as the firm's poor communication skills, intellectual arrogance and the inability to constructively deal with conflict or differences of opinion regarding the firm's path forward. He did not feel that the firm should seek the needed legal management expertise until the firm learned how to communicate better. He described it as going from ignoring the issue to polarizing the issue in one quick step. Unless the firm and its leadership learned how to effectively communicate and discuss with each other issues of concern with the firm, he believed it would fail. Currently, this would be particularly true once Bill's "glue" was removed. I asked Mick to give me some time to think about what he had revealed and consider how I might be of service.

In reviewing my notes and our discussion, it became obvious that this situation was far more broad than just individual conflicts or issues. Frankly, Bill's firm had a dysfunctional conflict culture and had been successful -- in spite of itself -- probably due to the high quality of the lawyering, work and income generated. Having a lawyer like Bill as the leader and face of the firm makes that result more likely. Taking away his presence and feeling the bite of increased

competition and reduction in income and profit all indicate that unless this dysfunction was addressed, the firm may well dissolve or splinter.

For example, the lockstep system for partner compensation is a traditional model for conflict avoidance. It is designed to alleviate the need to have difficult discussions regarding the relative worth and merit of individual partners and practices to the firm. As a result, those very necessary discussions are less likely to occur. Change is less likely to occur as well.

Other indicators here include the lack of transparency and opportunity for feedback using the change in implementation of the aging policy as examples. This also ties into underdeveloped leadership experience issues. Active does not always equate to effective. Underdeveloped leadership can cause much additional conflict.

There were undoubtedly more issues that would be revealed with further investigation. For example, if billable hours are the most important evaluative tool, "silos" would almost certainly be present with lawyers hoarding their work and billable hours. At any rate, many of these issues would, while important, be outside the primary scope of my initial efforts. They would more likely be addressed with legal management consultants. Before that could happen productively though, the firm needed to become conflict competent, or at least conflict resilient.

Specifically, the firm needed to accept that conflict was not preventable, but inevitable. While handled wrongly, it could lead to negative outcomes; but, it could also be an opportunity for creative, positive change if handled correctly. The firm needed to learn how to have civil discussions about difficult topics and learn to "struggle with" each other rather than "struggle against" each other to solve problems. If it could not learn to do these things, the results of any further consulting efforts would probably end as poorly as the prior effort did.

Mick and I met again to discuss moving forward. I wanted to again make clear to him that my efforts, even if successful, would not solve all the firm's problems. One or more legal management consultants would be necessary to fully address the firm's needs.

For example, Tim Corcoran, a well-known national legal consultant, could help the firm address the Big "4" process issues: Governance, Operations, Business Development and Compensation. In Governance, he would review the firm model, discuss what is optimal (recognizing that not everyone is a leader) and recommend leadership and management training. For Operations, he would (probably with the assistance of Catherine MacDonough and Legal Lean Sigma), review the current system and recommend ways to reduce inefficiency, productize offerings (X service for Y fixed cost), institute or increase knowledge management and reduce the cost of the products sold. In Business Development, he would help develop forecasting and strategic pricing, means of measuring client satisfaction and a training and strategic plan to carry that forward. For Compensation, he would evaluate the firm's needs regarding partner retention and profit, and assist and advise the firm in developing an optimal formula and mix.

For other issues, the Zeughauser Group, another nationally-known management and marketing consultant, could assist the firm in a more strategic way. It could help the firm find its "way"—the firm's existential goal or *raison d'être*. It would assist in planning for growth in firm size, practice areas and geographical reach. It could further assist in marketing and branding of the firm.

While there are some areas of these services in which I could be of assistance, my main focus would be to prepare the firm to productively engage these consultants to address the firm's needs. To make the firm ready to treat the inevitable conflict as an opportunity, not a

problem; to struggle "with" and not "against" each other; and, to help give leadership the tools it needs to constructively lead the process.

Mick then wanted to know what specifically I would be doing to help the firm become "conflict competent" and further develop or coach leadership skills. I then began explaining to Mick the conflict consulting process of proposal, assessment and action plan. In preparation for our meeting, I prepared the proposal set forth below:

PROPOSAL OF CONFLICT CULTURE
ASSESSMENT FOR BILL'S FIRM

Dear Mick:

I greatly appreciate the opportunity to confidentially discuss your concerns regarding Bill's firm and its future. Specifically, you are concerned that the firm is "stagnant" or in decline and that it is unwilling or unable to discuss the issues facing the firm due primarily to a desire to avoid conflict between the firm's partners. As I understand your position, you want me to consult with the firm and development methods for the firm to become more conflict competent so that it may productively discuss and address critical issues moving forward.

Our Goal

The stated goal is to help the firm become conflict competent and resilient. This means that the firm comes to accept that conflict is inevitable and stop trying to prevent it. Rather, the firm needs to embrace conflict as an opportunity for creative change and develop a culture that the partners struggle "with" each other rather than "against" each other to solve the firm's problems. Communication, not avoidance, is the key. Peace is not the absence of conflict. Rather, it is the ability to handle conflict by peaceful means. The firm needs to learn how to have civil conversations about difficult issues. The aim here is to help the firm and its leadership develop tools to meet this goal – not just for now, but also in the future.

Assessment

Before a plan to develop tools of conflict confidence can be prepared, it is vital that a better understanding of the issues underlying the current culture be obtained. This initial assessment will help illuminate these issues, both interpersonal and organizational.

Interpersonal issues can include personality conflicts, communication skills and deficiencies, value clashes, respect issues, anger issues and others. Organizational issues include underdeveloped leadership, lack of role clarity, a

blame environment, difficulties in giving or obtaining feedback, silos and a lack of accountability, among others.

My recommendation is that we compile a list of essential personnel to be confidentially interviewed in order to get an in-depth picture of the underlying causes of the dysfunction. These interviews also empower these personnel with the feeling that they are important and part of the solution. It also helps that they understand that positive steps are being taken to improve the firm and its prospects for the future. The information obtained through these interviews will remain confidential as to origin, but will be utilized to produce the assessment and discuss the underlying issues creating the dysfunction.

Action Agenda

Once the initial assessment is completed, an action agenda will be prepared for the firm. This agenda will include a recommended list of actions designed to specifically address the firm issues found in the assessment and provide tools to address these issues and build a conflict competent culture. Possible action items would include:

1. Team-building facilitation/training;
2. Conflict resolution training;
3. Communication training;
4. Leadership development; and
5. Group development of guidelines for dealing with conflict.

Because every organization has its own unique problems, this list of action items will be tailored to meet Bill's firm's needs. This list of items will be priced specifically by item.

Cost

My hourly rate for this work is \$350 per hour. I estimate that the time necessary to conduct sufficient interviews (10-12) of approximately one hour each will result in an expense of \$3,500-\$4,000. Preparation of the assessment report and list of action items should take another five hours resulting in a \$1,750 expense. Given the interesting nature of the assignment and my respect and affection for Bill, I propose a flat rate of \$3,000, or approximately 60% of my usual fee.

I understand that the management committee of Bill's firm must approve this agreement. I am ready and eager to meet with them to discuss the proposal. If

you have any question, please call at your convenience. I look forward to working with you on this interesting project.

Yours very truly,

Consultant

After giving Mick the proposal, I asked him to review it and get back with me if he had any questions. He called a day or so later and asked about the assessment report and action agenda. He felt that he would need these in promoting the proposal to the management committee. I explained that I could not really prepare one until the interviews were completed. However, I did agree to prepare a truncated version accepting his observations as being validated. He felt that this would help and particularly wanted to know about the cost of the action agenda items. So, I prepared and sent to Mick a limited version of the conflict management report and action agenda, as set forth below.

CONFLICT ASSESSMENT REPORT AND ACTION AGENDA

I really appreciate the opportunity to work with Bill's firm in preparing the conflict assessment report and action agenda. This report is designed to identify underlying issues causing conflict and to recommend tools for dealing with the issues. These tools, or action agenda items, are listed and described separately with specific pricing for each one.

The employee interviews revealed a wide range of concerns regarding the future of the firm and attempts to address them. Some felt that it was just business as usual. Others were very concerned. The trend was that the younger partners were much more concerned than their older brethren.

The report sets forth some of the main causes for concern. However, all the interviewees were proud of the firm and its accomplishments. All expressed loyalty to and affection for Bill. This did not change the fact that many of the partners, particularly the younger ones, were extremely worried about the future of the firm and the lack of evident concrete action to address potential future issues or direction.

Conflict Assessment

There were several somewhat overlapping issues revealed in the interviews. They are separately addressed below:

1. Dysfunctional Conflict Culture.

The major issue here was conflict avoidance. Rather than problems being addressed, they were kicked down the road. The worry is that these problems are going to surface in the near future causing potentially fatal damage to the firm. For example, stagnant revenue and declining profits are being addressed by telling lawyers to bill more hours. No one could point to a member of the firm who did not work hard when the work was available. The problem seemed to be a lack of new business and no concerted effort firm-wide was forthcoming to address it. In fact, lawyers who aggressively sought new client development were penalized when their billable hours declined due to the time spent on the client development effort. A strong desire for a coordinated plan and execution was expressed, but has not been forthcoming. The practice remains that individual lawyers do client development as they feel like it.

2. Lack of Effective Communication.

Another consistent thread was lack of effective communication in any systemic feedback procedure. This is particularly true of the partners in the smaller offices, but also was expressed by many in the main office. Everyone felt that the minutes of the management committee meetings were woeful, imparting very little information, and they were the only formal method of discovering what actions the management committee took. Another example was a lack of communication and feedback regarding the basis for productivity pooled decisions. Still another was a lack of warning or heads up to the more aggressive application of the aging, declining point process. Some lawyers were simply told by phone that "this is it." Even the annual reviews of partners by the management committee hadn't discussed or even mentioned the change.

3. Underdeveloped Leadership.

While there was an overall positive feeling and excitement about the new, younger management team, there was also a concern about a lack of consensus building. Top-down communications and a take-it-or-leave-it feel to decision making was expressed as an issue. The hope was that the younger leaders would grow on the job. However, there was a concern that they might not.

ACTION AGENDA

The goal here is not to criticize, but to help the firm develop a competent conflict culture embracing conflict as an opportunity in developing the tools to effectively do so. These items are suggested to meet your special needs.

1. A One-Day Training and Group Workshop.

This is recommended initially for the partners, possibly held in conjunction with the firm retreat. It will be designed to introduce the partners to the causes of conflict, removal of drama from conflict, understanding how conflict can escalate and how to prevent it and, most importantly, the benefits of embracing conflict as an opportunity for creative improvement.

Cost of training workshop \$4,000

2. Leadership Development Coaching for the Management Committee Chair.

While it would be valuable to have the entire management committee participate in this training, the impact of seven lawyers with full-time practices undergoing a three-month coaching program is probably too great. However, it would be essential for the chair.

Everyone is unique and some people tend to be stronger leaders than others. Obviously, the chair is viewed as having leadership skills since he was elected. However, even strong leaders are not always effective. This program is designed to provide personalized coaching to the individual in the firm who sits at the top of the leadership to better utilize his talents.

Initially, the chair would take the Hogan Lead Series Assessment to measure his personality and point out strengths, weaknesses and values. Additionally, the Leader Versatility Index assessment would be utilized. This reveals how people around the leader view what he tends to manage and how he tends to manage.

Additionally, the coaches would have a series of eight meetings or sessions in which the assessments would be discussed and applied to current issues. Further, there would be book studies of several works dealing with conflict managing and coaching.

Cost \$6,000

3. Communication/Feedback System Review

This item simply involves the consultant's review of the existing communication systems in the firm and existing methods of getting and giving feedback. After that review, the consultant would provide recommendations on how to systemically improve communications and feedback at the firm.

Cost \$1,000

We greatly appreciate the opportunity to work with you and hope you will find our efforts very helpful. Please let me know what you decide once you've had an opportunity to review this information.

Yours very truly,

Consultant

After I gave the report to Mick, he wanted some time to review it. I told him that I wanted him to understand it, as he was going to be the initial point person to sell the proposal to the management committee. He told me that the management committee would meet in a week and he wanted to bring the proposal and the report to it. I wanted to go with him to make the pitch, but he demurred. He wanted to lay out all of his concerns as to why this was necessary and felt that it would go better if it was kept in-house at this point. I did remind him that this was not an all-or-nothing proposal. The firm could start with the assessment and report and only go forward with the action agency if they found value in the report and its findings.

He called me back about a week later. He was devastated and embarrassed. He had given the management committee the proposal and the report, but it wanted nothing to do with conflict consulting. They did not feel that the firm needed it and did not want to spend the money. He was embarrassed that I had done all the work for nothing.

I told Mick not to worry about it. I enjoyed doing the work and the exercise opened my eyes to an extremely new and potentially lucrative market – working with legal management consultants to help prepare the firm they were consulting with for strategic planning if their conflict culture was dysfunctional enough to need it. In my experience, this is a target-rich environment. I was already beginning to develop a marketing plan for this new template.

I had contacted several consultants that I knew; started writing some articles on the subject matter; and actually agreed to present the topic at a state bar seminar in a couple of months. Also, Bill's firm's problems weren't going away. They had the proposal and a form of the report. They may well be back.