



805 The Care & Feeding of the Legal Department

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Faculty Biographies

Marty Barrington

Marty Barrington is vice president and associate general counsel at Philip Morris Companies Inc. in New York. His responsibilities include oversight for the law departments that serve several operating companies of Philip Morris, including Miller Beer, Philip Morris Capital Corporation, and Chrysalis Technologies Inc. Mr. Barrington also manages practice groups that handle international trademark matters and corporate affairs issues. His current management responsibilities include participating in developing strategic initiatives such as Vision and Values, diversity programs, and professional development programs for the worldwide Philip Morris law department.

Prior to his current position, he served in a number of legal positions supporting Philip Morris USA, including three years as senior vice president, general counsel, and secretary. Before joining Philip Morris, he was a partner at the firm of Hunton & Williams.

He is a member of the New York and Virginia Bar Associations.

Mr. Barrington received his law degree from Albany Law School, where he was Notes and Comments Editor of the *Albany Law Review*.

Michele S. Gatto

Michele S. Gatto is senior vice president and general counsel of The National Life Group in Montpelier, VT. As chief legal officer, her responsibilities include management of all the legal affairs for a diversified financial services group which offers life insurance, annuities, retirement products, mutual funds and related trust, broker-dealer and investment services. Additional management responsibilities include policy forms, market conduct compliance, corporate secretary, and human resources.

Formerly Ms. Gatto was vice president, general counsel and corporate secretary of Massachusetts Casualty Insurance Company, a subsidiary of Sun Life Assurance Company of Canada (U.S.). Prior to that she served as vice president, assistant general counsel, assistant secretary/treasurer at The Paul Revere Corporation, now merged with UNUM-Provident Corporation and formerly a subsidiary of Textron Inc.

Ms. Gatto is a member of the ABA, ACCA and ACCA's Northeast Chapter, the Association of Life Insurance Counsel, the Liaison for the State of Vermont Lawyers Professionalism and Ethics Committee of the Defense Research Institute (DRI), and the Steering Committee of DRI's Life, Health, and Disability Committee. She also serves on the Business Advisory Council for the Graduate School of Management at Clark University. Ms. Gatto has also authored articles for the *ACCA Docket*.

Ms. Gatto holds a bachelor's degree from Indiana University of Pennsylvania, a master's degree from Youngstown State University, a JD from Western New England College School of Law, and an MBA from Clark University. She also completed the Executive Development Program at the Harvard Business School.

Phillip H. Rudolph

Phillip H. Rudolph is vice president and international general counsel at McDonald's Corporation, where he is responsible for managing and overseeing the provision of legal services for McDonald's in the 120 non-U.S. markets in which it does business. He also oversees the supplier compliance function for McDonald's.

Prior to joining McDonald's, Mr. Rudolph was a partner at Gibson, Dunn & Crutcher L.L.P., in Washington, DC. He joined that firm as an associate, practicing as a general commercial litigator who specialized in antitrust litigation and counseling.

Mr. Rudolph is a member of the ABA's Antitrust Section. He has written chapters on antitrust damages and on intellectual property transactions for the J. O. von Kalinowski treatise, *Antitrust Laws and Trade Regulation*, and served as an author and editor for the von Kalinowski *Antitrust Laws and Trade Regulation Desk Edition*. Mr. Rudolph also was on the Editorial Board and was a contributing author for the ABA's antitrust treatise entitled *Antitrust Law Developments (Fourth)*.

Mr. Rudolph received his bachelor's degree magna cum laude from the University of California at Irvine and his law degree from the University of Chicago Law School.

Program #805: The Care and Feeding of the Legal Department

October 23, 2002

PREPARING EFFECTIVE DEVELOPMENT PLANS

Dos and Don'ts

Dos

- Do involve the staff member in the development process
- Do limit focus to a few key areas
- Do show ample commitment in time and resources
- Do provide feedback, encouragement, reinforcement, coaching
- Do include adequate variety (special assignments, seminars, etc.)

Don'ts

- Don't expect too much too soon
- Don't forget to specify how you will measure success
- Don't ignore target dates
- Don't fail to consider staff member's level of skill and learning style
- Don't forget that the most powerful development occurs on the job

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CREATING DEVELOPMENTAL ASSIGNMENTS

- ◆ Ask lawyer to represent General Counsel or Managing Corporate Counsel at a meeting and present findings/results
- ◆ Delegate the responsibility for managing a complex project from start to finish
- ◆ Assign lawyer to mentor a new or inexperienced lawyer or staff member
- ◆ Coach lawyer in managing a highly talented lawyer or staff member
- ◆ Request that lawyer chair a project that has met with high degree of resistance or conflict
- ◆ Coach lawyer in managing a poor performing lawyer or staff member
- ◆ Delegate to lawyer the management and responsibility for part of Law Department budget
- ◆ Put lawyer in charge of cost containment project
- ◆ Assign lawyer the training responsibility for other lawyer(s) or staff members
- ◆ Request and recommend that lawyer chair cross-functional task force within the company
- ◆ Assign to lawyer projects that provide visibility in company
- ◆ Utilize job rotation or temporary lateral assignments (if Law Department is large enough)
- ◆ Consider assignments that thrust lawyer or staff member beyond comfort zone
- ◆ Provide to lawyer assignments that enable him/her to interact with executive management

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What Every Law Department Needs:

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EW GENERAL COUNSEL OR MANAGING CORPORATE COUNSEL HAVE NOT struggled with how to evaluate the performance of their legal teams. Believing that lawyers, like most professionals, tend to function best with a high degree of autonomy, many managing attorneys take a hands-off approach to performance evaluation. And given the hectic schedules of most, they may question whether performance evaluations of in-house lawyers are worth the time and effort.

Like other managers, you may approach performance appraisals with discomfort and anxiety, and seek to avoid them. In theory, you know that appraisals have value. But in practice, you may find it easier not to do them. After all, they involve paperwork, forms from the human resources department that you and your staff may view as invalid, irrelevant, or inappropriate for professionals. Appraisals also make people feel uncomfortable. You probably know the boss who, as a practicing lawyer, is aggressive and strident, but who, as a managing attorney, cannot bear to have a face-to-face discussion about performance issues. You may even be that person.

A Performance Evaluation System That Works

Michele S. Gatto, "What Every Law Department Needs: A Performance Evaluation System That Works," *ACCA Docket* 19, no. 1 (2001): 50-65.

APPRAISALS CAN BE MOTIVATIONAL, ESPECIALLY FOR TOP PERFORMERS, WHO ARE TYPICALLY VERY ACHIEVEMENT-ORIENTED. OR THEY CAN BE CONSTRUCTIVE, FOR PERFORMERS WHO MAY NOT BE AT THE TOP, BUT WILL TAKE DIRECTION ON HOW TO IMPROVE.

Having been on the other side, you also know that staff members often have equal distaste or apprehension for performance appraisals. Some may not know what to expect of the appraisal process.¹ Others may feel that they do not receive enough feedback or communication.² You probably remember the following drill: the new attorney waits to go into the boss's office for his first performance appraisal. She keeps him waiting while she reads the newspaper. When he walks in, she doesn't look up. Then she begins to talk about the headlines in the newspaper, the weather, her trip to China. Forty-five minutes later, she jumps up, tells him that she has to go to a meeting and says that all is going well and that she will send him the completed appraisal form.

But a performance evaluation need not be unpleasant or a waste of time. Instead, it can be an effective tool for enabling a law department to achieve its goals and for furthering lawyers' careers. Appraisals can be motivational, especially for top performers, who are typically very achievement-oriented. Or they can be constructive, for performers who may not be at the top, but will take direction on how to improve.³ For all employees, positive words from the boss can have a striking effect on reinforcing good work.

You can create a performance evaluation system that really benefits your company and staff. To do so, however, you have to focus on the performance appraisal process, from planning which evaluation tools you will use to periodic monitoring of staff performance to conducting the appraisal interview and developing staff action plans. The process is up to you to individualize to suit the needs of your department.

DEFINING THE PERFORMANCE APPRAISAL PROCESS

A performance appraisal is a structured, continuous process whereby you review and discuss the work performance of a staff member. It covers a predetermined period of time, usually six months or a year, and involves periodic meetings with the staff

member, including brief ones designed for "how are you doing?" catch-up talk, as well as a full-fledged appraisal interview. Although most managers think of the appraisal as the evaluative interview, you will want to keep the lines of communication open with members of your staff and monitor their progress throughout the year. How you conduct the performance appraisal process will ultimately determine whether it has value.

You may use staff performance appraisals to (1) identify strengths and weaknesses, (2) outline an action plan for improving areas of less than acceptable performance, and/or (3) develop new skills.⁴ You may also use them as the basis for promotions, demotions, transfers, and terminations. Some organizations rely on appraisals to determine pay increases and bonuses, although opinion varies widely on whether performance appraisals should be tied to reward systems.⁵

Well in advance of the appraisal meetings/interviews that you have with each member of your staff, you will need to explain how the appraisal process works. You should discuss with staff the evaluation tools that you will be using and the performance characteristics, qualities, traits, and so forth that you will be measuring. You should let them know what to expect from the appraisal interview so that they can prepare and use the time wisely.

During the appraisal meeting, you should talk with staff members about their training and development needs. Appraisals also provide a mechanism for giving feedback. All lawyers, whether entry level or senior, want to know how they are doing. You never know when the next legal recruiter is going to call and pursue a member of your staff. Those who do not know how they are measuring up within your organization may be more likely to entertain other opportunities.

Effective performance appraisals promote accountability. Lawyers work autonomously. If you communicate your expectations for their performance during the appraisal process, your staff will know who is accountable for what. Without such accountability, you risk inefficiency, ambiguity, or even redundancy within the law department.⁶ An effective performance appraisal will help you to make critical employment decisions, such as promotion, termination, merit increases, and bonus awards. And by documenting performance, you

Dos

- Do spend sufficient time in preparing for the appraisal.
- Do keep appraisal results confidential.
- Do use self-appraisals.
- Do obtain feedback from multiple sources.
- Do make performance evaluation a continuous process, not just a report card.

Don'ts

- Don't avoid performance evaluation.
- Don't get hung up on forms.
- Don't talk too much. The process should be interactive.
- Don't lecture.
- Don't use the annual appraisal as the sole means of communicating about jobs and performance.

reduce the risk of litigation for alleged discrimination and/or wrongful discharge.⁷

CREATING A PERFORMANCE EVALUATION SYSTEM

To create a performance evaluation system that really works, you need to do some strategic planning. Well in advance of actual staff appraisal interviews, think through what type of appraisal system would function best in your law department and within your organization. Your human resources department may promote a performance appraisal system for your company's use. You may want to use the company system in its entirety, modify it, or develop a new one. Before deciding, give some thought to the organizational culture within which your law department exists and what you want to evaluate.

Organizational Culture

If your company is traditional and hierarchical, it may have strict rules and procedures regarding performance evaluation. All departments, including your own, may be required to adhere to the company's standardized evaluation system and/or use the company's evaluation form. Systematic performance ratings may drive merit increases and have a bearing on promotions. Standardized forms and procedures generally make the performance-evaluation process easier for larger companies. But even if you use the company system or forms, you may be able to improve by supplementing the standard system or making some changes in its implementation.

If you work in a quality-oriented manufacturing company, measurement may be critical to your company's strategy. Your company's culture may include zero defects, reduced cycle times, and increased customer satisfaction. If so, your law department has a better chance of making a difference if you use a

quantitative performance measurement system.

If you work for a fast-paced, dynamic entrepreneurial firm, however, managers may view very structured internal systems as rigid or overly bureaucratic. If so, you may have far more leeway in how you evaluate staff performance as long as you get results.

Finally, you may find yourself as a new general counsel brought in to change the organizational culture, to transform an underperforming law department, or to align it better with business needs. Effective performance evaluations can assist you in achieving this cultural change.⁸

What Will You Evaluate?

You will need to think through what you want to evaluate. To guide your thinking, you may want to ask yourself the following questions: What does it take to be an effective lawyer in this company? What attributes are necessary? What technical expertise? Which high-level skills? Professionals often criticize standardized human resources forms for being irrelevant or inapplicable. Some of these forms rate attributes, such as trustworthiness, dependability, and enthusiasm. But an attorney can be exceptionally trustworthy, dependable, enthusiastic, and yet ineffective if he lacks a certain level of technical expertise. Conversely, a lawyer could have a high level of technical expertise, but be inept at dealing with company personnel. Carefully consider the traits necessary for lawyers to be successful in your company.

You may find it helpful to review job descriptions before deciding on a performance evaluation system. These descriptions often list the job duties and responsibilities, as well as the skills, education, knowledge, and expertise required to do the job, any or all of which you could evaluate.⁹ If your job descriptions are updated and reasonably well developed, they could easily form the basis for your

Performance Appraisal

Name: _____ Title: _____
 Position: _____ Department: _____

	Excellent (5)	Good (4)	Satisfactory (3)	Average (2)	Unsatisfactory (1)	Rating
1. Initiation Voluntarily starts projects and/or initiatives and/or undertakes.	Shows little initiative. Does not volunteer. Shows little or no initiative.	Shows some initiative. Shows the necessary level of initiative.	Voluntarily assumes responsibility for routine problems.	Not really voluntarily.	Shows little or no initiative.	
2. Communication Ability to clearly and effectively convey information orally and in writing.	Establishes clearly specific communication.	Establishes specific communication.	Establishes specific communication.	Establishes communication.	Clearly and consistently communicates, both orally and in writing. Demonstrates good listening skills.	
3.						
4.						
5.						
6.						

Comments: _____

Employee Signature: _____ Date: _____
 Supervisor Signature: _____ Date: _____

Fig. 1 Performance appraisal rating scale with explanations

Fig. 1. Performance appraisal rating scale with explanations

performance evaluation system or at least help you think through the issues.

As you consider the attributes, skills, expertise, accomplishments, and so forth that you would like to appraise, keep in mind a simple rule of thumb: what is important gets evaluated, and if it doesn't get evaluated, it must not be important.

CHOOSING THE EVALUATION TOOL

A number of performance evaluation tools exist, each with its own advantages and disadvantages. You may decide that the best system for you is to use several tools in combination. In considering your options, remember that no tool is perfect. The tool you choose depends on your management style, your comfort level in conducting appraisals, and your personal preference. The appraisal process, from the planning stage to the appraisal interview, is far more important than simply the tools you use. But the following evaluation tools are available to help you to improve your appraisal process.

Rating Scales

Many performance appraisal systems consist of an evaluation whereby you rate certain personality traits, qualities, abilities, and so forth on a scale. The scale may be numerical, typically 1 to 4, 1 to 8, or 1 to 10, or verbal, often ranging from unsatisfactory to outstanding.

A rating scale system has the advantages of being structured, standardized, easy to understand, and easy to use.¹⁰ Rating scales also take little time to complete and enable comparisons of performances among employees. You may find, however, that standardized human resources rating scale forms do not generally rate traits relevant to attorneys' jobs. Many rating scale systems, for example, do not focus on results. Guard against using a rating scale that evaluates who the person is, rather than what he does.¹¹ Excerpts of sample rating scales appear in figs. 1 and 2.

Critical Incidents

Critical incidents are notes that you make periodically throughout the appraisal period of both positive and negative examples of a staff member's performance or behavior. If you use critical incidents, you will want to collect, review, and compare your notes in

PERFORMANCE APPRAISAL

Name: _____ Assessment Date: _____
 Position: _____ Department: _____
 Supervisor: _____

	5	4	3	2	1	0
1. PLANNING AND ORGANIZING WORK Ability to establish meaningful objectives, priorities, and deadlines.						
2. KNOWLEDGE OF JOB Understands job's overall technical content, key responsibilities, and major results.						
3. ANALYTICAL SKILLS Ability to analyze or problems comprehensively, evaluate solutions, and determine solution and outcomes.						
4. CREATIVITY						
5. INTERPERSONAL SKILLS						
6.						
7.						
8.						

Comments: _____

Rated by: _____ Date: _____
 Supervisor Signature: _____ Date: _____

Fig. 2 Performance appraisal rating scale with numerical ranges

Fig. 2. Performance appraisal rating scale with numerical ranges.

preparation for the appraisal interview. An advantage of this tool is that it focuses on direct observations of an individual's performance. You may find it difficult to determine exactly what constitutes an incident, however, and you may inadvertently give a rare instance of an action or behavior too much weight.¹² If you decide to use this tool, consider combining it with other tools. An excerpt of a hypothetical critical incident appears in fig. 3.

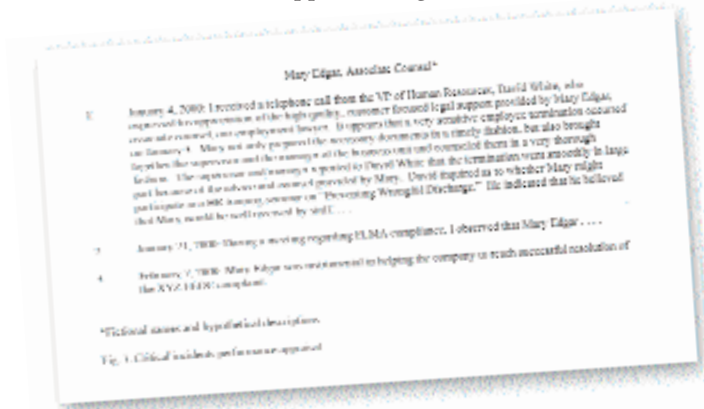


Fig. 3. Critical incidents performance appraisal

Ranking

In a numerical ranking system, you rank each lawyer in comparison to the other lawyers. This tool may help you to analyze the performance of each individual on your legal staff and the staff as a whole. It also forces you to compare and differentiate performances: not all lawyers can end up in the top or in the middle. Unfortunately, rankings often tend to be based on gut instincts, rather than on objective criteria. If you manage a large law department, you may not be familiar enough with the work of each lawyer to make a valid ranking.¹⁵ Justifying the difference between the number 4 lawyer and the number 5 lawyer, for example, may be unduly problematic. As with critical incidents, you should consider combining a ranking system with other performance-evaluation tools.

Goals/Objectives/Results Evaluations

A number of tools deal with achieving goals, objectives, and results, rather than with rating traits, skills, and expertise. Some are an offshoot of management by objectives ("MBO"). With these tools, you measure your staff's performance by whether and to what extent they meet or exceed predetermined objectives

and goals. These tools tend to be definitive: either objectives are met or they are not met. If you use a goal-oriented evaluation system, you can have members of your staff monitor their own performances between appraisal interviews. Obviously, the more quantifiable the objectives, the easier the measurement.

Before you decide to implement such a system, you will need to determine whether it is realistic or practical to do so. Staff members may lack the skills necessary to make the system work effectively, or they may not buy into the goal-setting process. It is difficult to form objectives that are not overly rigid and inflexible, yet still contain sufficient clarity.¹⁴ By its nature, lawyers' work does not easily lend itself to quantitative measurement. But some MBO-based systems can be effective for professionals if they focus on ends and not means. For a results-oriented system to work well, you and your staff must agree upon objectives at the beginning of the appraisal period. See fig. 4 for an excerpt of a hypothetical objective-based tool.

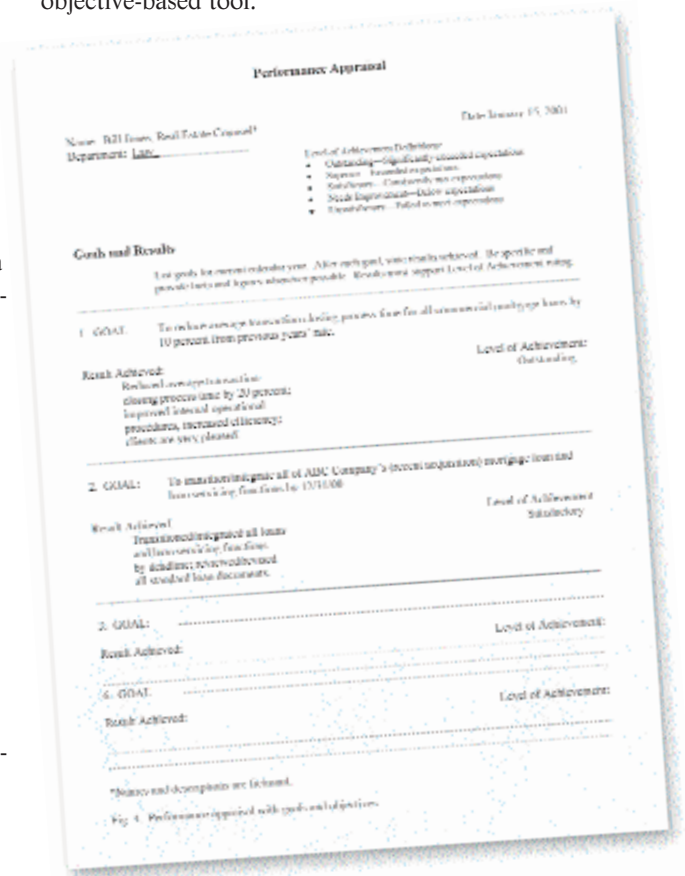


Fig. 4. Performance appraisal with goals and objectives

Narrative/Essay

Narrative or essay performance appraisal systems come in various forms. You can prepare a general memo to summarize a staff member's performance in very broad terms, or you can prepare detailed responses to narrative questions regarding his or her job performance.

Narrative/essay appraisals are less structured than rating scales. They tend to be open-ended and flexible, giving you more freedom of expression. You can choose the aspect of a staff member's performance that you would like to emphasize. But narrative/essay appraisals generally take more time than other methods and can be more challenging and demanding. To be effective, narrative/essays, which are inherently subjective, require more skill and expertise of the reviewer than do other tools. A key disadvantage to narrative/essays is the difficulty they present in comparing and/or contrasting the performance of lawyers within a unit.¹⁵

The narrative/essay tool may work best if you focus it on key performance components, such as responsibilities, strengths, weaknesses, accomplishment of goals and objectives, or future development plans. See fig. 5 for an excerpt of a hypothetical narrative appraisal.

Self- and Third-Party Appraisals

You may find it especially helpful to solicit a self-appraisal from the lawyer whose performance you are evaluating and to canvass the opinions of others who work with him or her. Such narrative appraisals can assist you in creating a full and fair work portrait for review.

Self-appraisal: The self-appraisal is a key step in an effective performance evaluation system. Not only do staff members' self-appraisals give you valuable insight,¹⁶ but also they involve staff intimately in the process and foster good communication. Self-appraisals can provide you a better understanding of lawyers' expectations, reduce defensiveness by staff, and help you to suggest ways in which staff members can improve their performance.¹⁷

If you use a narrative/essay evaluation form, you may ask the staff member to complete the same form to evaluate himself. Or you may prefer to ask him or her to respond to questions regarding accomplishments for the year, particular challenges the staff member had that made reaching goals difficult, personal contributions the lawyer made to the law department's goals and objectives, future plans, and so forth. You may choose to present questions to the employee and have him or her answer them in a memo, which you may use in place of or in addition to a standard appraisal form. See fig. 6 for a sample self-appraisal form.

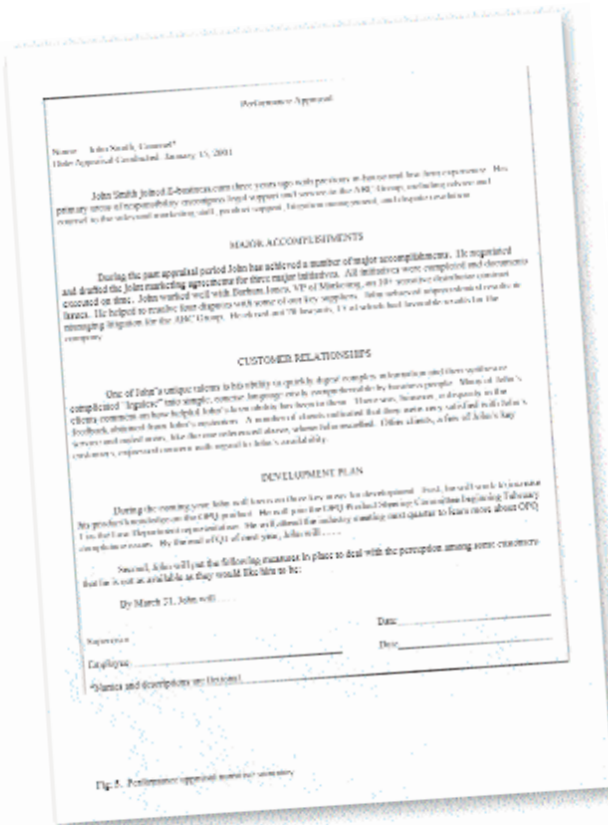


Fig. 5. Performance appraisal narrative summary

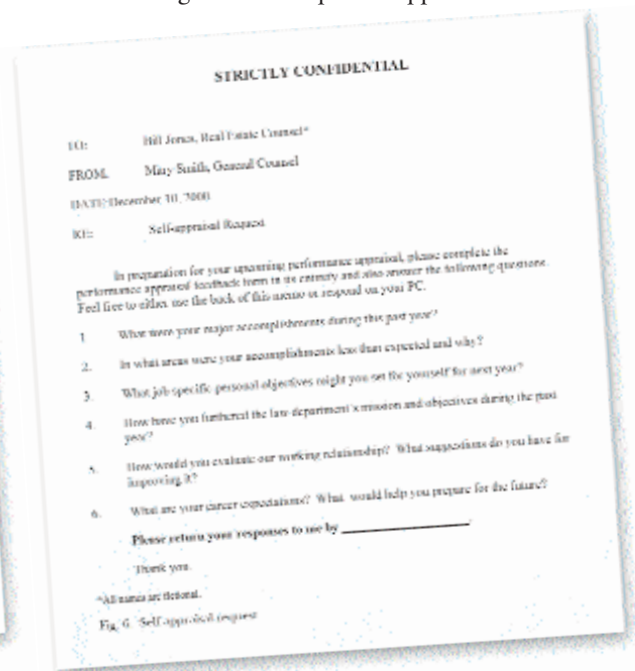


Fig. 6. Self-appraisal request

Third-party appraisals: Gathering feedback from a variety of sources is one of the most valuable aspects of the appraisal system. Such commentary increases the accuracy of your performance evaluation and raises credibility in the process. It also serves to reduce potential defensiveness, which is particularly important if the performance of the staff member whom you are evaluating needs improvement. For example, you may have a lawyer who needs to brush up his interpersonal skills so that he can work more effectively with clients. If you give him feedback based solely on your observations, he may become defensive. But if you provide him anonymous feedback from eight to ten customers, you may be able to diffuse his emotional reaction. A discussion that includes other people's opinions may be far more meaningful than a simple one-on-one evaluation.

In evaluating your legal team, consider gathering feedback from peers, subordinates, customers/clients, or outside counsel. Sometimes peers have more complete and/or accurate information than you have regarding a colleague's performance. Lawyers who work together often have a keen understanding of their colleagues' strengths and weaknesses, skills, attributes, accomplishments, and so forth and may provide open and candid input.¹⁸

When you evaluate lawyers who manage other staff members, you may find their subordinates to be an excellent source of information regarding the lawyer's managerial style. After all, they observe the manager close-up, whereas you do not. Subordinate input should not receive inordinate weight, but it can be a reliable barometer of a manager's effectiveness.¹⁹

Clients are also an excellent source of performance feedback. They can comment knowledgeably about a lawyer's approachability, availability, responsiveness, and turnaround time. Clients in business units can tell you whether they perceive a lawyer's advice and reasoning to be clear, concise, and useful. They can also serve as a gauge for determining whether a lawyer is viewed as a business partner.

Although outside counsel often work closely with in-house counsel, you may find it awkward to solicit performance information from them. Their input may be more helpful if it is unsolicited.

You can obtain feedback from all third parties through a personal discussion, an objective questionnaire, or an open-ended, narrative questionnaire. The personal discussion may elicit more detailed responses than a questionnaire, but some narrative questionnaires

can achieve the same result. Respondents often tend to prefer the objective questionnaire because it is easy and quick. Consider using an objective questionnaire that provides space for comments, as well. Sample questionnaires appear in figs. 7 and 8.

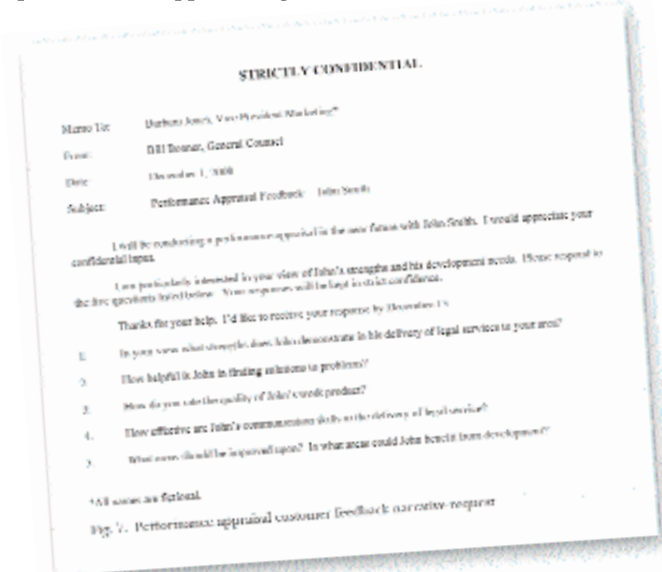


Fig. 7. Performance appraisal customer feedback narrative request

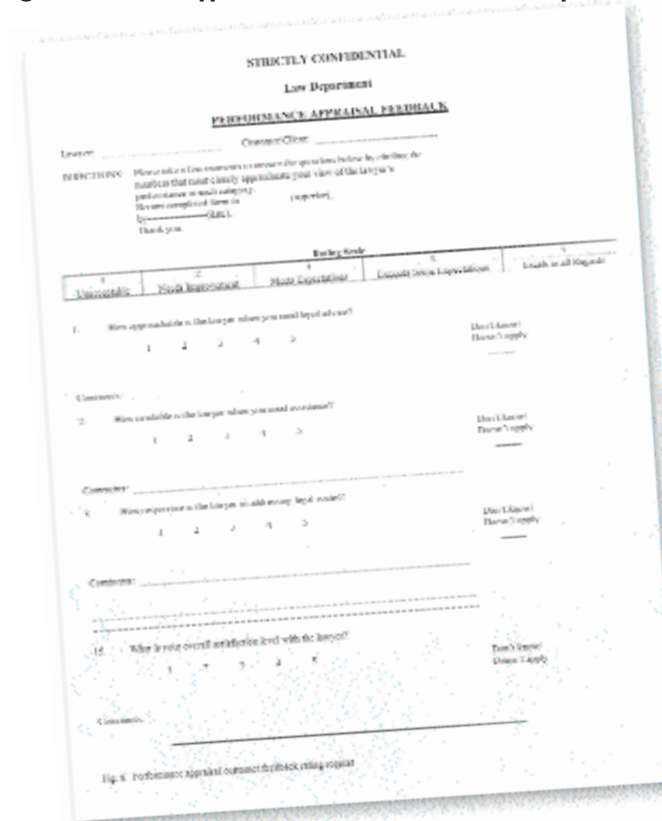


Fig. 8. Performance appraisal customer feedback rating request

Rating Bias

No matter what evaluation tool(s) you choose, you will want to guard against rating bias. Your biases can help to perpetuate employees' self-fulfilling prophecies, enabling those who have performed well to view themselves as good performers and to continue to perform well, but also enabling those who have performed poorly to consider themselves below-average performers and to continue to perform as such. Rating errors and bias, which can be overt or subtle, result when reviewers place disproportionate emphasis on one incident of

an employee's performance over another or overrate or underrate staff because of certain preconceived, prejudicial notions.²⁰ A full discussion of rating errors and bias is beyond the scope of this article, but you will want to become familiar with the most common types.

CONDUCTING THE APPRAISAL INTERVIEW

A month or so before the appraisal meeting, you will want to send out the feedback memo and/or form to customers and a request for the staff member to complete a self-appraisal. Two weeks before the appraisal, you should review all of the customer feedback and self-appraisal forms, any critical incidents that you may have written, and any notes that you may have taken while continuously monitoring a lawyer's progress and plan the appraisal meeting. It is a good idea to jot down notes for yourself about the appraisal forms you have received so that you can provide accurate information without disclosing the sources.

Some of the goals of your appraisal meeting will be to discuss performance during the appraisal period, share customer feedback, and set forth a plan to address any development needs. To ensure an effective appraisal interview, try to keep in mind the following basic points.

First, you should allot sufficient discussion time so that you do not feel rushed. To avoid interruptions, you may want to use a conference room instead of your office. Members of your legal team will respond better to the appraisal if they see that you take it seriously and are willing to commit time and effort to it.

Second, it is always a good idea to begin the meeting by putting the staff member at ease. If you articulate strengths and achievements early in the discussion, you are more likely to have a productive session. Always discuss problems that are affecting a lawyer's performance in a constructive manner, showing your interest in helping him or her to improve and thrive in the job. When discussing both accomplishments and performance problems, provide the third-party feedback that you have collected. And remember the caveat to keep your sources confidential and anonymous.

Performance discussions can be sensitive, so it is important that you avoid confrontation. Whatever you do, do not lecture. Your appraisals should be interactive, not one-sided. Provide staff members plenty of time to share their thoughts and input.²¹

Rating Errors/Rating Bias

The most common types of rating bias are as follows:*

- **Halo Effect:** allowing a favorable impression of one incident or personal trait to disproportionately influence overall rating.
- **Pitchfork Effect:** permitting a negative impression of one incident or trait to disproportionately influence overall rating.
- **Recency Effect:** allowing the most recent performance to disproportionately influence overall rating.
- **Central Tendency Effect:** exhibiting a tendency to rate all staff members in the middle.
- **Length of Service Bias:** exhibiting a tendency to rate long-term employees based on their past performance.
- **Competition Rating:** having a tendency to refuse to give a subordinate a higher rating than one a manager has received.
- **Jealous Rating:** having a tendency to underrate based solely on personal feelings.
- **Demanding Rating:** exhibiting a tendency to underrate because of your own unrealistically high standards.

*See Michele Whitham, *Defining the Job: Understanding Job Descriptions*, in 1 DRAFTING EMPLOYMENT DOCUMENTS IN MASSACHUSETTS 7, 7.3 (Mass. Cont. Legal Educ., 1997); see Nathan Aaron Rosen, *Performance Appraisals and Staff Evaluations: A Reemerging Management Tool or a Legal Minefield*, in MANAGING THE PRIVATE LAW LIBRARY: MANAGING IN A CHANGING ECONOMY 18, 23 (Practising Law Inst., Oct. 1993).

This interview is a good time for you to hone your listening skills and to observe nonverbal communication closely.²²

Most staff members, even those who are the most apprehensive, will more likely view the appraisal as worthwhile if they believe you are committed to helping them achieve their goals and if you come across as honest and sincere. Imagine how disheartening it must be for a staff member to hear the boss say that he had obtained customer feedback by calling the primary customer five minutes before the appraisal to get a read on how the lawyer was doing, for the boss to rush through the

appraisal meeting and be unable to make eye contact, or for the boss to prevent the staff member from sharing his or her own thoughts on performance. In addition to being prepared, strive to make the appraisal substantive.

Before concluding the appraisal meeting, you should discuss a future action plan that lists about three training or developmental needs. If applicable, these needs could include career-development items. The plan that you work up with a staff lawyer should indicate specifically what action or activity you want the lawyer to accomplish and a reasonable time period for its completion.

In many companies, managers complete the appraisal form before the appraisal meeting/interview and give it to the staff member at the meeting. You may find it more effective, however, to complete the form after the appraisal meeting so that the staff member can feel that he or she is more a part of the process. If you do not use a form, you can draft a narrative summary of the appraisal discussions. Whether the appraisal document is a form or a narrative, the lawyer you are evaluating should receive a copy of it after both of you have signed it.

No performance evaluation should contain big surprises. By making the appraisal process continuous and ongoing, you can eliminate the element of surprise. Periodic meetings—not full-fledged appraisals—with staff to discuss how things are going keep the lines of communication open and help you to monitor progress throughout the year. The appraisal should not be the sole means of communicating with staff members about their jobs and their performance. Scheduling periodic catch-up meetings with staff can be very effective.

Ongoing coaching and counseling of staff can also help you to reinforce good performance. You can both shape and encourage changes in performance. In its simplest form, coaching provides continuous feedback. Without it, new lawyers may have a difficult time increasing the depth and breadth of their subject-matter skills. More advanced lawyers may need coaching and counseling to improve their communication, interpersonal, and/or leadership skills.

Give feedback in as nonthreatening a manner as possible, allowing the lawyer to speak freely, ask questions, and bounce ideas and thoughts off you. When you are coaching, provide balanced criticism. Too much negative comment can be demoralizing and discouraging. And if you fail to notice or recognize an outstanding or even an above-average performance,

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- Marilyn D. Jackson, *Law Firm Management: Rating Performance*, 75 A.B.A.J. 88 (Nov. 1989).
- *How to Make the Grade In-House* in CORPORATE LEGAL TIMES, 34 (May 1997).
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- Eleanor R. Nelson, *Forum on Training: The Performance Appraisal System: A Training Tool to Tap Legal Talent*, in LAWYER HIRING AND TRAINING REPORT, 4 (July 1990).
- Sample Attorney Appraisal Form
www.acca.com/protected/legres/perfapp/psi.html
- Jack Zigon, *Performance Appraisal Lessons from Thirteen Years in the Trenches* (visited June 6, 2000)
www.zigonperf.com/articles/lessons.htm
- Joan Wagner Zinober, *Human Capital: Coaching & Development for Fun and Profit*, in LAW PRACTICE MANAGEMENT, 45 (May/June 1999).

you will fail to reinforce it, and it may not occur again. If you provide only praise, however, and ignore deficiencies, the likelihood of a staff member improving his or her performance is slim. Bottom line: Too much of anything will not work well over the long term.

CONCLUSION

Performance evaluations need not be dreaded, irrelevant exercises of form over substance. They do not have to zap your time or bury you in paperwork. Rather, you can use a conscientiously planned and effectively implemented evaluation process as a powerful management tool to help you align the law department's service delivery with the needs of your organization. The process can also further your legal team's professional development.

In developing a performance evaluation system that works for your company and staff, you need to remember a few fundamentals. First, what is important gets evaluated. Second, many types of evaluation tools exist, but no tool is perfect. Be creative. Combine tools if the resulting system would benefit your department. The evaluation tool, alone, however, does not necessarily constitute effective performance evaluation because an appraisal is a continuous, ongoing process, not just a report card. The most effective systems include employee self-appraisal, feedback from a variety of sources, an interactive appraisal meeting, a future action plan, and coaching/counseling. It is up to you, as the manager, to deliver all of these elements. Your staff will thank you for the effort. And your legal department may just become the highly effective, efficient, and productive team you have envisioned. Such a development certainly would not hurt you when it comes time for your own performance evaluation. ■

NOTES

1. See Nathan Aaron Rosen, *Performance Appraisals and Staff Evaluations: A Reemerging Management Tool or a Legal Minefield*, in *MANAGING THE PRIVATE LAW LIBRARY: MANAGING IN A CHANGING ECONOMY* 18, 20 (Practising Law Inst., Oct. 1993).
2. In 1992, I chaired a performance management task force for one of my former employers. The task force was charged with making recommendations to improve the company's performance management system. As part of our research, we conducted a survey of approximately 1500 employees and a group of middle and senior managers. We also conducted personal interviews of executive management. The data reflected a wide disparity between managers' and employees' perceptions regarding whether adequate feedback was provided to employees concerning their performance and whether managers' expectations were adequately communicated. Secondary research confirmed that these disparities were common in a number of studies.
3. Unless performance is so poor that it is unacceptable, all appraisals should be balanced, containing both positive and constructive comments. Although top performers may have no weaknesses that need strengthening, they may have developmental needs to prepare them for taking the next step in their career paths and/or for supervising other staff in the future.
4. See Archer North & Assoc., *Archer North's Performance Appraisal—The Complete Online Guide* (visited June 6, 2000) www.performance-appraisal.com/intro/htm.
5. *Id.* See also Archer North & Assoc., at www.performance-appraisal.com/reward.htm.
6. See Archer North & Assoc., *supra* note 4, at www.performance-appraisal.com/basic.htm.
7. See Michele Whitham, *Defining the Job: Understanding Job Descriptions*, in 1 *DRAFTING EMPLOYMENT DOCUMENTS IN MASSACHUSETTS* 7, 7.3 (Mass. Cont. Legal Educ., 1997).
8. Changing a culture in any department or entity is a challenging endeavor that involves many dimensions. The performance evaluation system can be very effective at reinforcing the various aspects of the change initiative.
9. See Whitham, *supra* note 7, at 7.2; see Rosen, *supra* note 1, at 27.
10. See Archer North & Assoc., *supra* note 4, at www.performance-appraisal.com/ratings.htm.
11. William S. Swan and Phillip Margulies, *HOW TO DO A SUPERIOR PERFORMANCE APPRAISAL* 22 (1991).
12. *Id.* at 25-27.
13. *Id.* at 23-25.
14. See Archer North & Assoc., *supra* note 4, at www.performance-appraisal.com/results.htm.
15. See Archer North & Assoc., *supra* note 4, at www.performance-appraisal.com/essay.htm; see also Swan, *supra* note 11, at 19-21.
16. Those who do thoughtful and analytical self-appraisals often gain increased self-awareness and insight. Staff members (even those the manager thinks he or she knows very well) often feel more comfortable expressing certain thoughts or feelings in writing than in person. If taken seriously, the lawyer can gain much from the self-appraisal process.
17. See Rosen, *supra* note 1, at 29.
18. See *id.* at 28.
19. See *id.* at 29.
20. As managers better understand their own biases, they will be better able to reduce them. This understanding is more apt to occur if managers themselves are evaluated on how well they supervise, appraise, and develop their staffs.
21. A mistake many managers make is talking too much during the appraisal meeting. The most effective appraisals are interactive.
22. See Rosen, *supra* note 1, at 30.

Excerpted from ACCA's "Recruiting and Retaining In-house Staff" InfoPAK
Produced by The Affiliates at the direction of the American Corporate Counsel Association

I. Recruiting, Hiring and Managing: An Overview

Attracting qualified professionals and motivating them to give their best are top concerns for today's corporate legal departments. These offices must locate attorneys, paralegals and administrative staff with the right expertise to address the changing array of legal issues that companies face. And once a first-rate team is assembled, general counsel and supervisors must encourage them to strive for peak performance and to work effectively together to accomplish common goals.

Despite your best efforts, sometimes you'll be faced with problem employees or other difficult situations. Knowing how to promptly and appropriately react allows you to minimize the impact of adverse circumstances on your staff. This InfoPAK offers some tips on how to successfully recruit, hire and manage employees.

Following is a summary of the areas we'll cover in detail:

1. Recruiting Top Talent

Before you begin the hiring process, you should have a comprehensive recruiting strategy in place. This involves forecasting possible workload peaks and valleys, which will help you decide the type of employee required -- full-time, part-time or project -- or whether you even need a new hire at all. After creating a plan, prepare a job description and research compensation trends in your area.

2. Hiring the Best People

A well-prepared job description can help you evaluate the quality of the resumes you receive. When you've decided whom you would like to interview, the job description can also assist you in developing questions to ask during these meetings. Once you have a top candidate for the position, be sure to check references thoroughly in accordance with your company's policies and/or procedures. And don't delay too long in extending an offer. Once new hires are on board, provide a proper orientation so they can hit the ground running.

3. Motivating and Managing People

Sustaining your team's productivity levels and minimizing turnover requires that you effectively manage and inspire employees to give their very best. Providing a supportive work environment that offers open communication and honest feedback are among the best ways to elicit peak performance from your legal staff.

4. Handling Difficult Situations

Even the strongest companies can face difficult times that make staff reductions necessary. And managers who employ the best hiring strategies and supervisory styles are not immune to the problems presented by underperforming team members. How you deal with a variety of challenging workplace situation — including layoffs and terminating employees — will determine whether you're able to protect your company as well as the morale of the rest of your team.

II. Recruiting Top Talent

A. Determining Your Staffing Needs

As corporate legal departments attempt to address rising workloads while also containing human resources costs, they're often faced with the challenge of doing more with less. There is an alternative, however, and it's called strategic staffing.

This approach begins with reassessing your employment requirements in terms of your department's long-term objectives. The next step involves satisfying those needs with a well-chosen mix of full-time and project legal professionals. With this process, you don't become locked into maintaining additional staff you may not need regularly. Instead, you turn a portion of your largest fixed cost — labor — into a variable cost that is tied to your changing workloads. This flexibility can give you a significant competitive advantage. Strategic staffing also protects the jobs of full-time employees by helping you avoid a demoralizing cycle of overhiring, layoffs and costly rehiring when conditions change again.

1. Filling Needs, Not Desks

As caseloads increase and deadlines loom, many hiring managers and administrators respond by immediately attempting to fill job vacancies or create new positions. A well-planned hiring process can help you keep up with the rapid pace of change within organizations today. To cost-effectively maintain access to top legal talent, try to look beyond the "one person, one job" approach.

When a staff member leaves, don't automatically assume you must replace him or her with another full-time professional with the very same qualifications. Examine how the work may have changed since the last person that held the position was hired: Are new skills and abilities now needed? Also consider whether some of the job responsibilities could be redistributed among existing staff. Duties that must be performed only occasionally can be assigned to a qualified project professional.

2. Initiating a Strategic Staffing Plan

After you've determined the staffing needs for the position in question, step back and conduct a comprehensive analysis of your entire department's employment trends for the past year. By identifying workload peaks and valleys, you can better plan for upcoming demands.

While a full-scale staffing evaluation for your department is recommended, you may already know how well your staffing plan is working without doing a formal analysis. The indications are obvious. Low morale, missed deadlines and increased absenteeism are danger signs that your team is understaffed. If that's the case, a strategic staffing plan -- carefully thought-out and executed -- should be your first priority.

3. Deciding on the Kind of Help You Need

Once you've determined that a strategic staffing plan can help you achieve maximum productivity, take a look at the different types of temporary professionals available:

- *Pinch hitters* fill in during employee absences, providing assistance during peak work periods. They can also help you bridge the gap during job vacancies resulting from an extended job search or hiring freeze.
- *Specialized experts* include professionals with skills that don't exist internally who can help with specific new initiatives.
- *Professionals for special projects* can work with full-time staff or with technical experts on one-time tasks, such as automated litigation support for a particular case.

4. Monitoring Your Staffing Activities

Strategic staffing is a year-round effort. Once you've put a plan into action, you will still need to regularly reassess your human resources needs. This allows you to make any necessary adjustments, such as utilizing paralegal project professionals in new areas if you find they have additional knowledge of which you were previously unaware.

Talk to your full-time staff often about how project professionals are working out. Are they making a difference in workloads? Members of your team who are closest to the projects are obviously in the best position to offer this feedback.

If intelligently planned, implemented and monitored, a strategic staffing approach offers your legal department considerable flexibility and provides a cost-effective

way to deal with fluctuating workloads while maintaining your full-time team's morale and productivity.

B. Using Competency Modeling

Whether you decide on full-time, part-time or project professionals, what qualities should you seek in staff members? Many firms today are using a process called "competency modeling" to help target the characteristics that distinguish top performers. This information can then be used in the hiring process to evaluate prospective employees.

Competency modeling involves determining, as accurately as possible, what combination of traits and abilities are required for professionals to excel in their jobs. This process not only helps you hire the most qualified legal staff, but it also uncovers areas in which employee training might be useful. Following are several strategies designed to help you build an effective competency model.

1. Interview Your Top Talent

Nearly every firm employs several stand-outs who consistently outperform their peers. For example, if you're a senior corporate counsel overseeing 12 employees, you may have a particular staff member who has become the troubleshooter by default. Coworkers rely on his or her interpersonal skills and analytical abilities when they need to resolve an issue -- two traits to incorporate in your model. The key to competency modeling is identifying all of the traits inherent in extraordinary performers.

One of the easiest ways to gain this insight is to observe your outstanding employees directly. As you do, ask yourself:

- What, if any, special skills do they possess?
- What personality traits do they share?
- What common attitudes and beliefs do they bring to work?
- Typically, patterns will emerge, and these are the qualities you should incorporate into your competency model.

2. Talk to Clients and Vendors

Your contacts within the company and the vendors you use can also be sources of valuable information. Seek input from those with whom staff members interact on a regular basis. You may find they value a particular employee because he or she listens carefully to their requests and often is able to resolve issues

independently, rather than passing problems on to others. Based on that information, you would incorporate problem-solving ability, listening skills and accountability into your competency model.

A fully developed competency model will help to enhance the talents of your current employees. Weigh their strengths against those you've found to be most important to your company's success. If you find a gap that applies to a significant number of workers, invest in additional training. It can be an excellent way to build and promote leadership from within the organization.

C. Writing a Job Description

A detailed job description should be developed well in advance of the recruitment process. As you receive and review resumes, the job description will help you narrow the field. And when the candidate you select comes on board, you will be able to define exactly what's expected on the job.

A well-written job description should include the following:

- *Primary responsibilities.* Outlines the main duties of the position.
- *Secondary responsibilities.* Describes periodic, rather than daily, duties (i.e., "train new staff members").
- *Experience required.* Specifies type and amount of experience. For example, does the candidate need to be familiar with a specific practice area and industry (i.e., extensive knowledge of intellectual property for software manufacturing) or have a minimum number of years' experience in the field?
- *Compensation.* Establishes a starting salary range for the position.
- *Preferred educational background.* Specifies degrees, certifications and other credentials sought. (Be careful not to turn this item into a "deal-breaker" later in the hiring process. Credentials can be a useful screening device, but their absence should not prevent you from hiring an otherwise qualified, experienced prospect.)

Sample Job Description

Position/Title: Associate Counsel

Department: Legal

Reports to: General Counsel

Key responsibilities:

- Real estate attorney requiring highly technical legal skills as well as substantial business acumen.
- Responsible for real estate and corporate filings, closings and due diligence.
- Attorney must be able to work as part of a team in a flexible and dynamic environment.
- Management and supervisory skills ideal.
- Position requires travel.

Candidate requirements:

- Must be admitted to the bar of Virginia.
- Minimum 4-6 years general legal experience required, preferably in-house or with a large or midsized law firm.
- Minimum 3 years working in real estate law preferred.
- Candidate must have graduated from a top-tier law school and/or graduated in the top of his/her class.

D. Researching the Market

A prerequisite for successful recruiting is a competitive compensation package. Managers who have access to the most up-to-date information on salaries and other incentives will be best positioned to structure an attractive employment offer.

1. Comparing Salaries

While legal professionals consider many different factors when deciding among job offers, a competitive base salary is still key to recruiting top talent. Ideally, you should offer salaries that keep pace with — or slightly exceed — current industry and local market standards.

If you're not sure what these standards are, contact specialized recruiters or consult industry surveys for information about salary ranges for legal personnel at other companies of comparable size in your area. *The Affiliates Salary Guide* features compensation levels for a wide range of in-house legal department positions as well as insight into job market trends.

Other ways to benchmark your compensation levels include:

- U.S. Bureau of Labor Statistics Occupational Outlook Handbook -- available online at www.bls.gov
- Reports prepared by industry publications and professional

associations (online and in libraries)

Competitive compensation is not only an essential element of successful recruiting and hiring; it's critical to effective, ongoing staff management. Compensation has a significant effect on how employees feel about their jobs; therefore, salary levels should be periodically reevaluated to ensure they are keeping pace with the market.

2. Attracting Hard-To-Find Talent

If you're looking for expertise in specialty areas currently in high demand, you may have to be more flexible when planning compensation, benefits and perks. Knowledge of intellectual property, for example, continues to be sought by many corporate legal departments. That means competition for these experienced professionals is likely to be more intense and you may have to pay a little more.

What should you offer to attract hard-to-find talent? Signing bonuses may be used as an added incentive for senior-level professionals. While these are most often thought of as recruitment tools, they can also aid in retention since they usually require employees to remain with a firm for a specified length of time. Other incentives to discuss with top candidates include company stock options or equity incentives; retirement programs; employee health care plans; on-site benefits such as a childcare center, cafeteria and workout facilities; and other employee "perks" such as monthly luncheons or periodic off-site functions.

These and other elements are part of your staff's overall compensation and should be presented to prospective candidates, particularly those with in-demand skills and experience.

E. Making Recruitment an Ongoing Commitment

Once you've identified the skills and qualities you need, your next step is to locate candidates who possess them -- through a strong and ongoing recruitment program. Remember that recruiting is more about quality than quantity. Just because you attract a large number of resumes doesn't mean all applicants are equally qualified. Focus on identifying professionals with the skills you need most.

1. Recruiting is a Year-round Job

Many hiring managers view the recruitment process to be an as-needed activity. The most successful recruiting efforts, however, require an ongoing commitment that involves continually reassessing your needs and searching for top talent. In fact, companies known for their ability to attract and hire quality employees are always recruiting -- even when they have no immediate openings.

2. Identifying Candidate Sources

There are a number of ways to recruit the talent you need for your legal department. Some of the more traditional include:

- *Classified advertising:* Evaluate the cost versus the benefit of newspaper or business publication classified ads. These advertisements can reach a large audience, but, in the process, may attract a great number of unqualified candidates you'll have to evaluate.
- *Employee referrals:* Encourage employees to refer friends and relatives by offering incentives such as bonuses or extra vacation days.
- *Network referrals:* Attend professional association events regularly to meet potential new hires. Ask others in your network for candidate referrals. Be as specific as possible when you're telling people what you're looking for, and make sure you trust the source of a recommendation.

3. Going Online

In addition to traditional recruiting methods, the Internet has become an invaluable tool for sourcing qualified legal professionals. The ease of posting employment openings, the relatively low cost of advertising and the speed of candidate response has many legal administrators and managers devoting more time than ever before to recruiting online.

As with other tools, the Internet is not without its limitations as a means of attracting qualified candidates. For example, firms listing opportunities on major job boards may receive applications from a much wider geographic region — and sometimes from less-qualified applicants — requiring additional sorting and review. Firms are also noting that some candidates who post their resumes online may be more passive job seekers; they merely want to “test the waters” and wait for results.

If you are using the Internet in your recruiting efforts, here are some tips for increasing your success in locating candidates:

- *Make your company's website candidate-friendly.* Are job opportunities at your office easy to find? Can candidates apply online? What message do applicants receive once they've submitted their resumes? All of these factors play a role in the number of job seekers visiting your site and the type of first impression your firm presents.

- *Explain what's unique about the position(s) you're advertising.* What exactly about this role is exciting and challenging? What type of person would be most likely to thrive in your company?
- *"Sell" the firm as well as the position.* Unless your company is a household name, be sure to include a sentence or two describing your business. If your firm has just celebrated a major milestone or received positive media coverage or industry recognition, briefly mention that as well. What innovative employee benefits do you provide? Differentiating your organization from the thousands of others recruiting online will help you build name recognition.
- *Network on industry sites.* Become familiar with websites of bar and professional associations as well as others targeted to the legal field. These sites can provide valuable opportunities for broadening your reach in the legal community and getting to know a group's officers and members, many of whom may be qualified job candidates. Often these sites will post job openings for a nominal fee.
- *Familiarize yourself with recruiter sites.* Whereas major job boards guarantee you'll reach a wide spectrum of job seekers, recruiter sites can expose your employment openings to targeted legal professionals in specific practice areas or industries.

4. Adding Flexibility

Staffing a position on a temporary or temp-to-hire basis can provide you with greater flexibility during your decision-making process. In addition, this arrangement gives you a chance to evaluate a candidate over an extended period of time to determine if he or she is a potential fit for a full-time position.

5. Maximizing Your Efforts

Make the most of the time you invest in your recruitment program by keeping the resumes of all candidates on file after interviews — even those who don't get the job. You never know when your requirements will change and you'll need expertise you weren't originally seeking.

6. Working with Recruiting Firms

In addition to the recruiting sources discussed above, using specialized staffing firms can help you fine-tune your search. You'll gain access to a large pool of qualified applicants and avoid the administrative details of placing ads and preliminary screening. If you decide to adopt this approach, here are some suggestions for finding the best firm:

- *Check out recruiters personally.* While online and newspaper sources can be helpful, firms offering a personal approach to service can save you time and money in the long run because they can give individualized attention to your specific needs. To take advantage of this benefit, make in-person visits to firms that specialize in locating legal professionals with the experience and skills you require.
- *Be explicit about your needs.* When speaking to your account executive, make sure he or she understands your business, your corporate culture and your exact requirements as a legal department.
- *Clarify fee arrangements.* Ensure that you have a clear understanding of how your recruiter charges, and make sure any arrangement you make is in writing.
- *Express your concerns openly.* If you aren't happy about any aspect of the arrangement, clearly explain your concerns to the recruiter.

F. Promoting From Within

If you're staffing strategically, you've likely already considered internal resources before you began the recruitment and hiring process. If you have not, take a moment to consider the advantages of promoting from within.

Internal promotions are proof to your employees that hard work and excellence are rewarded in the company. But promoting from within requires careful planning. You need to actively groom promising employees to take on new responsibilities and assume greater authority. Include your best performers as frequently as possible in high-level meetings outside the legal department. This can help them build skills in strategy development, and it offers them an opportunity to observe firsthand the management style in your company.

To expand your employees' leadership abilities, consider appointing promising individuals to chair key committees or task forces. Most importantly, make yourself available to them as often as possible to offer tips on how you approach managing other people, prioritizing your time and interacting with colleagues in other departments to achieve overall company objectives.

G. Writing the Right Job Ad

Classified advertisements, whether in print or online, are probably the most widely used recruiting method in business today. If you expect to attract candidates who best match the qualities you're seeking for a particular position, invest some time in writing your

employment listings. Refer to the job description you've created and try to summarize it, outlining key responsibilities and required skills.

While advertising costs may limit the length of your ads, you should include enough information to make them as targeted as possible. Be straightforward; if you're too general, you'll increase work for yourself in evaluating unqualified candidates.

Here are some elements of a well-written job ad:

- *Headline.* The headline is almost always the job title.
- *Job information.* Include a line or two about the general duties and responsibilities of the job. Whenever possible, use the active voice in your description.
- *Company information.* Always include a few words about what your company does.
- *Qualifications and hiring criteria.* Specify the level of education and experience required to do the job.
- *How to respond.* Let applicants know the best way to reach you: phone, fax, e-mail, etc.

Here is an example of an ad that takes into consideration these criteria:

LEGAL SECRETARY, CORPORATE (IN-HOUSE)

Busy, expanding legal department of large insurance corporation seeks capable, well-organized individual to support three in-house lawyers. Responsibilities include producing correspondence, maintaining attorney schedules and client files, and updating publications. Position requires dynamic individual who can work independently and multi-task with ease. High school diploma or GED required; BA or AA (associate of arts) degree preferred. Must be proficient in Windows and Microsoft Office. Competitive salary and benefits offered. Mail or fax resume to:

III. Hiring the Best People

A. Reviewing a Resume

With a little preparation and a discerning eye, you can reduce the time you spend scanning resumes and ensure you schedule interviews with only the most qualified legal professionals. Here are some tips:

- *Define requirements.* Have a detailed job description on hand before you begin. It should focus on skills and expertise that will truly impact performance. (See “*Writing a Job Description*,” p. 6). While you will no doubt have a fairly clear idea of what the position requires, this document can keep you on track as you review resumes. It can serve as your “filter” and help you narrow the field.
- *Review styles.* Resumes typically fall into two categories, chronological or functional, and it’s important to know what to look for in each type. The classic resume is organized chronologically, with most recent work experience listed first. Job responsibilities are then described after each position listed. An alternative is the functional resume, wherein information is organized according to individual skills, with experience and abilities most relevant to a given position listed first.
 - When reviewing a chronological resume, pay close attention to dates of employment and any gaps in work history. For example, a resume that states a position was held in “1996” does not clearly indicate the length of employment. The job could have lasted one day or up to 12 months.
 - With functional resumes, be on guard for vague job descriptions or failure to list actual positions held. This can indicate that the job seeker hasn’t acquired enough relevant work experience.
- *Read between the lines.* A resume should be well-written and free of any typos, misspellings and grammatical errors. Candidates who take the time to produce a clean and professional resume demonstrate attention to detail and a desire to make a favorable impression. Also be on the lookout for such vague phrases as “exposure to,” “familiar with” or other qualifiers. These often indicate the candidate lacks hands-on experience.
- *Follow up with phone calls.* Even after carefully reviewing resumes, you may still have doubts about which candidates are suitable for in-person interviews. Consider conducting brief telephone calls to narrow the field. This additional step

can save you valuable time: An unproductive phone conversation may take only five minutes, but an unnecessary in-person meeting could require an hour or more of your day.

B Effective Interviewing

The personal interview is one of the most — if not *the* most — critical parts of the hiring process. While a resume, cover letter and phone conversation can offer insights into a candidate's qualities, a one-on-one meeting allows you to observe an individual's demeanor, confidence level and interpersonal skills. Here are some suggestions to help you make the most of an in-person job interview:

- *Prepare in advance.* Develop an approach you'll use with all of your candidates. Rank key factors required for the job in order of importance. Also, prepare a list of specific questions that will allow you to explore candidates' problem-solving abilities, legal experience, practice area expertise, interpersonal skills and overall business acumen. Compare these qualities to the competency model you developed. (See "Using Competency Modeling," p. 4).
- *Ask the right questions.* To assess the candidate's work style and compatibility with your firm's culture, vary the style of your questions. Ask closed-ended, factual ones ("How many years did you work for Firm A?"); open-ended questions ("Can you describe your major accomplishments?"); and hypothetical, job-related scenarios ("How would you handle a situation in which one of your employees complains that someone else took credit for his ideas?"). Develop interview questions that specifically address key competencies you've identified from your model, such as problem-solving or strategic planning. With pre-established guidelines in place, you'll increase your odds of making the best hiring decisions.
- *Make a pitch for your firm.* Gone are the days when only the candidate had to project a good image. Job seekers today want to know what your organization has to offer them, so it's critical to give a positive first impression. Employees are looking for firms that offer progressive compensation packages and corporate cultures that foster career growth and support a balance between work and personal demands. Be sure to point out specific programs your firm offers when meeting with candidates.
- *Rephrase questions to get complete answers.* If an applicant's response to your question is vague or insufficient, don't be afraid to ask it in a different way. For example, you could rephrase "Why did you leave your previous position?" to "What types of opportunities are you looking for that your last job did not provide?"

- *Pay attention.* Fight the urge to formulate your next question while the candidate is still responding to the last one. Actively listen to the answers provided to pick up on bits of information that might otherwise escape notice.
- *Write it down.* Memory is unreliable, so it's best to take notes in an unobtrusive way during the interview. Don't try to transcribe everything the candidate says word-for-word; jotting down the highlights should be sufficient. You may also want to write more comprehensive notes immediately after the interview. In addition, try to follow a consistent format in your notes. As you likely will be interviewing a number of candidates, this will help you to more easily compare the strengths and weaknesses of prospective employees.
- *Don't rush to judgment.* Try to avoid forming an opinion too quickly about a candidate. Wait until after the interview to evaluate responses and make interpretations.
- *End on a positive note.* Once you feel you have enough information, end the interview politely. Thank the applicant for his or her time and interest, and briefly mention subsequent steps (i.e., "We'll begin the second round of interviews within the next couple of weeks").

C. The Do's and Don'ts of Interviewing

To be most effective, the interview process should be streamlined, efficient and uniform. Here's some additional advice that can help you maximize your meetings with prospective hires.

1. Do:
 - *Make your candidate comfortable.* Start by engaging in small talk. You can gain insight into the candidate's personality and also put him or her at ease, increasing the likelihood that you'll receive candid responses.
 - *Double-check answers.* Ask the candidate many of the same questions that you plan to ask his or her references in order to compare the answers. If a reference tells you something significantly different than what the applicant tells you, follow up with the candidate for an explanation. (See "*Checking References*," p. 16).
 - *Create a standard rating system.* Use a uniform system to evaluate all candidates. You can even use a form that lists the hiring criteria and how each applicant rates on a scale of 0 to 5. Don't forget to measure both strengths and weaknesses.

2. Don't:

- *Fall victim to the "halo effect."* Don't allow one aspect of a candidate's background — such as the fact that you went to the same school or that the applicant worked with someone famous — blind you to reasons he or she may not be right for the job.
- *Overemphasize interview performance.* Don't attach undue importance to how well the person interviewed. Legal professionals who interview well may not necessarily be the best people for the job — they may just be well-practiced at interviewing.
- *Let too many "cooks" spoil the hiring decision.* Don't get too many people involved in making the final decision. If you hire "by committee," you may not find the best person for the position but rather a candidate who satisfies everyone in some way yet is not right for the job.

D. **Checking References**

It can be tempting to rush through the reference-checking process — or bypass it altogether — in order to make a quick hire. While it's important not to delay making the job offer and risk losing the candidate to someone else, reference checking is still a critical tool for evaluating prospective legal professionals.

Legal issues have compelled many firms to institute policies in which they offer no more candidate information than dates of employment, title and salary. This presents a new set of challenges in the reference-checking process. However, with a little preparation and persistence you can glean valuable insights from a candidate's references.

1. Announce Your Intention

Making a thorough reference check a precondition of hiring can improve your odds of getting quality responses. This is perfectly legal as long as the information being verified is job-related and does not violate discrimination laws.

Inform candidates early in the process that if they become finalists for the position, you will be calling their references. They will likely arrange for cooperative individuals — and applicants with something to hide may voluntarily remove themselves from consideration. It's wise to also get the candidate's written approval — not only to check the references provided, but also to pursue additional references of your choosing who might provide further insight.

2. A Do-It-Yourself Project

Handle the reference-checking process yourself. You know better than anyone else the experience, skills and personality that will best fit the job. Additionally,

by speaking with the candidate's former managers — your counterparts — you're more likely to develop some camaraderie, enhancing your chances of gaining useful information.

3. What Should I Ask?

Start your inquiry with the basics: Ask for confirmation of date of hire, title, job duties, salary and previous place of employment. If the reference is receptive, ask for further information, such as the candidate's strengths and weaknesses, and his or her ability to work as part of a team. Also inquire whether the contact would rehire the applicant if the opportunity arose.

Keep in mind that the same discrimination laws that apply to interviewing also apply to reference checking, so you may not ask about marital status, age, disabilities, religion, ethnicity, sexual orientation or other personal issues.

4. Getting 'Real' References

If you encounter a negative reference among several outstanding ones, continue checking to determine if this is an isolated incident or a sign that the candidate may not be a good fit for the position. Similarly, if you suspect the reference may be a "fake" (i.e., your calls reach only voice mail or an answering machine), call the firm's main switchboard to see if the person is in fact employed there, and ask for his or her title. It's not unheard of for a former coworker to pretend to be a past supervisor.

5. Going Beyond Reference Checks

In addition to checking references, some employers administer drug tests, require medical exams or conduct criminal background checks. Whether or not you decide to take these additional steps depends on the nature of your business and the type of position that is being filled. Before making any such moves, however, be sure to consult an employment or labor law specialist.

E. Extending the Offer

While it's important to be thorough when evaluating an applicant's skills and experience, don't delay too long once you've identified your first choice. Sometimes a strong candidate is interviewed and evaluated only to be lost because the final hiring decision was slow in coming.

An experienced legal secretary, for example, may receive multiple employment offers before making a final decision, which means there is always a risk he or she may pursue another opportunity if your offer isn't forthcoming. Expediting the selection process will improve your chances of securing the best candidates.

Sample Offer Letter to Prospective Employee

[Date]

[Address]

Re: Terms of Employment

Dear [Potential Employee]:

We are pleased to inform you that after careful consideration [Company Name] (the "Company") has decided to extend this offer of employment. [This decision is made, in part, on the information provided by you in the Company's form of Employment Application.] This letter sets forth the terms of the offer, which, if you accept, will govern your employment.

You will be employed in the position of [Position] and will report to [Name, Position]. Your first day of employment will be on [Date]. Your responsibilities will be as directed by the Company from time to time.

Your compensation will be a salary at the annual rate of \$_____, payable in [weekly, biweekly, monthly] installments; _____ weeks of paid vacation for each full year of employment completed with a maximum period of _____ weeks; and participation in the health and other benefit plans of the Company according to their terms and as may be amended or terminated from time to time.

Our employment relationship will be terminable at will, which means that either you or the Company may terminate your employment at any time and for any reason or for no reason with or without notice (or upon _____ weeks notice for pay in lieu of notice if terminated by the company).

In the event a dispute does arise, this letter, including the validity, interpretation, construction and performance of this letter, shall be governed by and construed in accordance with the substantive laws of the State of [California or other State]. Jurisdiction for resolution of any disputes shall be solely in [State].

[You also will be subject to the Company's Confidentiality and Invention Assignment Agreement, which is enclosed with this letter and must be signed and returned to the Company.] By signing below, you not only accept the terms and conditions of this offer, but also represent to the Company that you are under no obligation or agreement that

would prevent you from becoming an employee of the Company or adversely impact your ability to perform the expected services.

Upon your acceptance, this letter will contain the entire agreement and understanding between you and the Company and supersedes any prior or contemporaneous agreements, understandings, communications, offers, representations, warranties, or commitments by or on behalf of the Company (oral or written). The terms of your employment may in the future be amended, but only through a written document which is signed by both you and, on behalf of the Company, by a duly authorized officer.

If these terms are agreeable to you, please sign and date the letter in the appropriate space at the bottom and return it to [Personnel Department] or [specific person] prior to _____, 20___. We hope you accept this offer and look forward to you coming on board.

Sincerely,

[Company Name]

By:

Title:

Agreed and Accepted:

[Prospective Employee]

Date:

F. Providing Orientation

An employee's first few weeks on the job are especially formative. This is the time when newcomers establish perceptions about the position, coworkers, management and the company itself. That means it's essential to get new hires off to a solid start with a quality orientation.

1. Plan Strategically

The best orientation programs are well-planned, ongoing processes tailored to your firm's corporate culture and its unique employee base. Your objective should be to:

- Clearly define responsibilities of new hires
- Educate new employees on your company's overall mission and business practices
- Provide an overview of policies and procedures, giving new hires a sense of the prevailing culture at your firm
- Ensure employees have the tools they need to be productive
- Engender a sense of camaraderie, collaboration and teamwork

2. Explaining the Corporate Culture

Be sure to include in your orientation an explanation of your corporate culture, especially your core values and how they represent your company. Describe the level of professionalism expected on the job, including the importance you place on ethical behavior. Make it clear what you expect from your employees in their daily activities based on those values.

3. Establishing Expectations

Besides information on your working environment, facilities and corporate policies, the new employee will also want to know how his or her job fits into the big picture. This is where a basic overview of the mission, clients and competitors is valuable. Having the general counsel or a senior attorney on hand to provide this summary can underscore its value.

Individual attention in the first few days is as important as the corporate overview. An employee's orientation should also include some quality one-on-one time with his or her immediate supervisor, who can provide job-specific information and, of course, introductions to those with whom the new hire will work most closely.

To help newcomers achieve a successful start in your department, provide a job description and outline one or two projects they can begin work on right away. Assigning a mentor can help reduce the learning curve and take some of the stress out their first few days. More tenured staff members or attorneys can show new hires the ropes, provide informal introductions to coworkers, answer questions and provide support.

4. An Ongoing Process

For a new employee — who is often inundated with information in his or her first days on the job — orientation spread over several weeks or months may yield more lasting results. After a month or two when professionals have become immersed in their new roles, for example, consider asking them to “shadow” others in the department to learn more about what their colleagues do and how all parties can work together more effectively.

Of course, the most successful orientations are continual. Make sure you maintain the flow of information when new policies are announced or expectations shift. Let your orientation efforts blend seamlessly into ongoing internal communications programs.

IV. Motivating and Managing People

A. A Positive Corporate Culture

Besides financial incentives, the most important motivator for employees to give their best — and to remain satisfied with your company — is your corporate culture. Many businesses are addressing these priorities by revising policies and changing long-held attitudes in order to create a more attractive organizational climate.

While professionals' interest in achieving a better work-life balance has prompted many companies to offer options such as flexible hours, telecommuting and childcare programs, it's the intangible elements of corporate culture that are probably the most important to employees. Your policies regarding open communication, regular recognition and opportunities for intellectual growth, for example, are key influences for legal professionals considering your company and department.

B. Empowering Employees

A firm's competitive edge often lies in the intellectual capital of its staff. Businesses that encourage their employees to be resourceful, exercise creative decision-making and take appropriate risks are more likely to achieve future success. One of the most efficient ways to increase the performance of your staff and your firm is to empower your employees. Taking advantage of the following strategies can significantly increase employee productivity and satisfaction in your office.

1. Encourage Creative Decision Making

Allow employees as much flexibility as possible in order to enhance business processes and achieve project objectives. While everyone assigned to a

particular case or project shares the common goal of a successful outcome, the means to the end may not be the same for everyone. Recognizing this allows you to capitalize on the creativity of your workforce to improve best practices. Specific training on solving problems, making sound decisions and managing time effectively can help prepare your staff for increased responsibility.

2. Provide Necessary Information

Providing employees with the facts necessary to make informed decisions is crucial. Communicate openly about your firm's big picture. Discuss information such as progress on cases and long-term strategies.

Don't forget that exchange of information should work both ways. Encourage your staff members to share their observations, concerns and ideas, and provide a convenient method for them to do so. Regular meetings between employees and management, staff surveys and even a traditional "suggestion box" can be effective. Be sure to respond swiftly to input from employees, since prolonged silence or delay can be discouraging.

3. Allow Room for Error

When people are challenged to become more resourceful and responsible — which inevitably entails risk taking — a certain amount of error will occur. Rather than abandoning empowerment strategies, assess what went wrong. Carefully consider why the mistake occurred and how it might have been prevented. Did the employee have the information necessary to render a good decision? Were others involved in the decision-making process (peers, support staff, etc.)?

Based on your findings, incorporate changes in the employee empowerment process that will prevent problems from reoccurring. Ultimately, empowering your staff members can result in increased department productivity and greater employee satisfaction.

C. Fostering Teamwork

The legal profession requires experts in a wide range of disciplines to work together, not only in person, but on the phone and via the Internet. Your ability to inspire employees to collaborate effectively and seamlessly on projects and activities can add tremendous value to the service your department provides the company.

Explain that, given the collaborative nature of law, credit for successes should go to the team rather than individuals. Nothing is more disruptive to group productivity than an employee who seeks personal credit for an accomplishment that was earned by the efforts of many hardworking people. When exceptional results occur, recognize the

contributions of as many individuals as possible, both in writing and in person. Legal staff will learn from this and use your example to promote a spirit of positive teamwork within their workgroups.

Be prepared to provide assistance at a moment's notice, and make sure others in the department do the same. Unanticipated situations occur continually in the legal profession. While you may not be involved every time, you will be more effective if you and your team maintain a flexible approach when these sudden demands surface. Remember, the better you are at being a team player, the more likely you are to inspire a productive legal staff and office environment.

D. Conducting Performance Appraisals

While many managers regard performance reviews as more of a time-consuming chore than a benefit, developing and conducting employee appraisals can keep your staff focused on their most important objectives, identify areas where training is needed, and further motivate those who excel in their jobs.

Still, successful reviews require careful balancing. You'll want to provide your employees the feedback they need to advance their careers, yet you don't want to damage morale or diminish their enthusiasm. Consider these tips for your next evaluation:

- *Don't make it an annual event.* Provide input to employees throughout the year so there won't be any surprises when it's time for a formal review. If an employee needs to improve in a certain area, for example, don't wait eight months for the formal review to let him or her know. Your immediate feedback will help workers fix the problem behavior before it becomes a habit.
- *Deliver negative feedback with care.* Discussing an individual's weaknesses in a constructive way can be quite a challenge. To keep employees optimistic, provide examples of how to improve in specific areas. This will help them focus better on future success. Be sure to comment on positive attributes as well. Encouragement is the best incentive for improvement.
- *Reinforce company values.* Employees who are clear about expectations and how their daily contributions tie into the business's goals are the most successful in their jobs. Discuss key corporate objectives during the appraisal process to help clarify staff members' roles and how their projects fit into the big picture.
- *Consider self-evaluations.* You may want to ask each staff member to assess his or her own strengths and weaknesses prior to your review. This not only gives them an opportunity to examine their performance and career paths, but also provides you insight into their perceptions and goals. Of course, some

employees may feel awkward completing a self-evaluation because they are worried about rating themselves too highly or too harshly. To help staff members feel more at ease, let them know that any discrepancies can be discussed during the review.

- *Document appraisals in writing.* Whether your company issues standard evaluation forms or you create your own, all comments should be in writing. Cite specific examples to support your assessments.
- *Keep the tone conversational.* Schedule a personal meeting with each employee, and be sure to budget enough time to engage in a two-way dialogue on all topics that need to be covered.
- *Set objectives for the next year.* Make sure individual goals are in line with your department's casework, but also consider a staff member's career path. If an employee has future plans of advancing into an expanded role, for example, then objectives should be geared toward acquiring the skills needed for the type of position envisioned. Discuss options for seminars, classes or other professional development. Your employees should leave the review with several specific goals for the coming year.

VII. Additional Resources

ACCA Docket Articles

Six Sigma: Positioning for Competitive Advantage by Thomas L. Sager and Scott L. Winkelman ACCA Docket January 2001

<http://www.acca.com/protected/pubs/docket/jf01/six.html>

Statistically driven and data intensive, Six Sigma has emerged as the latest and hottest quality initiative within corporate America. Learn how you can apply this strategy for increasing client satisfaction and reducing costs within your legal department.

What Every Law Department Needs: A Performance Evaluation System That Works by Michele S. Gatto ACCA Docket January 2001

<http://www.acca.com/protected/pubs/docket/jf01/what.html>

Are you dreading performance evaluation time in your department? Fear not. Help is at hand. No, we can't tackle them for you, but the samples and advice in this article should go a long way toward helping you achieve your goal.

Getting Closer to the Business: How to Foster Innovation and Value Through Culture and Philosophy by Jeffrey W. Carr and James Lovett ACCA Docket January 2001
<http://www.acca.com/protected/pubs/docket/jf01/getting.html>

Are you looking for ways to improve client service? See how the legal department of one corporation moved its attorneys closer to the business and how, in the process, the corporate legal team earned increased respect among the business managers and enjoyed greater professional job satisfaction.

Using Exercise to Reduce Corporate Law Practice Stress: It's a Marathon, Not a Sprint
ACCA Docket June 2001 <http://www.acca.com/protected/pubs/docket/jj01/stress1.php>

If your life is a whirlwind of business lunches, late hours, and airplane food, try letting a little calm into the storm. Consistent exercise will give you better health, and the focus you need.

The Spirit of Work by Dr. Lance Secretan, ACCA Docket November/ December 2001
<http://www.acca.com/protected/pubs/docket/nd01/spirit1.php>

Are you an old-story leader or a new-story leader? Find out where you stand in the spiritual awakening that is stirring in the workplace and why you should care.

Interviewing Job Applicants: Can I Ask This Question? by James K. Cowan Jrand Laura Effel
ACCA Docket March 2001

<http://www.acca.com/protected/pubs/docket/ma01/interviewpage1.html>

Need help advising nonlegal managers about the questions they should and -- more importantly -- shouldn't ask job candidates? This article provides a handy checklist for them and a discussion of the relevant law for you.

Program Materials

Recruiting, Hiring, and Retaining Employees Program Material Annual Meeting 2001
<http://www.acca.com/education2k1/am/cm/104CD.pdf>

Included are outline with sample employee application, referral and evaluation form and sample questions for interviews.

The employee manual: No policy is not good policy. Program Material Annual Meeting 2001
<http://www.acca.com/education2k1/am/cm/603CD.pdf>

Provides guidelines for drafting employee handbooks; includes model disclaimer language that seeks to preserve the "at-will" employee status.

Teaching Contract Law to Non-Lawyers: Learn Training Methods that Really Work
Program Material Annual Meeting 2001

<http://www.acca.com/education2k1/am/cm/503.pdf>

Includes articles and outline on contract drafting