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Richard Gary
ON MANAGEMENT

20/20 Foresight

Refine your firm's business intake processes now—or regret it later.

Law firms make business intake decisions every day. Although these decisions are often considered routine, they have far-reaching consequences for the long-term viability and success of the enterprise. And at many firms, they have an impact on not only the operating results and risk management profile, but also the compensation of individual partners.

Business intake practices vary widely. At some firms, intake decisions are left to individual partners, who are responsible for addressing conflicts of interest and other relevant issues. Independent approvals for either new clients or new matters for existing clients are not required. At other firms, the intake process has been institutionalized, with detailed written policies and mandatory independent approvals.

Advantages of Institutional Control

Most midsize and larger firms have institutionalized the business intake process by transferring intake decisions from the originating partner to the firm. While this practice affects partner independence, it has clear advantages for the firm as a business enterprise. These advantages include increased focus on business and strategic considerations and reduced exposure to risk of professional liability.

Partners are often concerned that institutional controls will slow down the intake process to an unacceptable degree, but most firms that control the intake process have adopted measures to ensure that these decisions are made in a timely, fair, and uniform manner. Partners at firms with institutional controls rarely complain that the process is too cumbersome or bureaucratic. Rather, they support a process that improves realization and profitability, reduces risk, and strengthens the firm overall.

Intake Policy Elements

Business intake policies should cover four fundamental elements:

- **conflicts of interest;**
- **creditworthiness;**
- **practice expertise and resources; and**
- **desirability of the engagement from a firm policy or strategic perspective.**

Conflicts of Interest. All firms are subject to rules of professional conduct governing both actual and potential conflicts of interest. These rules are generally published and administered by state bar associations pursuant to applicable state law. They protect against the representation of multiple clients with actual or potentially differing interests.

A sound conflicts clearance policy has two key elements—complete information about the client or matter under consideration, and independent review. The firm should identify and clear not only the new client or matter but also all related and adverse parties. And the final resolution of any conflicts issues and the clearance decision itself should be made by someone other than the originating attorney. The personal interests of the originating attorney in attracting new business to the firm, while understandable and important, may be inconsistent with the firm's interests in approaching conflicts from an objective, dispassionate perspective. This is especially so at firms with either subjective or formula-based compensation systems where partners are paid,

Richard Gary is principal of Gary Advisors in Tiburon, Calif., and the former chair of an Am Law 100 firm.
E-mail: rngary@garyadvisors.com.

in substantial part, on the basis of business originations.

Creditworthiness. No firm should accept new work unless it has determined that the client has the financial resources necessary to ensure prompt payment for the firm's services. Ideally, this determination should be made by the firm's chief financial officer or someone acting under his supervision. For an existing client, this involves nothing more than a quick review of the client's current account and payment history. Most firms have a "green list" of clients whose accounts are current and for whom new matters may be opened without a further credit check. For new clients, however, firms should require a recent financial statement and a credit report by Dun & Bradstreet or other reputable information provider.

Practice Expertise. Business intake policies should also require an independent finding that the firm has both the technical expertise and available practice resources to perform the services required by the new engagement. This determination should be made by a practice leader in the relevant area of law. In this connection, the firm should consider issues involving both practice skills and know-how and appropriate supervision of junior lawyers.

Policy Issues. Many firms evaluate new clients and matters from a strategic perspective. For example, firms that have a significant practice representing insurance companies may refuse, as a matter of policy, to accept cases involving the representation of policy holders against carriers even though conflicts rules would not technically prevent acceptance of such engagements. And some firms refuse matters in specific listed areas of practice where they lack either expertise or interest. Occasionally, these policies are absolute, but often the managing partner or business intake committee reserves the right to make policy exceptions.

Engagement Letters

A signed engagement letter should be required for all new clients and new matters for existing clients that are outside the scope of historical representation. It is not enough for the originating attorney to have mailed the letter to the client or to represent to the firm that the engagement terms are "in negotiation" with the client. Ideally, an engagement letter, in the form approved by the firm and signed on behalf of both the firm and the client, should be in the firm's possession before the file is opened and time recorded to it. Any variation from the firm's standard form letter should be approved in advance by either the managing partner or a member of the business intake committee.

Process

The intake process should involve both professional and administrative staff, working cooperatively to ensure compliance with the firm's policies and, at the same time, facilitate prompt action on intake issues. A well-designed intake process will be rigid enough to require conformity to the rules, and yet flexible enough to accommodate the realities of doing business in today's highly competitive legal services environment.

At most firms, the intake process should take no more than a few days, start to finish. Use of electronic forms and 24-7 availability of people empowered to make intake decisions is critical. And so is the appointment of intake decision makers who will put the firm's interests first and whose decisions will be respected by partners.

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No substantive discussions with a prospective client or with an existing client concerning a new matter should occur until the intake process—or, at a minimum, the conflicts clearance portion and engagement letter, if required—is complete. Some partners will argue that this is unrealistic, that the process takes too long, and that clients' interests may be compromised if work does not begin immediately. Don't be swayed by that argument. Shortcutting the process exposes the firm to unnecessary risks.

Outcome

The principal purpose of exercising care in new business intake is to avoid subsequent problems—problems involving conflicts, which can lead to disqualification and, in some cases, disgorgement of fees; problems involving late payment or even nonpayment of fees; problems involving staffing and expertise; and problems involving inconsistency with the firm's long-term strategies and goals. As many firms have learned the hard way, these problems can lead to breakdowns in the attorney-client relationship. In turn, breakdowns in the attorney-client relationship can lead to professional liability claims.

We all know that hindsight is more accurate than foresight. Most conflicts, collection, and professional liability problems could be avoided if firms would exercise greater care at the outset of client relationships. Your firm's business intake policies and practices should be designed to give the firm 20/20 foresight. Follow the suggestions outlined above, and you'll improve realization and profitability, reduce risk, and strengthen the firm overall.