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KMS ProfitPower Tips for Lawyers™



Issue 29... **December 2006**

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Robservations

Welcome to the December 2006 edition of "KMS ProfitPower Tips for Lawyers"... Issue 29

I trust that you enjoy the read, and find it both thought provoking and useful to you in practice. Please feel free to e-mail me any feedback by clicking this link...Editor@lawfirmprofit.com

Recently I was e-mailed by a partner in a client firm to advise that shortly after we had together introduced KMS WorkPlans™ to the firm one of the "positive outcomes" was that a young solicitor had resigned.

It appears that he was very uncomfortable with being accountable for his time and for the state of matters he was responsible for.

It was gratifying in the circumstances that the firm saw his departure as a positive outcome.

In all the discussion of the particular expectations of members of Generations X and Y sight is often lost of the difference between "reasonable work/life balance", and a perceived freedom, even a "right", to operate in a law firm without planning, monitoring, accountability, and without obligation to work in a manner reasonably directed by one's employer.

Put simply, it's too easy for employers to tolerate for far too long a basic lack of willingness or ability to deliver a fair day's work for a fair day's pay. That is one inalienable right of employers all good

Covered in This Issue...

- Editorial... Robservations1
- More on Firm Time, and "what's a reasonable amount?" .2
- Seven major myths about time/activity recording that will really cost you dearly3
- ProfitPower™ the real practical value of a Planning Retreat.....4

firms insist upon...for the benefit of all stakeholders of the firm over the long term.

How often do we lose an employee after a considerable period of perceived under-performance, only to discover horrendous problems in client files once we get the opportunity to get close to those files and actually try to properly look after the clients involved?

Forget what "Generation" someone is from. Sloppiness, ill discipline, lack of focus and inability to organise workflows and meet deadlines are essentially cross-generational problems, and need to be identified, and rectified (or otherwise dealt with by freeing up the person's future), promptly.

Simply being "nice" to people is not the

answer...it doesn't help you and it doesn't help them...it simply allows issues to fester and cause greater problems later...for both of you.

So why is it that unsatisfactory performance is so often allowed to continue for so long?

My observation is that a desire to avoid "conflict" permeates management in many law firms.

There might not be quite such a problem with avoiding conflict per se...but it stunning to observe what many so-called "managers" regard as "conflict" that they seek to avoid at terrible cost to them and the firm.

It can extend to anything they perceive as potentially being the slightest bit stressful. The mildest passive/aggressive behaviour by a person who needs some help, guidance or advice can send such managers scurrying for cover, buried in something they find easier to handle.

Conversely, even managers who are firm and fair can easily be regarded in firms as, "tough bastards", simply because they have good standards and expect them to be adhered to. The conflict-avoiders usually rapidly delegate what they see as the tough jobs to these people, perpetuating the perceptions.

My approach is that truly helpful managers should teach themselves to delight in helping employees with performance problems by being "firm but fair".

Sit down with them in a private situation

The Editor, Rob Knowsley, is a lawyer, admitted 31 years, who practiced successfully with firms of all sizes – city, suburbs and country...in Australia and New Zealand. As KMS Senior Consultant, his insights are further based on the experience of nineteen years of consultancy assignments, and telephone/e-mail support, for lawyers...in all areas of practice management and profit building. Many practices have quickly reaped the monetary benefits and enjoyed the feeling of being in more control of their business through his practical help...as multiple referees attest.

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and discuss the desired inputs and outcomes, and get agreement, fresh agreement if necessary, that what the firm is expecting is clear and reasonable. I say "fresh agreement" because often the employees agreed to everything that was put to them in the interview process, and have simply done the opposite ever since.

Get agreement on the things that aren't presently happening...and get agreement on some techniques to be tried to rectify the situation. Offer practical help based on the experiences of team members who have demonstrated that they can get the required outcomes.

Set a time frame for a review of the new outcomes, and adhere to that.

Identify things you will do to make changes to assist the individual achieve the desired outcomes if necessary...and arrange for them to be done promptly and confirm what you have done.

Often this sort of "firm but fair" approach will be a novel experience for the employee and, even if it is after a further session or two, you will get to where you both want to be. Clearly it's worth trying.

However, if the results aren't happening, and the individual isn't buying in to the process of changing the outcomes appropriately, move quickly through the process of opening up an opportunity in their future. They will be happier somewhere else, more suited to their skills and personality.

Doing that will also open up an opportunity to introduce a new team member to your team who does have the desired skills and qualities.

While this editorial focuses on poor performers and those who tacitly condone the poor performance, there are obviously many hundreds of young lawyers out there who are talented, organised, willing and open-minded. They expect leadership and guidance, but understand and accept that to develop their careers and be paid well they must be accountable.

People who are not comfortable being accountable to you and your firm are usually not great at impressing clients either...so don't ignore the warning signs, and don't delay.

At the very least you owe it to everyone else on your team to refuse to allow the firm's standards to be dragged downwards. Lead from the front... promptly, firmly and fairly.

More on Firm Time, and "What's a Reasonable Amount?"

Recently the Human Resources partner of a leading firm approached me for a discussion about it's positioning on starting salaries for graduate lawyers.

During the discussion he referred to what we both knew was the firm's position on providing a very high level of training and mentoring, and commented that many graduates still perceived that as an attractive element in making a choice of where to work.

He made clear that this element assisted the firm in avoiding having to pay starting salaries as high as some of it's competitors to attract quality candidates.

During the discussion the thing that struck me most strongly was that years of experience showed us both that despite the admittedly high level of training that new graduates were given, the firm was not having to compromise on obtaining a decent level of Client Time from graduates.

Using the KMS WorkPlan™ system with every "established" lawyer, partner, clerk and new graduate meant that it was demonstrable that high levels of training (both getting and giving) could be coupled with Client Time averages that were also above average for the Australian profession, without extending the average working day.

The key to getting this balance is to establish good categories of Firm Time to record to, and to set guidelines for each employee individually based on knowledge of what others have achieved in the past, and are currently achieving.

Regular feedback, and discussion of both file loads and the reasons for unusual levels of recorded Firm Time, will ensure that the team member is clear what is expected and the firm fully understands the reasons if unacceptable variances exist.

In my experience it is unusual for a

graduate being properly trained, while working with a supervisor on the supervisor's files, to need more than 2 hours a day Firm Time averaged across year one. It will often be a bit higher in the early months, but usually a trend downwards thereafter will reflect the benefits of the earlier learning, with more Client Time being spent by the recipient of the training.

This is at odds with so many firms where graduates produce very little in the first year, partly because of low expectations of them, and partly because of poor supervision by those whose job it is to ensure that they have enough work to achieve their KMSWorkPlan™.

There is too much evidence of an attitude that because they are not being paid 'much', little effort needs to be put into planning and monitoring their production. This is not a good approach to the people you need to be the powerhouses of the firm's future and perhaps part of your succession planning.

Here's a practical example of the effect of getting it right.

Experience, and my reading of various surveys, shows that graduates in recent years haven't been getting paid significantly more than they were a few years ago, and they are producing very little. I suggest you take as a guideline about 3.5 effective Client Time hours a day on average, at about \$185/hr, producing just \$150,000pa on average.

Were you to use a KMSWorkPlan™ requiring even 40 hours of activity for the firm and it's clients, properly recorded, you could expect an average day of 6 Client hours and 2 Firm hours from a graduate who is being well trained.

At 6 hours a day for 230 days and \$185/hr, raw Work in Progress recorded will be \$255,300. Experience shows us that in most firms there will usually be some leakage from Raw WIP captured to bills rendered, and for a graduate experience tells us to allow about 20% write-down, so bills rendered eventually from the first year's production (after the usual time lag for each different type of work) will be about \$204,000.

This is a very healthy lift per graduate from what is happening at present. It is not too tough on them. On the contrary, they will learn faster and enjoy the experience more if they are busy and well trained and mentored,

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with plenty of feedback on how they are going.

Very importantly, it helps them to realise from the outset that they are working in a business, where the smart employer is prepared to invest in their training, but expects the rest of every day on average to be spent repaying the employer through effective effort commensurate with the limited but developing present skills available.

Seven Major Myths About Time/Activity Recording That Will Really Cost You Dearly...

As I talk to clients throughout Australasia each day in on-line coaching contacts, I continue to hear many of the same old misconceptions about time/activity recording. I thought it was high time that I listed some of the "best", and de-bunked them for my readers using my thirty plus years experience...

1. There's no point recording time spent on anything other than "chargeable" work... this common myth assumes that the whole process is about costing, and allows a fee-earner to make decisions about what is chargeable at the point of doing the work.

This is far from the truth and not very wise. Time-recording used to be called "time-costing", and the fact that we have moved on underlines the fact that it is far more than a costing system.

It is a fundamental part of monitoring the way that your key human resources are used to look after your clients, and to continuously improve themselves and the firm to keep doing that in the future.

Failing to record work you do not think is chargeable totally undermines the management aspect. For example, many lawyers, not just junior ones, have very low self-esteem, and are very quick to downgrade the value of what they have done. Failing to record it will mean that they produce very low numbers for a day's effort, or work longer days to compensate.

Further, the proper time to assess what is or is not chargeable is at the time when a bill is being prepared and the relevant person in the firm is assessing the value of the services delivered against the clients'

instructions and expectations.

Very often some or all of the effort which may weeks earlier have been thought by an inexperienced operator to be non-chargeable, can comfortably be included in a bill paid happily and promptly by a satisfied client.

2. There's no point recording time spent on fixed fee work... again, this myth is founded on the assumption that time-recording is almost exclusively about costing. "Costing is agreed and fixed, so what's the point of recording how long we take as a team to get the job done as we can't thereby charge any more?"

It ignores the potential for learning about our levels of efficiency in getting the job done, and it ignores the value of being able to identify early the existence and extent of "strike rock" work, for which sensible communication with the client at disclosure time will allow you to charge additional fees.

Finishing a job, using extra resources for "strike rock" work and not charging anything extra for it, returns you nothing for that very necessary extra time and investment. Even recovering 50% of \$600 extra work gives you \$300 profit improvement on the job. This is always worth having...but it's especially important if the initial fixed fee doesn't give you much profit in the first place.

3. "Leverage" is manipulating time to advantage the firm and disadvantage the client... this is an attitude often found in commentators on the Profession who think they are in touch with practical realities but are in fact way out of touch.

Unfortunately it's also often found in practitioners who haven't fully thought through the practical ramifications. Leverage arises for parts of most days when a practitioner is recording time in minimum unit lengths, most commonly six minutes.

Work carried out for a client often takes less than a full six minutes or twelve minutes etc., and the recording is rounded up to the full unit or units. A busy practitioner will move straight into the next activity, for a client or for the firm, and thus to some extent leverage up the available

time.

The bottom line is that the client is expecting a result that delights him (or at the very least satisfies him) and provided you do that and charge a fee that he expected and sees as fair value, he will not be concerned in the slightest that you charge in six unit minimums.

To sit and stare at the wall for the "spare" minute, or to be less efficient and actually use the whole of the unit to get that task done, does not advantage firm or client.

A tip here on making your Firm Time more efficient. I have noticed that many lawyers allow themselves to be interrupted with monotonous regularity through their day to attend to minor, unimportant and non-urgent administrative tasks.

Some dutifully record a six minute unit for each...meaning that at day's end Firm Time can appear to amount to some hours of real time when it is not always so.

My advice is to as much as possible do and record minor administrative tasks as a block. Not much real time will be used and the various activities can still be recorded. Further, quality time will not be wasted throughout the day when you are generally fresher and able better to concentrate on more difficult client work.

If you must also attend to some minor Firm Time tasks throughout the day, do them very briefly "overlapping" Client jobs so it is unlikely that you will lose any Client Time as a result.

In my experience the net result is that you will record more Client Time in a day and still both get through and record the Firm Time tasks. A much more efficient use of your already busy day.

4. Entering activities directly to your computer automatically ensures that you will record all your activities... the reality is that few people capture all their activities no matter what recording system they use.

However, while there are powerful advantages to entering time directly to your computer using a good program designed for that purpose, such as being able to prepare a draft bill rapidly at any time because there is no data entry lag, it should not be assumed that people who use a computer in

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this way necessarily get better results than those who use a paper-based timesheet or an on screen sheet which is not fully linked to the firm's practice management system.

Regularly when I find a lawyer who is struggling to record a proper day despite working long and hard, I arrive at the re-training solutions for that lawyer by analysing a paper timesheet incorporating a "clock" that I have required them to revert to for a trial period. It is extremely difficult to spot the full gamut of where a lawyer is going wrong with time/activity recording from a computer printout.

5. Time-recording is itself a waste of your time... an argument that is frankly sad to hear from any lawyer, let alone a very busy one.

Too often it is used as a feeble attempt to throw management off the track of the lawyer and the lawyer's effectiveness. In reality time/activity recording takes a few seconds per entry (contemporaneous with the activity itself), and in many cases there are actually not a huge number of entries needed per day at any event.

At a minimum I find that a lawyer working identical length days with good time/activity recording can lift overall contribution to the firm from those days, including at least \$50,000pa fee improvement and often a lot more.

The bottom line is that the average lawyer is not a very good manager of time, and tracking the use of the investment in time is a necessity as we continue to be expected to pay more without any noticeable increases in productivity.

6. Recording 65 Client Time units (of six minutes) on average per day requires the average person to be in the office in excess of ten hours... this is a perennial...trotted out week after week in my contacts with the Profession.

Reality check...If you actually spend six and a half hours in a day doing Client work, you should record between 65 and 75 units every time. If you then actually

spend one and a half hours a day on average attending to Firm Time investment tasks such as Business Development and staff training and other practice management, you can get a perfectly good return from a mere eight hour day genuinely working for the clients and the firm.

No-one is disputing that if you aren't effective, or fail to record things you do, you will have to set aside a lot more than eight hours a day on average to record 65 Client units and 15 Firm units!!

Decent comprehensive time/activity recording will help you to see where there are inefficiencies you can work on to improve your lifestyle and your returns.

7. Time-recording is a soul-destroying exercise and encourages the overcharging of clients... these are two quite separate points but I often hear them linked together in this way.

My advice to lawyers who find time/activity recording soul-destroying is to teach them how to make it into a habit that turns it into a non-event. Usually demonstrating how much better off the lawyer will be in terms of lifestyle and the means to better enjoy the lifestyle is enough to get people to refocus on the importance of doing it well.

Perhaps the biggest trap for people who struggle mentally with the discipline is thinking that they have to be accountable for every minute. Being accountable for delivering reasonably effective use of an agreed amount of time on average per day is a very different concept.

Finally, in my experience time/activity recording doesn't encourage over-charging. Quite the reverse, it enables lawyers to see what they are really doing for clients and get a better grasp of what is a reasonable fee in the circumstances.

Far more lawyers undercharge than overcharge. Assisting lawyers to manage time well, and as part of that to earn better incomes, more commensurate with their skills and effort, does not amount to overcharging.

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