INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Work Session: Local Government Law Practice

Title: Bringing Private Sector "Best Practices" to the Municipal Law Department

By

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My foray into municipal law began in the summer of 2002, following the election of C. Ray Nagin, a local CEO with no prior political experience, as Mayor of the City of New Orleans. Mayor Nagin ran and was elected on a pledge to "run the City like a business." Toward that end, he recruited nearly his entire cabinet from the private sector and charged each of us with the mission of bringing private sector "best practices" to city government. Through trial and error—and, certainly, not without growing pains, the Law Department of the City of New Orleans has made great strides in the last three years in doing just that. The result has been a marked improvement in the professional reputation of the office and a 68% reduction in the number of pending cases against the City. Summarized below are the top ten private sector "best practices" that were adopted and implemented in our effort.

Number One: Professional Commitment—You Belong to the Firm…

Survey any of your big firm colleagues and you will find that "side practices" are just not permitted. Rather, all of your professional efforts (read: legal work for which you get paid) are expected to inure to the benefit of the firm. Sure, there may be the occasional family matter or pro bono case, but even these usually require the prior approval of the firm to guard against conflicts of interest or representation that would conflict with firm philosophy. However, in the public sector, it is not uncommon for full-time attorneys to supplement their income by taking on private clients. In my opinion, however, a public servant cannot serve two masters—particularly if one is paying $150+ per hour!

In addition to potential conflicts, the biggest issues associated with permitting outside legal work are the difficulties in policing the volume and in monitoring the attorney's municipal work efforts. In our office, it was discovered that some of our "full-time" attorneys had full-blown private practices—complete with brick-and-mortar office space, Yellow Pages listings, private support staff and private dockets exceeding 75 cases. In addition, when deputy attorneys tried to assign an attorney to cover a last minute TRO or to otherwise monitor the attendance of the attorneys they supervised, they often encountered the excuse, "I have to be in court on a private matter." The bottom line is that the City was too frequently not getting the attention it needed and deserved from its counsel.

To remedy the problem, "side practices" were phased out over a six-month period, and all full-time attorneys were required to sign and adhere to a Declaration of Full-Time Status. In order to make this change palatable, however, it was necessary to couple the change with significant adjustments to attorney salaries. Although this is a challenge, it can be—and, in our case, was—accomplished. A good starting point is to first identify Metropolitan Statistical Areas (MSAs) that are similar in population to your municipality and then compare the salaries of their municipal attorneys in order determine a market rate benchmark for salaries in your municipality. In our case, we compared Nashville (pop. 554,636), Fort Worth (pop. 534,694), Oklahoma City (pop. 504,132), Tucson (pop. 486,699), Albuquerque (pop. 448,607) and Virginia Beach (pop. 425,257) to New Orleans (pop. 484,674) to support our request for the needed salary adjustments. In

addition, the City Council received assurances that the raises were contingent upon a "full professional commitment" from our attorneys, which would result in a more aggressive and comprehensive defense of the claims against the City and, we hoped, a corresponding reduction in the amount of damages awarded against the City. The approved adjustments appear in the table below.

OFFICE OF CITY ATTORNEY, CITY OF NEW ORLEANS

PRIOR SALARY		CURRENT SALARY	
City Attorney	120,519	City Attorney	120,519
Sr. Chief Deputy City Attorney	95,181	Sr. Chief Deputy City Attorney	95,181
Chief Deputy City Attorney	44,021-54,372	Chief Deputy City Attorney	81,999
Deputy City Attorney	39,867-44,021	Deputy City Attorney	75,170
Assistant City Attorney IV	35,201	Assistant City Attorney IV	70,643
Assistant City Attorney III	31,900	Assistant City Attorney III	60,108
Assistant City Attorney II	28,882	Assistant City Attorney II	50,513
Assistant City Attorney I	21,975	Assistant City Attorney I (Outside Practice Permitted)	21,975

Number Two: Firm Philosophy—"We Are the Wal-Mart of Municipal Government."

Every big firm has a "firm philosophy"—whether it is expressed as an internal mission statement, a vision published on its website or an unspoken, but understood, culture of who the firm is, what type of representation it will undertake and how cases are generally handled. Here, it is the firm culture, rather than the specific verbiage negotiated by the strategic planning committee (reminiscent of a Dilbert strip) that is important. When folks think about the firm, what images come to mind? In our case, Wal-Mart's legal department was our model.

Wal-Mart has a reputation for not only being extremely reluctant to settle cases, but for also being a formidable opponent in court. They are aggressive in their motion practice. When they lose, they appeal. It's not impossible to get a verdict—even a sizable one—against them, but you are going to have to work for it. Hard. Nuisance settlements are unheard of.

We adopted "We are the Wal-Mart of municipal government" as our mission statement. In so doing, we overturned a long-standing practice of settling cases with minimal risk for a finding of liability for a few thousand dollars. Unlike most private sector clients, who must consider the "cost of litigation" in deciding whether it makes sense to settle a meritless suit for peanuts or to pay cashews to an outside firm to defend the case, our staff of 58 full-time attorneys do not bill by the hour. With the exception of experts and court costs, our expenses are the same whether we are seeking a quick dismissal or going through a full-blown trial. Plus, our junior attorneys could use the experience. Since implementing our new "firm philosophy," we have not only saved the City money in

obtaining zero verdicts in most of these nuisance-type cases, but have also benefited from fewer suits being filed against the City as the word got out that it is no longer "easy money."

Number Three: Staffing the Case—First-Years Carry Briefcases

The old adage in law school is that if you go to a big firm, you will spend the first couple of years as an associate either buried in research assignments in the library or carrying the partner's briefcase to trial. The most complex cases are handled by the most experienced attorneys and vice-versa. This ensures that the client is getting the best representation possible in the most cost efficient manner.

Upon our initial examination of the staffing of our cases, however, we discovered that the assignments were most often doled out in accordance with "who was up," rather than in accordance with who was best suited to handle the matter. This practice resulted, in some instances, with attorneys who were fresh out of law school having full dockets with cases ranging from slip-and-falls to complex contractual issues for which they bore full responsibility. Under our restructured approach, all cases must be staffed with a minimum of two attorneys—a primary attorney and a secondary ("junior") attorney. Yes, this means a larger overall docket size, but the allocation of work is appropriate for the skill level of the attorney. Another benefit is that in the event of a turnover, there is another attorney who is fully familiar with the case. In addition, careful thought is given to ensure that the most sophisticated cases are assigned to the senior attorney with the most expertise in that area. If that requires readjustment of dockets to ensure an even workload, that is done.

Number Four: Knowledge Management—Sharing the Brain Trust

One of the nicest perks of working in a big firm is access to a treasure trove of forms (or, as our firm called them, "go by's"), white papers and practice guides. In the "old days," these were often organized in hard-copy binders by practice group. However, most firms now have electronic document management software, such as DocsOpen, that gives the potential for nearly every document to be a form and to be easily accessed through full-text searching. In addition, attorneys within the firm who author or receive white papers on new developments or other CLE materials are encouraged to share with their colleagues either through a formalized routing system, informal practice or section group meetings or by making the materials part of the library's collection.

This practice is especially well-suited for a municipal law department where the same issues arise time and again. The biggest challenge is finding a workable structure in which to share. Budgetary constraints may impede a municipal law department's ability to purchase the latest electronic document management solutions available to their private sector colleagues. However, even if they are not searchable on a network, most documents are nevertheless available in electronic form for sharing. A good starting

point is to have each attorney print a list of their pleadings, motions, briefs, memoranda, etc. and highlight the ones that would make a good resource and have a secretary or paralegal compile these into a master list for circulation. In our office, we are using our two new brief writers to assist in developing, revising and updating existing forms for our general motion practice.

In addition to sharing documents, we also emulate the private sector practice of holding weekly team meetings and monthly office-wide meetings for sharing knowledge through in-house CLEs (bonus: our bar association does give us credit hours) and Q&As regarding novel issues or difficult cases. The key to success here is to set a standard time for the meetings, such as 2 p.m. on the last Wednesday of the month, so that attorneys have ample notice not to schedule conflicting depositions or other appointments.

Number Five: Document Management—The Stepford Files

A centralized or standardized filing system is one of the hallmarks of a big firm environment. Some firms even have bar-code tracking for files. Most, however, are content with setting forth uniform standards for organization and content—pleadings binders that are filed in reverse chronological order with an enumerated index and separated by numbered tabs; correspondence, with postmarks attached, in reverse chronological order in green pressboard folders; separate folder for attorney notes; research organized by issue; color-coded redwell side-tabs, etc. The primary purpose of a uniform hard-document management system is to ensure that the files are complete and readily accessible. Nowhere are these needs greater than in a governmental setting. This is so because, unlike the private sector, where the files often leave with the attorney when a personnel change takes place, in municipal government, the files never leave. Thus, it is imperative that they be organized in such a fashion as to allow a new attorney to step in and get up to speed with the case.

This area provided one of the biggest challenges to our office. There was a file room, but it was essentially a dumping ground for unorganized boxes of documents. Every attorney kept their own files in their office or in file cabinets scattered throughout the department. Some files consisted merely of stacks of documents on the desk, chair, floor, etc. This practice led to chaos when a turnover occurred. In trying to recreate files, it was not uncommon to have to pay copy costs to the clerk of court for our own pleadings. However, for a minimal investment in an open-shelf lateral filing system and a full-time file clerk, the problem was easily remedied. We recruited a file clerk from one of the local firms with a great centralized filing model to avoid having to reinvent the wheel. The firm was so supportive of our efforts that it sent its file manager to train our attorneys and support staff on how to use the system. We started the conversion with new cases and once we were caught up, began to focus on reorganizing the older files, starting with the most recent cases. For the attorneys who couldn't let go of having the file in their office, we permit them to maintain their own "working files," provided that the "official" file is always kept complete and current.

Number Six: Embracing Technology—Or, At The Very Least, Shaking Hands

Big firms understand the role of technology in enabling attorneys to work smarter, not harder. On second thought, I am not at all certain about the "not working harder" part. Perhaps "working more efficiently" would be more accurate. In any event, there can be no doubt of the ever increasing role of technology in the law firm—from networked desktops with intranet and internet access to wi-fi laptops to Blackberries to OCR scanning to smart printers to videoconferencing…. The list goes on and on. Although budgetary constraints will often hinder municipal law departments from fully embracing state-of-the-art technology, there are certain basics that are a must.

First and foremost, every attorney, legal secretary and, ideally, each support staff member should have their own computer. That may seem too basic, but in the summer of 2002, there were several attorneys in our office who had to share desktop computers (a situation that was quickly remedied)! Second, everyone should be using the same software. To prevent continued conversion issues, don't allow holdouts when a change is made. Next, an email program that permits shared calendars is not only convenient for scheduling team meetings and assignments, but also for providing supervisors with an objective monitoring tool in the absence of time sheets. In addition, a good program to create databases, such as Microsoft Access, is very helpful to track pending litigation, case assignments, disposition of closed cases and payment of settlements and judgments. To meet printing needs, we follow the model of many big firms who dedicate a few networked heavy-volume printers to the attorneys and provide individual printers to the legal secretaries, who are most likely to have to hand-feed letterhead, envelopes and the like. Finally, heavy duty copiers, fax machines and at least one good scanner would round out the basics.

Number Seven: Aggressive Motion Practice—Win the Battle and the War!

Big firms are notorious for exhausting all avenues in filing exceptions, motions and memoranda designed to limit claims and/or defenses or, ideally, to secure an early dismissal from a case. The practice is prevalent because it is so effective (see Wal-Mart philosophy above).

This is the practice that has provided the most "bang for the buck" in our office. Once we had a true full-time professional staff and a good form-file sharing system in place, we were off and running. The first area that we focused on was filing motions of abandonment on all cases in which there had been no activity to advance the prosecution of the case for the requisite number of years. We identified many, many cases that were eligible—about 3000! It took us about six months of constant effort to prepare, file the motions, notice the opposing counsel and obtain signed orders of dismissal for these cases. However, at the end of the push, we benefited from scrubbed dockets that reflected the true workload of our attorneys and that enabled them to focus on

aggressively defending their active cases. Our next focus was to pursue more dismissals through motions for summary judgment. Again, this is a practice that is very well-suited for municipal law departments because the same types of cases and issues pop up over and over. Once you have created a motion and memo that is effective, minor tweaks allow it to be successful time and again. To further improve our effectiveness in motion practice, we hired two full-time brief writers. They serve as the primary writers for the most high-profile or high-risk cases, but also serve as editors and coaches for reviewing and improving the written work product of our other attorneys.

Number Eight: "Profitability"—Justifying Your Existence

The measure of success of attorneys in just about all defense firms is the bottom line. While the results obtained for clients is high on the list, it is the tally of end-of-year collections that is paramount. Although full-time municipal lawyers do not bill by the hour, their contribution to the fiscal "bottom line" is nonetheless measurable. At no time is this more important than during the department's budget hearings. Here, having solid numbers will serve the department well, particularly if you are seeking additional funds to implement new "best practices" to further increase the department's effectiveness. This is where the database creation software pays off.

We create databases to track not only zero verdicts and dismissals, but also the amount of damages claimed by plaintiffs in the cases, which reflect money "saved" by our successful efforts. We also "do the math" when we lose cases, but are able to reduce the quantum from that which the plaintiffs sought. In addition to tracking "saved" moneys, we track amounts recovered on behalf of the City through subrogation claims, sales of adjudicated property, delinquent tax collections and other litigation. We also report on the number of new cases filed against the City and the number of cases closed, as well as the number of opinions and advice memoranda issued throughout the fiscal year to the various departments, agencies and boards of the City. Our tracking efforts have established our "profitability" and, concomitantly, have been crucial in not only staving off budget cuts, but also in securing increases to further improve our efficiency.

Number Nine: The Firm Manual—We Have a Policy On That

What would big firm life be without the firm manual—the bible of policies, philosophies and practices? Admittedly, while some of these manuals (particularly the ones with multiple volumes) can get out of hand, they can be great tools for ensuring consistency in the operation of the office. Citywide policies addressing such matters as employee dress code, annual leave, standards of conduct, insurance benefits, etc. are usually covered elsewhere. Thus, the focus of the law department manual should be on the mechanics and operations of that particular office. Ours is a work in progress, but, thus far, includes the procedures for handling and routing phone calls; requesting a court runner drop; monitoring and distributing incoming faxes; ensuring coverage of area during lunch and other breaks; etc. Consistency is key to the smooth operation of a large department. Toward that end, a well-organized "firm manual" that is written with the KISS principle in mind is an excellent investment in time and effort.

Number Ten: Graceful Separations—When Things Just Aren't Working Out

Unless a felony has been committed, it is the rare big firm that fires an attorney without permitting a graceful exit and a reasonable period of time to transition. Make no mistake, however, though the big machine may move slowly, it does move. Attorneys who are not working out are asked to leave. There's something to be said for that.

In our office, the long-standing rule had been that no one got fired. Ever. If a separation occurred, it was at the initiation of the attorney. The biggest downside? It makes it very difficult to initiate and implement significant change if resistance or refusal to adapt has no serious consequences. Further, it creates morale issues if one attorney is perceived as "getting away with" missing deadlines, violating office policy, putting forth minimal effort, etc. Change is tough, and significant change can rarely occur without casualties.

In our office, we now evaluate each employee in accordance with the "good fit" trinity—a positive attitude, a strong work ethic and demonstrated competency in the practice area. All three must be there. If one or more is missing, we try to work with the employee, if practical, to remediate the deficiency. If that proves unsuccessful, we negotiate a "graceful separation" with the employee. In handling these delicate discussions, we try to reiterate that just because someone is not a good fit for our particular needs at this particular time doesn't mean that they cannot bring considerable value elsewhere. In most cases, an amicable departure is possible. Whenever possible, we aim for a four to six week transition period in which we gradually reassign all of the attorney's existing workload and enable him or her to use some downtime to interview and pursue a more suitable position.

Conclusion

Every law department is different. The challenges we faced in New Orleans may be issues that other departments resolved light-years ago. The purpose of this paper is not to suggest that the "best practices" we implemented are the "end all, be all," but rather to encourage municipal law departments to examine areas in their departments that may be ripe for improvement and to explore possible solutions from our counterparts in the private sector. If any of you would like to share your experiences in improving efficiencies and effectiveness in the practice of municipal law, please send them to me at slandry@mayorofno.com. I'd love to hear from you. We've come a long way, but have far to go!