

Law Practice Management and Technology

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Regular Associate Evaluations Promote Professional Development

By Donna W. Low

A law firm's ability to provide legal services of the highest quality depends on its success in retaining skilled and committed attorneys. This in turn requires firm management to focus on its attorneys' performance and professional development. While meaningful and frequent informal feedback suggests the firm is committed to developing its associates, regular performance evaluations are an important mechanism to provide subjective and objective feedback on each associate's strengths, weaknesses, and areas for improvement. Implementation of a systematic performance evaluation process improves associate productivity and enhances retention. A structured associate evaluation program should serve as the basis for making informed compensation, promotion and termination decisions.

There are costs associated with implementation of a performance evaluation program. The firm incurs lost billable hours when the partners take time to meaningfully evaluate the performance of one or more of the firm's associates. However, with associate attrition costs in the hundreds of thousands of dollars, several hours of lost billable time due to a systematic evaluation process seems inconsequential.¹ Formal evaluation of each associate's performance and regular evaluation conferences are key components of a solid business plan aimed at decreasing attrition, strengthening the firm culture and, ultimately, providing better client services.

This article addresses the development of a structured program for evaluation of associate attorneys and includes suggestions to avoid unintended creation of implied-in-fact employment agreements, terminable only by just cause.

Creating a Structured Program for Evaluation of Associate Attorneys

At the outset, firm management should define the process and procedure for conducting formal performance evaluations of the firm's associates on a regular basis. Written performance standards should be developed for incorporation into an evaluation form. After firm management reaches a decision on these issues, a meeting should be held with the firm's associates to discuss how the formal evaluation program will be implemented. Ample opportunity should be provided for the associates to ask questions. The associates initially may have constructive comments that call for modification of one or more of the performance standards. The group discussion could play a vital role in team building and shaping the firm's culture in a positive way.

Once the performance standards are finalized, they should be incorporated in an evaluation form, which ideally reflects objective and subjective criteria. The performance standards should not discourage the associates' supervisors from expressing views on any aspect of work performance or professional development that are considered important. The associate's ability to work effectively with firm employees should be considered, since an ability to work effectively with others is typically predictive of the associate's ability to work well with the firm's clients.

After the process and the evaluation forms have been developed, the firm's associates should be given an opportunity to review the associate evaluation form well before the first rating period.

Each associate should be evaluated at least annually by each of his or her supervising attorney(s). Each associate should be rated based on the supervising attorneys' personal experience during the rating period with the goal of improving performance and productivity, while enhancing professional and business development. Written evaluation forms that consist merely of numerical ratings without supporting details are of little assistance to the associate or firm management.

Creating the Associate Evaluation Form

The evaluation form should include the associate's name, date hired, name of evaluator(s), and the average number of billable hours per month during the rating period or an equivalent metric.

The following performance standards may be useful, depending on the nature of the firm's practice:

- **Practice Administration:** Does the associate keep current and active time records? Are the time entries for services descriptive and satisfactory?
- **Drafting Ability:** Are the associate's letters, pleadings and discovery documents consistently well written and comprehensive? Is the associate careful to avoid typographical, factual or legal errors in the documents produced? Does his/her work product consistently meet the standards of the firm?
- **Analytic Ability:** Does the associate consistently identify and properly analyze complex factual and legal issues? Is the associate's analytic ability consistently reflected in his/her written work product?
- **Advocacy Skills:** Is the associate consistently well-prepared for hearings, depositions, meetings, etc.? Does he/she affectively advocate the client's position in written briefs at court hearings and in written motions/pleadings?
- **Efficiency:** Does the associate work efficiently? Is the number of hours billed on a project within the expected range?
- **Judgment/Maturity:** Is this associate making acceptable progress in developing judgment and maturity as a practitioner in both legal and ethical matters?
- **Responsiveness:** Is the associate consistent in completing work assignments in a timely fashion? Does he/she keep the supervising attorney adequately advised of the progress of assigned projects/files?
- **Initiative:** Does the associate seek out challenging assignments? Do the associate's actions demonstrate a strong desire to learn and refine his/her skills.
- **Commitment:** Does the associate's work product and conduct demonstrate a commitment to the responsibilities of his/her position? Does he/she have a strong work ethic?
- **Client Relations:** Does the associate maintain good rapport with clients? Is he/she responsive to client needs? Do clients seek out this associate for new assignments or speak highly of him/her?
- **Business Development:** Does the associate demonstrate a commitment to marketing and business development, given his/her level of experience? Does the associate make reasonable efforts to maintain existing relationships with the firm's clients or develop new lines of business?
- **Dedication to Firm:** Does the associate regularly participate in firm events? Does the associate maintain good relationships with all members of the firm? Does the associate's conduct demonstrate that he/she is a team player?

The associate evaluation form should allow space for written comments under each of the performance standards. An assessment scale for each performance standard is also recommended, such as:

Rating Scale

- 5 indicates exceptional performance based on the associate's level of experience.
- 4 indicates above-average performance based on the associate's level of experience.
- 3 indicates satisfactory performance based on the associate's level of experience.
- 2 indicates some concern, requiring an effort to improve.
- 1 indicates significant concern requiring prompt attention.
- NA indicates not applicable or insufficient information to assess.

The associate evaluation form should include an acknowledgement section, including a space for the associate's signature and the signature of the supervising attorney(s) completing the evaluation form. A section for the associate's comments may also be included.

Evaluation Conference

Verbal feedback should be provided to each associate during a sit-down meeting with his/her supervising attorney(s). This conference provides an opportunity for open discussion of the contents of the evaluation form, including any strengths, weaknesses and recommendations. The meeting will be more meaningful to the associate if he or she is given an adequate opportunity to review the written evaluation form before the meeting. The conference also provides an opportunity for goal setting and suggestions for professional development and marketing. Also, adjustments in compensation may be discussed.

Practical Suggestions

Timely and consistent documentation of performance information may be critical to the successful defense of an employment dispute. However, written performance evaluations may be construed by Courts to affect the nature of the employment relationship in ways that were not contemplated or desired by law firm management. To decrease this risk, consideration should be given to drafting associate evaluation forms which include express *at will* language. This language might state, for example, that the employment is *at will* and the employer expressly reserves the right to discharge the associate, at any time for any reason with or without cause and with or without notice. Additionally, a statement indicating that the evaluation form and process should not be construed as conferring any right to continued employment should be considered.²

About the Author

Donna Low is the Managing Partner of Low McKinley Baleria & Salenko, LLP, a ten-attorney litigation firm based in Sacramento. She primarily defends physicians, multispecialty medical groups and licensed health care facilities in medical malpractice litigation and administrative proceedings. Ms. Low is certified by the American Board of Professional Liability Attorneys and is a member of the Law Practice Management and Technology Executive Committee. In 2013-2014, she was selected by the National Association of Professional Women as Woman Of the Year for California Legal Services. Ms. Low has been recognized by SuperLawyers and in 2015 was listed as one of the top fifty female lawyers in Northern California.

Endnotes

¹ American Bar Association Fair Measure, *Toward Effective Attorney Evaluations*, (2d. ed. 2008) Back

² See *Soules v. Cadam* (1991) 2 Cal.App.4th 390 (The court held there was a triable issue of material fact regarding the existence of an implied agreement that Plaintiff would not be discharged absent good cause based on evidence of Plaintiff's length of service, promotions and superior performance rating, overruled on other grounds *Turner v. Anheuser Busch, Inc.* (1994) 32 Cal.4th 1238, 1252); *Wood v. Loyola Marymount Univ.* (1990) 218 Cal.App.3d 661 (An implied agreement to terminate only for cause existed where Plaintiff produced evidence that he had been employed for 15 years, had received repeated oral assurances of job security, meritorious performance evaluations and consistent salary increases.) Back

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Strategies to Improve Law Firm Collections and Cash Flow

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