



## STRATEGY

LAW FIRM

## Aligning capability and practice: Are your lawyers punching below their weight?

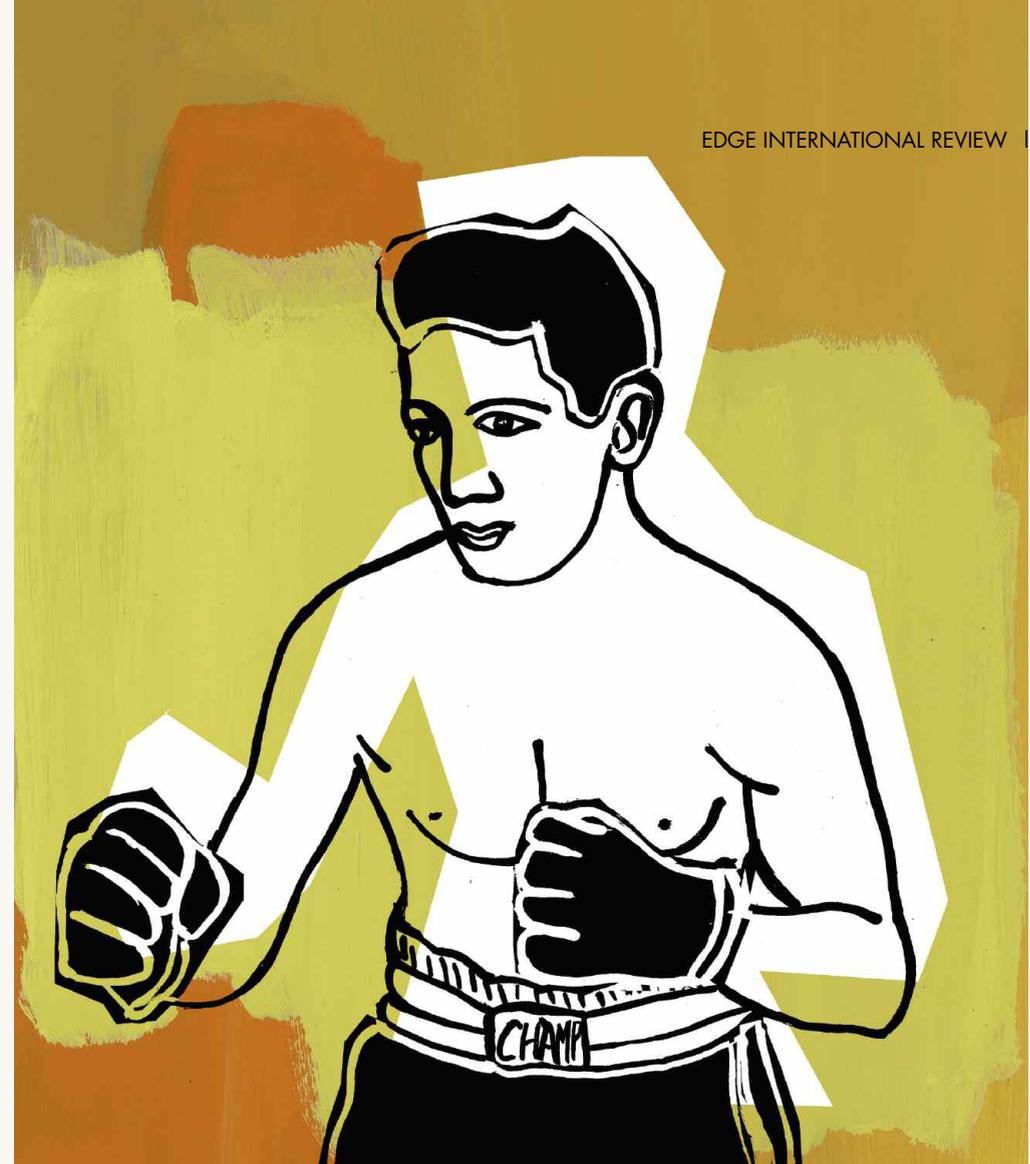
The twin recessions of the past decade have left many large law firms seriously misaligned in the quality of the work performed by their lawyers. Some firms' lawyers are in over their heads, but many others are wading around in the shallow end. Edge International has developed a Capability Alignment tool that can help firms better match the right work to the right attorney.

By Ed Wesemann

An increasing number of law firm leaders find themselves functioning as full-time managers. Unfortunately, in doing so, they may be getting themselves too far from the action to recognize changes in the capabilities their clients are expecting from their lawyers.

Worse, managing partners may have lost an accurate assessment of their own partners' actual capabilities. At one extreme, this could lead to substantial underpricing of services. At the other, the firm may not be able to deliver the quality of legal work it is promising clients.

The rapid growth of many firms has made it harder for leaders to keep track of the services their firms are providing. Even managing partners who are dealing with firm issues full-time can be so absorbed by partner personnel matters, merger talks, recruiting activities and compensation issues that they don't have the time to completely understand the nuances of their firm's diverse practices and the actual experience and skill levels of their lawyers.



For this, managing partners find they must depend on their practice group leaders. However, particularly in large multi-office firms, the group chairs have the demands of their own legal practices, along with keeping track of their group's billings, write-downs, receivables, lateral recruiting, and marketing budgets, not to mention attempts at coaching underproductive partners. And even if a practice group leader appreciates changes in the alignment of clients' needs and the capabilities of the group, ego and reputation issues sometimes get in the way of doing anything about it.

Over the past decade, we've seen two recessions — the technology bust of 2001 and the mortgage bust of 2008. The impact of these economic downturns on law firms may have caused some lawyers' capabilities to fall out of alignment with the level of sophistication their workload demands — in

some cases because they are under-qualified, but frequently, because they are overqualified for the matters they are handling.

Large and midsized law firms have felt three primary impacts that are attributable, at least in part, to these recessions.

**In the AmLaw 200, 84% of law firms have non-equity partners; in the average AmLaw 200 firm, these individuals make up 44% of the partnership. Compare this to 2000, when 70% of these firms had non-equity partners and they made up 25% of the average firm's partnership.**

**1. GROWTH OF THE LITIGATION REVENUE STREAM**

Traditionally, in most large law firms, the majority of lawyers were devoted to the transactional side of the practice. Often, firms were 60% business and 40% litigation, or at least 50/50. The immediate impact of a recession is typically on law firms' transactional practices. Because litigation matters

usually involve a longer time horizon than transactional deals, law firm layoffs are typically among corporate and real estate associates. So over time, firms became more litigation-oriented, frequently 60% or more. But as the recessions caught up with the litigation practices, firms struggled to fill partners' plates. Many increased their tort practices and became more liberal in the acceptance of plaintiff contingent-fee matters. Work-hungry lawyers took files off associates' desks; associates, pressured to reach billable-hour goals, started doing work that previously might have been handled by paralegals.

**2. THE SEGMENTATION OF THE TRANSACTIONAL PRACTICE**

Securities offerings and M&A transactions that were traditionally handled by local law firms have increasingly moved to capital market cities, primarily

New York. This has been driven partly by venture capital firms demanding the use of selected Wall Street law firms, and partly by major corporate firms looking for mid-market transactions to replace the work going to London in response to concerns about Sarbanes-Oxley. As a result, the corporate work available to local and regional firms has become less sophisticated, involving more governance issues and smaller transactions.

**3. THE RISE OF THE NON-EQUITY PARTNER CLASSIFICATION**

In the AmLaw 200, 84% of law firms have non-equity partners; in the average AmLaw 200 firm, these individuals make up 44% of the partnership. Compare this to 2000, when 70% of these firms had non-equity partners and they made up 25% of the average firm's partnership. This trend has increased the proportion of partner-level lawyers who are looking for sophisticated work capable of supporting a partner billing rate. At the same time, it limited the training opportunities available to senior associates.

What brought all this to our attention was our practice of performing interviews in connection with strategic planning or merger projects. When we

**Figure 1**  
**Matter Sophistication Scale**

Rating	Level of Complexity	Typical Buyer	Price Sensitivity	Skill Level Required
10	Bet the company	Board of Directors	High premium expected	Highest possible capability
9				
8	Important matter	General Counsel	Full rates plus	Among the most well-respected
7				
6	Normal matter	Assistant General Counsel	Negotiated standard rates	Journeyman Partner
5				
4	Routine	Procurement Director/Operating Manager	Heavily discounted rates	Senior to mid-level associate
3				
2	Cut rate	Claims Adjuster	Selection based only on price	Newly admitted/Senior Paralegal
1				

**Tips on Measuring Alignment**

1. There is a halo effect on both the capability of lawyers and the sophistication of matters. Using an outside party to perform the interviews improves accuracy.
2. The process can be a valuable addition to associate evaluations and partner compensation determinations.
3. Lawyers will invariably want to see how others rate their capability. Lawyers are surprisingly modest and the rating of their partners is usually higher than how they would have rated themselves.

Figure 2

## Fee Earner Capability Rating

1. Capable of performing routine paraprofessional work of an advanced clerical nature with normal supervision.
2. Capable of performing routine paraprofessional work with minimum supervision or advanced paraprofessional work with normal supervision.
3. Capable of performing high level paraprofessional work with minimum supervision or low-level legal work with significant supervision.
4. Able to work independently on routine, low-level legal work; extremely senior paralegal or minimum lawyer capability.
5. Average legal capability for a second-chair support lawyer.
6. Above-average capability for a second-chair support lawyer or minimum capability for a first-chair lawyer.
7. Average capability for a first-chair lawyer.
8. Above-average capability; "well thought of."
9. Particularly recognized for expertise and reputation as an outstanding lawyer.
10. One of just a handful of lawyers in the market capable of providing specific legal services at the highest level.

When we speak to firm leaders, we typically hear one story about the kind of work the firm does and the sophistication level of the firm's lawyers. But when we talk to the lawyers, we often hear quite a different story.

We decided to create a means of measuring the perceived sophistication level of a firm's lawyers in comparison to the sophistication required for the work the firm finds itself doing. The scale is completely subjective, but when the measurement is performed by speaking to several knowledgeable parties about a lawyer or a matter, it is surprisingly accurate. The result presents quite a clear picture of a firm's practice and capability.

### ANALYZING CAPABILITY ALIGNMENT

We typically start by asking the firm's Chief Financial Officer for some basic data. The first is a report showing all matters completed over the past year. The second is a list of all matters on which each lawyer billed time during the

past year, their hours billed to those matters, and their effective hourly rate. Next, we create a scale similar to the example shown in Figure 1. Typically, the table is customized to the specific practice area.

We then ask the practice group chair and the billing partners to rate the sophistication of each of the matters on the sophistication scale. If the ratings differ significantly, we ask other partners familiar with the matters and attempt to derive a median.

Then we ask each partner in the practice group to rate the capability of all lawyers in the group other than themselves, using the scale shown in Figure 2. Sometimes we will create unique definitions for lawyer capability for a practice group, but then follow the general guidelines shown in Figure 2.

By comparing the sophistication of projects on which lawyers have worked to their capability, a firm can draw an amazingly accurate estimate of the alignment of their capability and practice. It is also an excellent tool for setting billing rates and evaluating the profitability of alternative fee matters. •



## Global strategic expertise

**Ed Wesemann** specializes in assisting law firms with strategic issues involving market dominance, governance, merger & acquisition, and all activities necessary for strategy implementation. He has worked with law firms on six continents and is the author of four books on law firm management.

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