
Performance Plans for Firms

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A remarkable case study shows how one client was able to yield efficiencies by creating a performance plan.

FIVE YEARS AGO, René Brewer was hired by the Royal College of Dental Surgeons of Ontario to lead their professional liability program. Tasked with moving the program toward self-insurance and introducing best practices for staff and external counsel, Brewer proceeded to shift responsibility from external counsel to staff, so that the initial investigation and file workup was done in-house. Now, when a file is referred, the program informs external counsel of the expected outcome and what needs to be done to achieve it. Thresholds for referring matters to counsel were changed so that files are managed in-house longer. And more cases are now resolved without the involvement of counsel.

The liability program's panel firms were all well-regarded and dedicated. But some rationalization was required to provide each firm with enough work to build strong, mutually beneficial partnerships. Some external counsel had difficulty adjusting to the new style of file management, including more staff involvement, heightened reporting requirements and an emphasis on reducing file cycles. The College decided to eliminate one firm and replaced two that were not a good fit. At the same time, the liability program's ad hoc approach to case assignment, based largely on the personal preferences of staff, was replaced with standardized file allocation tied to geographical location.

Brewer says protocols now outline the program's reporting and file-management expectations, including reporting intervals, litigation strategy and staffing, in the belief that reducing file cycles by proactively moving cases toward resolution saves money.

As a way to achieve its objectives, the College decided to introduce formal performance plans with metrics for external counsel. Each file is now scored every six months on communication and responsiveness (10 per cent), efficiency (such as legal project management and file cycle, 35 per cent) and total legal spend (15 per cent). In order to promote innovation, the College added creativity in legal project management as a new performance metric. At closure, files are scored (40 per cent) on results as well. The scores assigned to each category are heavily weighted in favour of outcomes reflecting the program's focus on measuring the value of legal services.

Firms with aggregate scores of at least 95 per cent are considered to be meeting expectations. Firms that do not achieve the threshold are advised of the deficiencies and provided real-time feedback during the next scoring period to assist in resolving them. Interestingly, performance scores are not tied to the fees received by the firms. Instead, the scores of each of the program's firms are shared with all the firms. This approach seems to be more effective for continuous improvement than financial disincentives, given the low effective rates secured by the College.

Within one year, the liability program's active file count had fallen by 35 per cent, where it has stayed ever since, and actuaries were predicting losses for 2012 to be about half of what would have been expected based on prior years. The program was effectively independent of commercial insurance by 2014 and its

projected losses had dropped to pre-2000 levels by the end of 2015. The annual legal spend, including defence costs and indemnity, was 45 per cent lower in 2015 than in 2011. The program is successful with less staff than five years ago and a 7.5-per-cent increase in membership.

The program's financial performance over the past few years is proof that the changes in its operations and arrangements with preferred counsel have achieved the desired results. Further expense reductions are unlikely, but the program continues to evolve in order to best serve its stakeholders.

Brewer believes creativity remains untapped. The College is experimenting with limited retainers and flat-fee arrangements and will continue to explore alternatives to hourly billing. A new matter-management system is in development that will automate many of the liability program's processes, giving staff more time to focus on things like claim prevention. The program is crowd-sourcing content for information packets on legal topics relevant to program files for use by defence counsel and recycling and sharing legal intelligence with all stakeholders.

It has taken about five years to change and then fine-tune the relationship between the College and its law firms. Such a performance plan for law firms must include metrics. The success of the College's plan was achieved by changing operating protocols, the distribution of work across staff and counsel, and with formal communications in support of the plan.

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