

The Excess Capacity Problem: When is Hiring Required?

The capacity for performing legal work in most law firms vastly exceeds its normal demand. So how do you know when to hire?

By Ed Wesemann

Most large law firms have far more lawyers than the availability of client work requires. This is, in part, driven by the law school hiring programs that require firms to predict their staffing needs almost two years in advance. But an equal culprit is the fear by most law firms of having a client come to their door with an engagement and not having the people to do the work. New business is so difficult to obtain that, for many lawyers, the fear of not being able to perform it in an acceptable manner causes the firm to err on the side of excess capacity.

No one benefits from over capacity. Typically, the partners become aware of the problem first. To keep themselves busy, they, effectively, reach down and take work off the plates of younger partners and senior associates. This causes the non-equity partners and senior associates to hoard work by not assigning work to mid-levels and juniors. Young lawyers must then either find "make work" to keep themselves busy or take work back from paralegals. The result is dissatisfied clients paying rates that are too high for the sophistication of the work performed, and dissatisfied associates who are not getting the experience-building work they crave. Eventually, a dissatisfaction level builds that causes associates, in whom the firm has a high investment, to move to another firm where they hope for better opportunities.

Unfortunately, firms become accustomed to overcapacity, particularly in the young associate ranks. As a result, the first reaction of not having someone immediately available to perform work is to hire as rapidly as possible. Legal headhunters observe this routinely as law firms call them in a panic about the immediate need for a third year litigation associate. Then, a week later, the firm sits on the resumes of the candidates the recruiter sent over because the panic demand has passed.

The test of hiring comes in the answer to three questions:

1. How long term is demand for additional staffing? Is it in response to a specific deadline, a unique circumstance (maternity leave, back to back trials, etc.), or is there a systemic need for assistance?
2. How much assistance is required? Does it look like 2,000 hours a year or is it more likely 150 hours one month and 15 the next?
3. Given the known volume of work and high probability of potential engagements, what will the additional lawyer be doing in three months? Six months? A year?

So, if it is a slam dunk for hiring, do it. If it's a close call, consider finding a capable lawyer who might be available on a periodic basis or part time. A number of firms are having great success with lawyers on a "mommy or daddy track" who want to continue practicing but not commit to a full time position. If there is a risk of not needing a person after the current crisis - tough it out.

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