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ABA LAW PRACTICE DIVISION
The Business of Practicing Law

Efficiently Assimilating New Practice Developments in a Law Firm
to Improve Client Service and Firm Efficiency

By Jack Bostelman[1]
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Knowledge Strategy Interest Group
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Committee on Federal Regulation of Securities
Washington, D.C.
November 22, 2013

Executive Summary

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By establishing a convention for naming documents in the document management system, a practice group can facilitate the ability of its lawyers to find precedent relating to a new development, even if a centralized precedent collection is not established. Having a folder naming convention in the DMS can make finding final versions easier.

7. Establish a channel for practice updates 27

Because the ombudsman acts as the hub of the practice group's communications regarding the new development, it is important that external sources of information about the development be identified and directed to the ombudsman, and that the ombudsman issue periodic updates to the practice group.

Further information

- Visit the home page of the **Knowledge Strategy Interest Group** at:

  http://ambar.org/LPMKnowledge

- Contact the Group's chair at:

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- Join our Group to receive e-mail updates, meeting notices and more (free for Law Practice Division members; $50/year for ABA members):

  Select "Join our Committee" from our home page link noted above

- Read our Group's 57-page white paper on "Top 10 Knowledge Strategies for Larger Law Firms." A link to download the white paper is included in the welcome e-mail for all new members of our Group. If you are already a member of our Group, please e-mail the Group's chair for a copy.

Introduction

1. You are a thought leader

By virtue of your participation in the Fall Meeting of the Committee on Federal Regulation of Securities, you are demonstrating that you are a thought leader within your law firm. You are interested in

- learning about new developments in your practice area,
- discussing issues about these developments with colleagues at other firms,
- actively shaping the regulatory or practical approach to the subject, and
- sharing this learning with your clients and potential clients, as well as your firm colleagues.

2. You owe it to your firm to share with colleagues

Your firm has invested in you to attend the Fall Meeting, with the expectation not only that it will further your career but also that your learning here will redound to the benefit of the firm through sharing with your colleagues.

But how can this sharing be accomplished?

3. This paper describes ways to share your learning

This paper suggests ways that a law firm can efficiently assimilate new learning among its lawyers. The main goal is to improve the quality and consistency of service to clients. This makes clients happy and reduces risk to the firm. A further benefit is that junior (and lower-cost) lawyers can more quickly get up the learning curve, which reduces the cost to the client. These lower costs generally lead to reduced write-downs and write-offs, which improves realization rate and profitability.

4. How to implement these ideas about sharing your learning

a. Your approach depends on your role within the firm

You may have a leadership role in your firm or practice group. You may be a practitioner without a formal leadership role who is working hard on client transactions. (By virtue of your attending the Fall Meeting, you are nevertheless a thought leader, as noted above.) You may be a partner or an associate.

Regardless of your situation, you can bring the sharing ideas in this paper to your firm. You may be able to implement some of them yourself. The more senior your role within your firm, the more you will be able directly to influence the outcome. For other of the sharing ideas in this paper you may need to influence others to get the ideas implemented. The more senior the lawyers involved in the initiative, the more

likely its chances for success. In all cases, however, your individual efforts will have a significant effect on the outcome.

If you are a leader in your practice group, you should meet with a handful of members in your group to arrive at a consensus about the ideas in this paper and develop additional ideas. This group should most certainly include some associates. The discussion could be held at a regular practice group meeting, or as a special meeting with a subset of the practice group. Involve the discussion participants in implementation of the ideas, so they will take ownership and influence their colleagues to buy in.

If you are not in a leadership role, volunteer to your practice group leadership that you'd like to help implement one of the ideas in this paper. If you're a partner, you may well be put in charge of the initiative. If you're an associate, you'll probably be asked to help. These are good things! Suggest that the group discussion approach discussed in the previous paragraph be followed.

b. Key principles for pursuing ideas to share learning

The most important principle is that lawyers will generally not use a process or tool unless they believe they created it. That belief may be based on their having talked about it at a meeting, or having actually helped implement it.

Another principle is that ideas requiring many lawyers continually to contribute effort or information will probably fail unless practice group leadership (and even firm leadership) push hard over an extended period of time. Those kinds of ideas should be postponed until the requisite leadership commitment is in place. Instead, ideas requiring ongoing contributions from only a small number of lawyers should be pursued.

c. Find allies within the firm

Depending on your role in the firm and the nature of the idea being pursued, you may be able to find allies elsewhere in the firm. These people can assist in bouncing around ideas and perhaps even helping with implementation or ongoing support. In light of the first principle described in the previous subsection, though, these allies should not be asked to implement the ideas on their own. Lawyers in the practice group must be involved in creating the new process in order to be willing to use it.

- If the firm has a designated chief knowledge officer or equivalent, speak to that person.
- Check with the head librarian. They are often *de facto* knowledge officers.
- Check also with the head of professional development/lawyer training.
- Talk to the chief marketing officer. He or she will be among the few within the firm who look outwardly to what's going on in the law firm world. They know a lot about what other firms are doing (or can find out). They also talk strategy with the firm's

chairman/managing partner and tend to know what's going on within the firm, including other know-how sharing initiatives.

5. Where to start

Whether you are a leader in your practice group or a practitioner in a non-leadership role, you should find a project to start with that does not require IT Dept. resources or other help outside your practice group. The following ideas in this paper are good candidates for the initial effort:

- checklists
- document/DMS folder naming convention
- issues ombudsman
- teach-ins

Early successes with these projects will give your practice group credibility when it asks for more resources. IT Dept. resources within a law firm are always scarce and IT-dependent projects are slow to evolve. It is better to have a functioning manual process very soon, which can evolve with use and, if successful, be developed into a more automated system. This produces quicker results for impatient lawyers, whose support is needed. It is usually also much more efficient to automate an existing process than to develop the process and automate it at the same time.

Keep the early initiatives within a single practice group. The needs of different practice groups will vary. One size does not fit all.

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Efficiently Assimilating New Practice Developments in a Law Firm

to Improve Client Service and Firm Efficiency

The ideas that follow illustrate ways that a law firm can efficiently assimilate new learning among its lawyers. The main goal is to improve the quality and consistency of service to clients. This makes clients happy and reduces risk to the firm. A further benefit is that junior (and lower-cost) lawyers can more quickly get up the learning curve, which reduces the cost to the client. These lower costs generally lead to reduced write-downs and write-offs, which improves realization rate and profitability.

While this paper has been prepared for a program relating to operation of the amendments to Rule 506 of SEC Regulation D that permit general solicitation in private placements conducted under that rule, the ideas are applicable to a law firm's approach to assimilating learning for any major new development and, for most of the ideas, even any minor new development within a practice area.

Recommendation #1

Conduct a teach-in

Where warranted by the significance of a new development to the firm's practice and clients, a teach-in is an excellent way to jump-start the spread of learning among the firm's lawyers.

a. What is a teach-in?

A teach-in is a learning session for the firm's practitioners, including partners and associates, regarding a significant new development. In some cases the invitees should include a broad group of practitioners, or even the entire firm. In other cases, the new development will be of interest only to one or a few practice groups.

The most common form of development warranting a teach-in is a major regulatory change. Significant changes in practice, whether regulator- or market-driven, may also be candidates for a teach-in.

b. Why should a teach-in be conducted?

In addition to the obvious benefit of sharing the learning of the few with the many, a teach-in forces the instructors to organize the material, helps identify gaps in their own understanding and can identify issues they had not previously considered. Those instructors will likely continue to be the go-to lawyers in the firm for questions arising in the course of client matters affected by the new development.

Inviting clients to the teach-in (as discussed in section e. below) also creates client relations and business development benefits.

c. Who should teach it?

Typically there will be a small number of lawyers at the firm who have been following the development in question. Those lawyers can on relatively short notice conduct a learning session for the firm's practitioners. It is in the firm's interest to give billable hours credit to the lawyers who conduct the teach-in and the associates who assist them in preparing written materials, slides, etc. If the firm has issued or expects to issue a client alert on the topic, these same lawyers will likely be involved in preparing it. The efforts to prepare the alert and prepare materials for the teach-in will substantially overlap.

d. What should be the format of the session?

The length and format of the teach-in will be driven by the significance of the new development. A really major development would justify a special stand-alone session of one to two hours.

A more modest development could be handled as part of a regular practice group meeting. Unless the development is of such limited interest that it is clearly relevant only to a single practice group, the teach-in portion of the practice group meeting should be advertised to other practice groups that may be interested.

Attendance will be improved if the session offers CLE credit, which will require the preparation of written materials in advance. The session should be structured to allow time for questions from the audience, which will most likely include partners and other senior practitioners who will not be shy about raising issues. These questions can help the session's leaders by identifying issues they may not yet have considered.

e. Should clients be invited?

In most cases, the firm will advance its relations with clients by inviting them to attend the teach-in, either in person or via audio (or even video) conference. The presence of clients should not unduly chill the audience questions from the firm's lawyers, for it should be expected that at the early stages of a new development not all the firm's lawyers will be up to speed. Furthermore, client questions can help inform the firm's lawyers about areas of particular concern to clients.

Alternatively, the firm could conduct a separate teach-in exclusively for clients. The firm could also conduct teach-ins at the offices of particularly important clients.

If clients are to be invited to the teach-in, the firm's Marketing Dept. and the partners in charge of major client teams should be involved at an early stage in planning.

Recommendation #2

Establish an issues ombudsman

One of the most efficient ways to spread learning within the firm about a particular new development is to appoint one partner as the ombudsman for the subject.

a. Why an ombudsman?

Interestingly, it does not really matter whether that partner has prior experience with the new development in question, as long as it is generally within that partner's subject matter competence. The only qualifications are that the partner be generally respected within the practice group and indicate a willingness to act in this collaborative role. Even if the partner has no prior experience with the specific issue, he or she will be forced to get up to speed by being designated as the go-to lawyer for questions.

Most importantly, the mere fact of having a single person acting as the focal point for questions improves efficiency. Questions frequently repeat, particularly in the early stages of a new development. The first time a question is asked, it may take the ombudsman some time to come up with an answer or a suggested approach. The effort may involve overseeing research, reviewing new regulations and regulator commentary, conferring with colleagues within the firm or at other firms or reaching out to regulators.

The second time the question is asked, the ombudsman becomes a hero (or heroine). The questioner will be stunned by how fast the answer is produced. The ombudsman will be gratified, and filled with feelings that the effort of the job is worthwhile. Furthermore, the ombudsman will be uniquely positioned to spot trends and make connections between questions.

b. Who should be the ombudsman?

The ombudsman would logically be selected from among the partners who conduct a teach-in, as described in Recommendation #1 – "Conduct a teach-in." As noted above, however, the ombudsman does not need to have prior knowledge about the new development or the issues involved in order to be effective. The partner needs to have a basic familiarity with the subject matter, as well as a good judgment and a willingness to consult with others on questions of particular difficulty or significance.

c. How should the ombudsman role be structured?

Some work of the ombudsman will be billable to the matters on which the ombudsman is consulted. Other work, or related research that is more generic, may not be billable. If the ombudsman role is expected to require significant effort, the firm should grant him or her billable hours credit.

The ombudsman can be someone who focuses only on one new development, or could be appointed to address many or all new developments in a particular practice area. Which approach a firm or practice group takes depends, among other things, on the extent to which the firm is prepared to take the ombudsman away from being supervising partner on client work.

d. What should be the responsibilities of the ombudsman?

In addition to answering questions about the new development, both internally and from clients, the ombudsman will be the lawyer who oversees other firm initiatives relating to sharing its learning about the development, as described in the remainder of this paper. Those include preparing checklists, developing a list of all firm matters involving the new development, collecting relevant precedents and regularly updating the firm’s lawyers about the new development, such as through internal e-mails and at practice group meetings.

Recommendation #3

Use checklists instead of standard forms

Checklists and good precedents are generally preferable ways to guide lawyers, as compared with standard forms. This is especially true for guidance regarding new developments. Checklists produce 80% of the value with 20% of the time and effort.

a. Don't fall into a black hole

For most transactional practice areas at larger firms, standard forms are generally not appropriate. Creating more standard forms tends to be one of the first suggestions when a group of lawyers gets together to discuss how to make their practice more efficient. Yet this is rarely a good idea.

Standard forms make sense only for situations that are highly repetitive, such as consumer transactions, or that require a high degree of consistency or adherence to firm policies, such as legal opinions. In these cases the effort involved in creating the forms is more than offset by the improved efficiencies and quality control. Most types of work undertaken by larger firms is not worth the effort to create a full-fledged standard form.

Standard forms projects rarely get completed. Forms require a time commitment from the practice's best, and therefore busiest, partners. Deciding on forms to prepare and recruiting a promising associate to draft them is not difficult. Getting several senior partners to review the forms, the alternate provisions and the drafting notes – and to agree among themselves – is nearly impossible. Forms projects can become black holes. Years can pass with no usable results.

b. What good is a checklist?

The kind of checklist envisioned is one that describes the key provisions of an agreement or other document – in effect, an anatomy of the agreement or of a key part of the agreement. While inspired by the type of checklists contemplated in *The Checklist Manifesto*[2], it has more content than those checklists. It will be useful to both the drafting lawyer and the reviewing lawyer.

The checklist will be used by the draftsperson, most likely a more junior lawyer, to gain an understanding of the finer points of the key provisions. It tracks the main section headings of the agreement, and perhaps important subsections. It includes

[2] Atul Gawande, *The Checklist Manifesto – How to Get Things Right* (2009).

cross-references to secondary explanatory material, such as a useful firm memo, relevant article or section of a treatise.

When reviewing a draft during a matter, it is easy enough for an experienced lawyer to correct or improve what has been drafted. It is much more difficult to spot what is missing, whether it is something as supposedly obvious as the choice of law or choice of forum provision or something more subtle, such as an alternate provision that should be used in the present instance. The checklist will be used by the senior reviewer to ensure that nothing has been left out.

A checklist is also more useful than a standard form in assisting the firm's lawyers in reviewing an agreement drafted by others.

Because they are more streamlined, checklists can also be more nimbly revised than standard forms. For example, comments and suggestions from users can be incorporated into a future version of the checklist more easily than into a standard form, both from a drafting and an internal approval perspective. Similarly, changes in market practice or applicable law can be reflected more quickly.

c. Enhance the checklist with precedents

In order to assist the draftsperson with actual language for provisions, the checklist should include example agreements from actual transactions – in other words, precedents. Those precedents should be accompanied by commentary that explains why the precedent is useful. For example, it has a good basic structure for a pro-buyer (or pro-seller or neutral) agreement. Or it has a good example of a specific type of provision.

d. Lawyer resources will still be required, though at a reduced level

While a checklist/precedent approach may involve 20% of the effort to create a standard form of a complex agreement, it still involves real work. The same kind of team should be assembled as for a standard forms project. The team in fact would go about its task in much the same fashion as a standard forms project: create an outline, gather precedents, collect secondary sources, etc.

The difference is that the checklist project will produce usable work product much sooner than a standard forms project. In fact, while the first version of the checklist is being used by the practice group, an enhanced second version can be developed. For example, commentary can be added for additional or alternative provisions, and related precedents and possibly secondary sources can be tracked down.

If desired, the checklist could ultimately become a standard form with commentary. While that is not a reason to start a checklist project, it is a way to convince skeptical colleagues to start with a checklist approach. The argument would

be that the checklist is not a detour but instead an intermediate step on the same path as a standard form, which produces usable work product sooner.

e. Other types of checklists

Instead of describing the contents of an agreement, a checklist can also describe the steps for completing a certain type of matter or common task. This type of checklist could also include cross-references to relevant documents used during each step or even to a checklist of the type previously discussed that describes the contents of a relevant document.

This kind of process checklist can serve as a master roadmap for the matter, as an aid to training less experienced lawyers. It could also be used on a more real-time basis as a status reporting tool. If made available on-line, lawyers working on the matter could post status updates for the various steps in the matter, enabling the senior lawyer on the team quickly to assess where things stand for purposes of managing the team and reporting to the client.

Yet another type of checklist would list all the documents needed in the matter – essentially a closing checklist. By including assignments of primary responsibility to the firm and various other parties involved in the matter it could also be used as a status tracking tool, as well as enabling the relevant lawyers on the matter better to manage the production and finalization of documents.

f. Examples of checklists relevant to Rule 506 offerings involving general solicitation

To illustrate the benefit of checklists in sharing learning within a firm regarding a new regulatory development, consider the following types of checklists that could be used in connection with Rule 506 offerings under the amended rules:

- Summary of non-exclusive methods of verifying a natural person is an accredited investor,
- Summary of the definition of accredited investor,
- Steps to follow in performing diligence on various categories of accredited investor,
- Summary of bad actor disqualifications,
- Summary of key steps for conducting a Rule 506 offering generally, including any steps unique to those involving general solicitation,
- Summary of key elements of an accredited investor questionnaire,
- Summary of key elements of legends for offering materials, and
- Steps to be performed to support the firm’s no-registration opinion.

g. Conclusion

Through checklists, benefits can be realized much sooner than with standard forms, at a fraction of the effort and without precluding continuing on to create a

standard form (as unlikely as the latter is to be completed). Because of the speed with which they can be created, checklists are particularly useful in addressing new developments.

Recommendation #4

Track matter experience

Basic tracking of matters that involve a new development is essential to sharing lawyers' learning effectively. In most firms, doing that through automated systems is easier said than done. There are, however, some straightforward ways to accomplish this at the lawyer level.

a. Why is tracking matters important?

It is inevitable that fairly soon after a new development has been affecting a practice group's matters, the following questions will be asked:

- Which lawyers have worked on matters involving the new development? I want to ask them a question for my matter or staff some of them on my matter.
- What's our practice group's experience in working on matters involving the new development? I want to pitch a prospective client about our expertise in this emerging area.
- What deal documents of type X do we have that reflect the new development? I need precedent to draft a type X document for my deal.

The answer to each of these questions starts with a list of matters in which the new development has been addressed.

b. Why can't the IT Dept. just build something?

A common misconception among lawyers is that a technology tool is needed to accomplish information-sharing objectives. In fact, the technology should come second. Before it makes sense to introduce automation, the mechanism to collect the information must be designed and proven, preferably on a small scale and with existing tools (such as e-mail, spreadsheets, even paper forms).

Designing a workable collection mechanism is the key to the whole thing. That process should be tested, revised in light of real-world experience, tested some more, revised again, etc. Otherwise the technology team will be continually rebuilding and the project will never be completed. Even worse, when it doesn't work, the lawyers will blame the technology rather than the process design, so they won't focus in the proper place to find a fix.

c. So how do we build this?

The two pieces of information the tracking system needs to collect are:

- Is this a new matter?

  and

- Does it involve the new development?

The answer to the second question can be answered only by lawyers working on the matter. If the involvement of the new development is generally known at the start of the matter, that fact should be identified and collected at that early stage, when the lawyers are already thinking about organizational and administrative matters. If the answer generally becomes known only during the matter, the information should be collected at the end, when other wrap-up activities are occurring.

The key to success is developing a follow-up system that is triggered by either the opening or completion of the matter. Because it is much easier to identify through a firm's existing system the opening of a matter than its completion, whenever it is possible to collect *accurate* information at matter opening that should be the approach taken.

d. An example, using general solicitation in Rule 506 private placements as the new development

For example, assume the new development in question is whether the matter involves the newly permitted ability to employ general solicitation in Rule 506 private placements, and that these matters are handled exclusively within the capital markets and private funds practice groups.

Assume also that the firm's new matter intake system does not capture enough of a description for a reader to determine whether the matter is a private placement, but that it does provide a means *reliably* to identify the matter as being handled by the capital markets or private funds group (either because the matter is *accurately* coded as a capital markets or private funds matter or because the supervising partner is associated primarily with the capital markets or private funds group).

The first step

The heads of the capital markets and private funds groups should e-mail all the partners in the groups asking that they notify by e-mail a designated individual (such as the administrative assistant of one of the chairs, a paralegal or another administrator), at the time the matter is opened, stating whether or not the matter involves a Rule 506 private placement using general solicitation.[1] This request will be ignored or

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[1] Building this requirement into the on-line or paper form used in the firm's new matter intake process will generally not be helpful, even in the unlikely event that the revision could be quickly accomplished. This is because the lawyers frequently

overlooked in most cases, but is not the only element of the collection process. It is useful, though, to establish the request as an initiative from the practice group heads.

Administrative follow-up is key

It should be arranged with the firm's Finance Dept. that the individual designated in the e-mail receive at the beginning of each week a list of capital markets and private funds matters opened during the prior week. For each new matter for which no e-mail has been received from the supervising partner, that individual should contact the administrative assistant for each supervising partner, request the names of the senior associates working on the matter and contact them to obtain the response to the question.

The designated individual should maintain a master spreadsheet of all the new matters in the two practice groups that involve the new development, with columns for at least client/matter name and number, supervising partner, senior associate (when known), opening date of the matter, closing date (when known) and any special comments.

Confirming accuracy is important

To confirm the accuracy of the list, as well raise the profile of the data collection effort within the practice groups, the designated individual should e-mail it quarterly to all lawyers in the group, asking that they submit corrections for all listed matters opened during the quarter, most importantly whether matters have been omitted or erroneously included. The heads of the groups should be copied on this e-mail.

Gathering data at closing is an alternative

For other types of new developments, the necessary information may become known only during the transaction. In that case, the information collection process described above, or updates to the information gathered at the outset of the matter, should be triggered by transaction closing, rather than opening.

Identifying transaction closing is typically more difficult (and possibly labor-intensive) for firms. If that is not feasible, the designated individual may need to make monthly calls to an associate on each open matter to inquire whether the matter has closed and, if so, to collect the required information.

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leave to their administrative assistants the completion of all but the most critical pieces of information on the form (who gets billing credit, who is supervising the matter, conflicts information, etc.). Fields that are included in the form for general information collection purposes but that have no consequence to the lawyer completing the form, such as industry of the matter, can be notoriously inaccurate.

The manual effort is reasonable and temporary

While this process may seem labor-intensive, the number of new matters opened each week for two practice groups should not result in a burdensome effort. Also, after a year or so, the new development will no longer be new, and the entire effort can cease or be incorporated into a broader data collection process.

e. What do we do with the list, once we have it?

The list should be furnished weekly to the groups' ombudsmen, the lawyers in charge of staffing matters for the groups and any other lawyer who has asked to receive it. After there are a reasonable number of transactions on the list, it should be sent to all lawyers in the two practice groups, with an indication that an updated version is posted on the intranet and weekly or quarterly updates are also available via e-mail to lawyers who want them.

The ombudsmen can use the list for the following purposes:

- Calling periodic meetings of the senior lawyers who have worked on relevant matters to discuss evolving practice issues;
- Contacting senior lawyers to confer on questions the ombudsmen have been asked;
- Identifying lawyers who can be asked to describe their experiences at regular practice group meetings;
- Identifying lawyers who can prepare client alerts on emerging issues relating to the new development;
- Conferring with the groups' lawyers in charge of staffing matters; and
- Collecting precedents for an organized collection, as described in Recommendation #5 – "Collect and organize precedents and articles".

The firm's Marketing Department should also be informed about where to find the current list on the intranet.

Recommendation #5

Collect and organize precedents and articles

One of the most important aspects of a firm's coordination efforts regarding a new development is marshaling precedents. Once the relevant matters have been identified, organizing precedents and making them available should be a high priority.

a. The ombudsman should oversee the effort

Organizing and making available a practice group's precedents relating to a new development should be overseen by the ombudsman for the development (as discussed in Recommendation #2 – "Establish an issues ombudsman"). Articles addressing the new issue can also be included in the collection.

b. Prepare a subject matter index

Before collection begins, the ombudsman prepares separate subject matter indices for precedents and for articles. The index for precedents could be as simple as a listing of document types. In the case of a new development relating to general solicitation in Rule 506 private placements, those types could be private placement memorandum, accredited investor letter, subscription agreement, no-registration opinion, etc. The subject matter indices should also be sent to the administrators for the firm's (or practice group's) intranet to be loaded in an appropriate location, where they will be used as containers to hold the relevant precedents.

c. Design the collection process

Based on the list of matters that involve the new development (as previously discussed in Recommendation #4 – "Track matter experience"), the ombudsman oversees the collection of key documents from those matters. Based on material received from external news sources (as discussed in Recommendation #7 – "Establish a channel for practice updates"), the ombudsman also selects articles to include in the collection. Internal memos and other firms' client alerts could also be included.

Each week the list of matters that have closed should be forwarded by the administrator maintaining the list to another administrator. The second administrator should track down (either in the firm's Records Dept. or from the junior lawyer on the matter) documents matching a list provided by the ombudsman (which may in fact be the subject matter index). Alternatively, the same administrator who maintains the list of matters could be the one who tracks down precedents. Initially the ombudsman may

want to collect all final closing documents for relevant matters, in order decide which document types are sufficiently important to include in the precedent collection.

d. Categorize precedents and articles

Finally, the ombudsman reviews the precedents obtained, tags them for the relevant subject matter and forwards them for posting on the intranet in the appropriate location. As the ombudsman reviews articles and other secondary material relating to the issue, he or she can also tag and forward them for intranet posting, subject to any copyright considerations.

In the early stages of the new development, the volume of precedents is likely to be sufficiently modest that the ombudsman can personally review and tag them for subject matter. This will help the ombudsman gain an accurate picture of emerging practices and fine-tune the subject matter index.

As the transaction volume increases, the ombudsman will probably seek assistance from an associate or group of associates to tag the documents. It is important that the subject matter index achieve the appropriate balance between being detailed enough to be useful to the lawyers using it and being simple enough that tagging is consistent and easy when performed by multiple lawyers.

e. Other considerations

The ombudsman should publicize the availability on the intranet of the precedent and article collection through an e-mail and periodically remind the practice group at their regular meetings.

Of course, if the practice group already has a knowledge base or other similar tool, the precedents and articles could be organized according to subject matter and posted there.

Recommendation #6

Establish document and folder naming conventions

By establishing a convention for naming documents in the document management system, a practice group can facilitate the ability of its lawyers to find precedents relating to a new development, even if a centralized precedent collection is not established. Having a folder naming convention in the DMS can make finding final versions easier.

a. How a convention can aid in finding relevant precedent

If the practice group establishes a convention for naming documents saved in the DMS, lawyers will be able to search on the title in the document profile to find the type of document relevant to their inquiry (such as subscription agreement in a private placement).

By further confining the search to the matters that involve the new development, using the list described in Recommendation #4 – "Track matter experience", they will be able to find precedents even if there is no centralized collection effort as described in Recommendation #5 – "Collect and organize precedents and articles". In some DMS systems confining the search to specific matters will have to be done matter by matter, but for a reasonably short list of matters this approach is reasonable.

If the DMS supports folders, establishing a standardized folder convention that includes a folder for final documents will enable users more quickly to find final versions of precedents by confining their search to documents in that folder for the relevant matters.

While it is generally not feasible to establish firm-wide document and folder naming conventions, a consensus can fairly readily be achieved at the practice group level.

The benefits of a document and folder naming convention extend to all document searches by practice group members, not only those relating to a new development.

b. Considerations for establishing a document naming convention

The document naming convention should be kept simple. Broader compliance for a less-detailed system is better than spotty compliance for a detailed list of requirements. The main objective is to avoid the situation where most documents have brief and uninformative names, such as Agreement or Letter.

For example, require that documents be named as follows: [Document Type]-[Client/Matter or Project Name]-[Actual Title of Document]. Document Type would be from a standardized list of names for the most frequent types, so that there would be a single name for both Subscription Agreement and Share Purchase Agreement.

There could be different naming conventions for different Document Types. Agreements could follow the convention described in the previous paragraph, while Letters and Memos could have the convention: [Letter or Memo]-[Client/Matter or Project Name]-[First Addressee]-[Subject or Re].

If the practice group decides to have different naming conventions for different Document Types, they should limit the number of different conventions in order to avoid an overly complex requirement that will be challenging for users to follow.

In some practice groups, it may be desirable to include the transaction type in the document title (selected from a short list of standardized transaction types).

For simplicity, the Client/Matter or Project Name can be omitted from the naming convention, because DMS search systems typically can search by client/matter. It is nevertheless often helpful to have that information in the title of the document to aid in skimming lists of document names in search results.

The most important principle in designing the document naming convention is to develop a list of the main types of questions that users will seek to answer through searches on the document title, and ensure that the convention addresses those questions.

c. Considerations for establishing a standardized set of folders

A standardized set of folders for matters in the group should also be defined, assuming the DMS supports matter-centric folders that can be viewed by the team (and hopefully all users). Because these folder must be created manually by the team working on a matter, the folder definition should be kept simple.

For example, require there be five standard folders created for each matter: Research/advice, Primary deal documents, Ancillary deal documents, Final documents, and Other. Users would be permitted to create additional folders for documents in Other, and to create sub-folders under the five standard folders.

The folder definitions must be obvious enough that users can generally file in the correct folder without having to refer to the quick reference cards.

d. How to implement the system

The naming and folder convention system described above is entirely manual. The document names are manually entered in the DMS profile by the lawyer or the lawyer's administrative assistant. If the DMS supports folders, they are manually created in relation to the matter. Success of the initiative depends on reasonable

compliance by lawyers, their administrative assistants and paralegals in the practice group. Observing the following principles will lead to greater compliance:

- Before rolling out the new requirements, discuss the proposal and its benefits at a practice group meeting, in order to gain buy-in from the group;
- Establish a small working group of lawyers to create the document and folder naming conventions;
- Present the draft conventions to the entire practice group at a regular meeting;
- Incorporate reasonable comments and re-present the proposal, repeating until there is a consensus (or at least the absence of strong objection);
- Roll out the new requirements under the name of the head of the practice group, and be sure he or she leads by example (in other words, complies with the new system);
- Keep the conventions as simple as possible;
- Distribute quick reference cards;
- Train secretaries;
- Instead of formal training for lawyers, review the new requirements at a regular practice group meeting;
- Have an administrative assistant or paralegal spot-check compliance and send an e-mail to each non-compliant lawyer, copied to the practice group head (word will get around);
- Reinforce the importance and benefits of the naming conventions at regular practice group meetings; and
- Keep the pressure up on lawyers, administrative assistants and paralegals until the convention has become part of the practice group's culture.

Recommendation #7

Establish a channel for practice updates

Because the ombudsman acts as the hub of the practice group's communications regarding the new development, it is important that external sources of information about the development be identified and directed to the ombudsman, and that the ombudsman issue periodic updates to the practice group.

a. External resources for the ombudsman

Working with the firm's library, the ombudsman should identify external resources, such as paper and e-mail newsletters, likely to discuss updates and emerging practices regarding the new development. The goal is to find the right balance between too many and too few. Reviewing this information must not become burdensome for the ombudsman.

The firm's library or other administrative department, as well as members of the ombudsman's practice group, should also be asked to be on the lookout for conferences and bar association meetings about the new development. The ombudsman should decide whether the firm will attend these conferences. If the ombudsman decides to send another lawyer rather than personally attending, that lawyer should be asked to send a summary of the conference to the ombudsman and, if sufficiently interesting, to report to the practice group at an upcoming meeting.

b. Internal updates from the ombudsman

The ombudsman should periodically route information about the new development to members of the practice group, balancing the need to inform against the burden of too much information. Steps the ombudsman may consider include:

- **Publicize external resources focusing on the new development.** If there are one or two extremely targeted and useful external resources, the ombudsman can so advise the practice group in order that interested members can sign up to receive these from the library (either in paper or electronic form). The ombudsman could also arrange for these external resources to be made available through the practice group's intranet, such as through an RSS feed or link to the external publisher's archive system.
- **Periodic e-mail or blog updates to practice group.** The ombudsman should periodically send brief updates to the practice group regarding the development. These could be sent via e-mail. If the firm has the internal capability, a better way to communicate would be through internal blog software, accompanied by an e-mail to

the group that includes the blog text or links to it. Blog software will typically include an archive feature and subject matter categorization for each post, which facilitates the ability of practice group members to find relevant posts when researching an issue. Another way of archiving the e-mails would be to include them in the collection of articles posted on the intranet by the ombudsman, which are organized by a subject matter index, as described in Recommendation #5 – "Collect and organize precedents and articles". Some of these updates may also be suitable subjects for client alerts.

- **Updates at practice group meetings.** The ombudsman or another lawyer familiar with the issues should provide a brief update on the new development at regular meetings of the practice group. The frequency of these updates will depend on the significance of the new development to the entire practice group and the pace at which the development is evolving.

Further information

- Visit the home page of the **Knowledge Strategy Interest Group** at:

  http://ambar.org/LPMKnowledge

- Contact the Group's chair at:

  jack.bostelman@kmjdconsulting.com

- Join our Group to receive e-mail updates, meeting notices and more (free for Law Practice Division members; $50/year for ABA members):

  Select "Join our Committee" from our home page link noted above

- Read our Group's 57-page white paper on "Top 10 Knowledge Strategies for Larger Law Firms." A link to download the white paper is included in the welcome e-mail for all new members of our Group. If you are already a member of our Group, please e-mail the Group's chair for a copy.