

The Colorado Lawyer

The Official Publication of the Colorado Bar Association

March 2004 | Vol. 33, No. 3 | Page 35

Departments Law Practice Management

Grading the Teacher: Associate Evaluations of Partner Performance by Marian L. Carlson

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Mention the concept of associates evaluating partners—often referred to as "upward evaluations"—and you will get a variety of reactions. From lawyers and administrators in large firms, you will see recognition and hear comments ranging from an enthusiastic "We use upward evaluations—they're a wonderful tool" to a low-key "We've considered them, but they wouldn't work at our firm." Among those working in medium-sized firms, you might find a few who have heard of them. Most of these people have never considered using such a process, but can quickly identify several drawbacks to it. Others may look at you as if you're from another planet.

Over the past few months, I have spoken with partners, associates, and administrators at a number of Denver-based law firms, as well as law firm recruiters and professional development directors at a national conference, about their firms' receptivity to upward evaluations. Only one Denver-based firm has incorporated upward reviews into its annual performance evaluations.¹ Although the survey was not scientific, it is safe to say upward evaluations are not commonplace here.

Most partners recognize the value of feedback in improving the performance of associates who work for them. They may even concede that peer feedback could improve their own performance as managers. However, some cringe at the notion. This article explores the nature of upward evaluations, the possible roots of these adverse reactions, and the pros and cons of conducting such evaluations. A sample evaluation form is provided as an appendix.

The Nature of Upward Evaluations

Upward evaluations stem from the concept of multi-source or "360-degree" performance appraisals, a practice that gained popularity in the corporate world during the 1990s.² Through this process, a performer is evaluated not only by his or her direct supervisor, but by subordinates, team members, peers, internal customers, and external customers as well. Although the details of the process vary by organization, the person being assessed generally selects a number of coworkers (called "raters") to participate in the feedback process. Working individually, the raters submit information through either a written form or an online system about the manager's skills and behaviors as related to managerial or leadership effectiveness within the organization.

Many companies find multi-source evaluations a cost-effective way to help managers take an honest look at their strengths and weaknesses, as viewed from several perspectives. The theory is that, through data gathered from a variety of sources, a reliable picture of the performer emerges that is more resistant to the biases and distortions that can result from personal conflicts and favoritism.

In recent years, an increasing number of law firms nationwide have begun using multi-source evaluations, including "upward reviews," by which associates review partners on their management skills.³ The trend gained momentum in the late 1990s as law firms looked for strategies to retain associates, who were leaving in droves.⁴ According to a 1998 study by the National Association for Law Placement ("NALP"), the primary factors affecting associates' decisions to stay or leave were the amount of feedback they received, quality of attorney management, availability of mentoring, amount of communication with the partnership, and the unspoken firm policy on the balance of law practice and life.⁵ In a roundtable discussion at a Professional Development Institute in December 2003, nationally-recognized consultant Susan Manch estimated that approximately 30 to 35 percent of the nation's larger law firms now conduct upward evaluations, compared with approximately 15 percent in 2000.

In the upward evaluation process, associates do not evaluate partners on the quality of their legal work, but on their skills in managing, teaching, and mentoring associates. Some commonly addressed attributes include:

- Is the partner a good teacher?
- Does the partner give constructive commentary and criticism to associates?
- Does the partner give clear instructions?
- Does the partner set appropriate deadlines?

- Does the partner show respect for associates' time by assigning projects promptly after they are identified, rather than waiting until the last minute?
- Is the partner accessible and responsive to questions?
- Is the partner fair in handing out quality work assignments?
- Is the partner helpful in identifying resources to assist associates in doing their jobs?

To be successful, the evaluation questions must be skill-specific and unrelated to personality issues (see, for example, the sample evaluation form that is the appendix to this article). Also, the process must be designed to further the partners' development as managers, not to punish them.

Once the information is gathered, the firm's management committee typically summarizes the feedback provided on each supervising lawyer being reviewed. Committee members then meet with the lawyer to discuss the results. In some firms, the results are shared only with the lawyer being reviewed; in others, they also are provided to the leader of the reviewed lawyer's practice group.

Confidentiality and anonymity are essential to an effective upward evaluation process. In many firms, the management committee does not communicate results of an upward review unless at least three associates have rated the same supervising lawyer.

The Benefits of Upward Evaluations

Upward evaluations can provide valuable feedback to supervising attorneys that they may not get from their peers or senior partners. They provide positive reinforcement for those who are managing well and a road map for improvement for those who could do better. In addition to giving feedback to the individual supervisor, they provide information to the firm on the general quality of associate supervision and areas in which improvement is needed. In some cases, firms rely on this information when making compensation and bonus decisions. The process also gives associates a sense of empowerment by taking their views into account.⁶

Jeffrey O'Connor,⁷ an organizational behavior specialist who works frequently with law firms, describes three categories of partners who can benefit from upward evaluations:

1. *"Problem partners," who tend to be gruff or insensitive in their interactions.* These individuals are sometimes sarcastic, arrogant, and harshly critical of others. Frequently, they are unwilling to give clear guidelines in assigning work. Some yell and scream at associates on a regular basis. Dealing with them often is especially difficult because they are competent lawyers who generate considerable revenue for the firm. Receiving associates' feedback on the impacts of their behaviors is essential to helping firm management deal with these "bad actors."
2. *Partners who are willing to improve, once they understand the effect their behavior has on others.* These individuals can make adjustments in the way they operate that will significantly benefit those with whom they work. Their receptivity to feedback helps them create better relationships with peers, associates, and support staff.
3. *Partners who are doing very well.* Many senior lawyers find it gratifying to be recognized for their efforts in developing the skills of the firm's associates. Giving these partners specific feedback on the behaviors that motivate others helps reinforce and support the continuance of these behaviors. Additionally, identifying these partners may encourage other partners to seek them out for advice.

In short, all types of partners can benefit from these evaluations.⁸ The information they provide helps firm leaders increase their self-awareness, learn about their "blind spots," and become aware of others' perceptions of them. This awareness, in turn, promotes credibility and emotional intelligence. Although lawyers sometimes are thin-skinned and will not naturally seek feedback, honest feedback should help improve their leadership skills.⁹

Several large firms have recognized the value of upward reviews. "Sometimes people don't recognize their own failings," said Patrick Marshall, a partner in the San Francisco office of Pillsbury Winthrop and chair of the firm's attorney development committee. Norman K. Clark, a consultant with Altman Weil Inc., who has assisted that firm in 360-degree evaluations, added:

You have the abusive partner, the screamer. We see a lot of this. That type of behavior may have been quite successful for him—and it is usually a male—and people are scared to death of the guy, and he's brought in lots of money . . . so, we try to bring them to a point where they can see and appreciate the other consequences of their behavior. There are other results besides people running around scared. There's diminished productivity, for instance, and high turnover and miscommunication.¹⁰

At Proskauer Rose, one of the nation's largest law firms, associates have seen positive changes in partners' management skills since the implementation of upward reviews. Marc A. Persily, a corporate associate at Proskauer, said of Proskauer partners who were taken to task in reviews:

I've seen instances [where] problem partners have turned themselves around. You hear that people reach a certain age and can't change. Well, that's not true. Three examples stand out in my head. Time went by and their reputations were restored, and now they're a pleasure to work for.¹¹

Closer to home, the Denver firm of Holme Roberts & Owen LLP ("HRO") began conducting upward reviews three years ago. According to Kenneth W. Lund, the firm's managing partner, the program has been well received:

I think the partners have really embraced the concept without too much difficulty. They appreciate the feedback. When I get [the feedback], it's enlightening and an eye-opener. Sometimes you get busy and forget about how people perceive your actions and inactions.¹²

However, some experts question whether upward evaluations are effective in dealing with a firm's most difficult partners. One consultant states: "They [the problem partners] are not the target of upward reviews because the firm is not going to enforce real change on them if deficiencies are identified. The people who can truly benefit from reviews are the majority of partners and other senior attorneys who do the heavy lifting in supervising a firm's associate pool."¹³

The Disadvantages of Upward Evaluations

The concern that a firm will not act on upward review data is one of the principal dangers of conducting the evaluations. Firms have found that conducting upward reviews without following up—whether through imposing negative consequences on poorly-rated partners or rewarding highly-rated partners—demoralizes associates who participate.¹⁴ While many firms find associates reluctant to participate in the first instance, even fewer associates will participate in later reviews if they believe that nothing will be done with the information they provide.

Perhaps the greatest potential problem with upward evaluations is anonymity. Although anonymity is essential to creating a safe environment for associates to express their views, some view data from anonymous sources as inherently suspect. Moreover, partners may decline to conduct upward reviews for fear that given the opportunity, the associates would "complain and whine and dump on them," rather than provide useful feedback.¹⁵

To reduce the potential for abuse, most firms provide the subject lawyer with a summary of the associates' feedback that focuses on recurrent themes and patterns, rather than the actual review forms. "You have to be sensitive to the possibility that someone might use the process for the wrong reasons," said HRO's Lund. "We're aware that the potential is out there and we try to confirm feedback from a variety of sources, to ensure reliable results."¹⁶

Organizational psychologist Robert Kent questions the validity of 360-degree performance appraisal altogether, at least as the primary basis for imposing rewards and consequences on employees. Cautioning organizations against conducting them simply because they are popular, Kent poses the question, "Do you really want to have a company with a culture that promotes the use of secret reports to assess and judge its employees?"¹⁷ Rather than conducting annual 360-degree reviews, Kent advocates an ongoing, less formal approach to generating management feedback. He recommends that companies make soliciting performance feedback from co-workers, subordinates, and supervisors a part of everyone's job, and therefore, a performance requirement. He also recommends teaching employees how to give performance feedback to their supervisors and peers on a regular basis.¹⁸

Particularly in smaller firms, a less formal approach seems to make sense. Many firms have informal avenues of communication through which problem partners are identified and dealt with. Others also incorporate input from staff and clients into evaluations of lawyers who work with them, even though those individuals do not fill out evaluation forms. As long as there is some avenue for feedback to flow in multiple directions within the firm, evaluation benefits can be realized.

Conclusion

The sound premise underlying upward evaluations is that leaders benefit from honest feedback from their subordinates. Just as the proverbial emperor needed to hear the truth about his clothes, supervising lawyers need to know which of their behaviors are effective in managing associates and which are counterproductive. For some firms, formal upward evaluations make sense and prompt positive change. For others, informal methods can accomplish the same purpose. What is important is that firms generate meaningful feedback for their leaders on how they are managing the firm's human resources.

Leaders of successful law firms recognize that self-evaluation not only improves firm management, but also makes the firm more attractive to talented lawyers. As articulated by Lund, "The lifeblood of any organization is the talent it can attract and retain. Any avenue we can take to improve and retain our talent pool is good for the future. As the [labor] markets heat up, which they will, having these types of systems in place will be essential to building a great organization."¹⁹

NOTES

1. At the time this article was written, the author was able to identify only one Denver-based firm that conducts regular upward evaluations: Holme Roberts & Owen LLP. According to Attorney Development Coordinator Carol Spensley, Holland & Hart LLP conducts upward evaluations approximately every two years, but not on a regular basis.
2. See *generally* Tornow and London, "Maximizing the Value of 360-degree Feedback: A Process for Successful Individual and Organizational Development" (Hoboken, NJ: Jossey-Bass 1998).
3. According to a 2002 survey, only one of twenty-one law firms conducting upward evaluations used them as part of a 360-degree feedback program. See Meara, "2002 Survey of Law Office Upward Evaluation Programs: Executive Summary," *Professional Development Q.* (Feb. 2002), available at <http://www.profdev.com/UpPASurvey02.htm>.
4. See Ward, "Winning Points: Partner Review Programs Let Associates Rate Partners, Prompt Change," *ABA J.* (Dec. 2003) at 40.
5. "Keeping the Keepers: Strategies for Associate Retention in Times of Attrition," Executive Summary (NALP 1998), available at <http://www.nalpfoundation.org>.
6. Meara, *supra*, note 3.
7. O'Connor, "Upward Feedback: Having Associates Evaluate Partners," 29 *ABA Law Prac. Mgt.* 35 (Oct. 2003).
8. *Id.* at 36.
9. Richard, "Why Leaders Need Feedback," *Altman Weil Report to Legal Management* (May 2003), available at http://www.altmanweil.com/about/articles/lfma/org_psych.cfm.
10. Adcock, "Partners Behave: Associates are Rating You," *N.Y. Law J.* (March 27, 2002).
11. *Id.*
12. Telephone interview Jan. 30, 2004.

13. Manch, "Another Look at Upward Reviews," *handout at Professional Development Institute (Dec. 2003)*.
14. See, e.g., Krufka and Abbott, "Everyone Else Has Surveyed Your Associates . . . Have You?" (Altman Weil, June 2002), available at http://www.altmanweil.com/about/articles/lfma/hr_man.cfm.
15. See Davis, "Associate Reviews of Partners Catching On," *N.Y. Law J.* (April 5, 2000).
16. *Supra*, note 12.
17. Kent, "Why You Should Think Twice About 360 Performance Appraisal" (2003), available at <http://www.mansis.com/page12.htm>.
18. *Id.*
19. *Supra*, note 12.

SAMPLE

Year-End – Confidential Supervisor Evaluation

Review Period: _____
 Supervisor: _____ Supervisee: _____
 Supervisor's Office: _____

On how many different projects did you work with this supervisor during the review period?
 Brief description of projects, including an explanation of what you specifically were asked to do:
 Approximate number of hours spent working with supervisor during the review period:

0–25 26–100 101–300 over 300

Please use the following numerical scale to evaluate your supervisor's performance in each category below:

- | | |
|--------------------------------------|--|
| 5 - Outstanding. | 2 - Inadequate. |
| 4 - Noticeably exceeded the average. | 1 - Seriously deficient. |
| 3 - Acceptable. | 0 - Insufficient basis on which to evaluate. |

Note: Your written comments provide the most meaningful feedback on your supervisors. Numerical ratings alone do not tell us how someone is good or bad in a certain respect. Please spend at least a sentence or two elaborating on each aspect of supervision listed below.

_____ COMMUNICATION: Did the supervisor adequately explain your assignment and responsibilities? Were you informed on a timely basis of developments that affected your assignment?

_____ DIVISION OF RESPONSIBILITY: Did the supervisor delegate responsibility appropriate to your level of experience, ability, and expertise? Did the supervisor involve you with the client when you felt it was appropriate to do so? Did the supervisor provide you with a broad perspective of the matter?

_____ TIMING: Did the supervisor give you a reasonable and realistic estimate of how long the project would take and set realistic deadlines? If not, was this due to client demands, unexpected developments, or mistaken estimates of the time the assignment would take?

_____ AVAILABILITY: Did the supervisor make him/herself available to you on a timely basis and timely return phone calls?

_____ ATTITUDE: Did the supervisor treat you as a colleague and with respect? Did the supervisor attempt to create a congenial working atmosphere?

_____ FEEDBACK: Did the supervisor timely review your work and provide both positive and negative feedback? What type of review or feedback was given? Was it oral or written? Were those reviews and that feedback helpful? If not, why not?

____ EXPERTISE: Did the supervisor direct you to forms, prior work product, or other sources of helpful information? Did the supervisor explain substantive areas of the law when appropriate?

____ TRAINING: Did the supervisor provide you with a valuable learning experience? Yes ____ No ____
If yes, please indicate in what areas this supervisor was particularly helpful. For instance, was the supervisor a good teacher of substantive law, writing, drafting, strategic decision-making, client relations? If not, please indicate why not.

If you worked with this supervisor before this review period, please explain whether and how this supervisor's performance has changed since your last review.

What are this supervisor's:

Major strengths:

Major weaknesses:

Would you want to work with this supervisor again? Yes ____ No ____ Why?

Would it be helpful to discuss your supervisory experience in more detail with a member of the Professional Standards Committee? Yes ____ No ____

Attorney

Date

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