

Surviving a Bad Performance Review, Part I

[by Jamie Barnes]

Many lawyers and professional legal staff prefer to think of themselves as in business for themselves, merely using a group to provide office space, support services, and occasional camaraderie.

This assumed sense of personal independence undergoes a rude awakening when a senior partner calls you into his or her office to detail for you, without your asking, how you are perceived. Some of the thoughts that may go through your head at a time like this are:

"Just who the hell is (s)he to be judging me?"
"All that negative stuff has been coming from X, who has been talking behind my back. I knew I couldn't trust him/her." "[S]he acted as if (s)he thought I was pretty cool. Now the truth comes out!" "I feel dirty. I am neither as good or as bad as they say." "Why is all this ancient stuff being drudged up and thrown in my face?"

Recognize yourself in any of this? Had similar feelings? They are normal. By understanding anyone's normal self-centered and defensive reaction to being judged, and realizing that your feelings are automatically programmed to respond self-protectively in such situations, you have won half the battle; because with understanding can come a modicum of control.

You can't avoid professional criticism. You may have strong opinions as to the innate fairness of the appraisal process. You may be unfairly damaged and have documents to prove it. You may be thinking that you're being criticized for stuff that happened months ago and is no longer relevant. Regardless, the criticism hurts and remains potentially lethal as long as it sits in some partner's drawer already signed off on by other partners. Well, if you've ever felt abused by

the performance-review process, you're not alone. Such 'heart-to-heart' talks trouble everybody. What you need is a survival strategy to deal with performance appraisals. Otherwise they can drive you nuts.

Then there is this alarming news: According to Ellen Wayne of the New York Law Journal, "Evaluations have taken on an importance they never had before. Associates are not only judged on the basis of their work skills and performance targets but now have the added anxiety that termination could be the result of a less than glowing review." Rest assured that as law firms continue to be operated more like businesses (as opposed to being run like private men's clubs), the performance appraisal becomes an important tool for weeding people out, as well as identifying top performers at all levels, from associates to paralegals to legal secretaries.

Most of us would agree that some sort of evaluation system is needed for everyone.

The problem is how to construct a system certifiably free of bias. This may be impossible: evaluation systems are constructed by humans, and humans are fallible. Furthermore, it is difficult if not impossible to categorize and quantify the qualities that identify perfection in professions such as the law, meaning billable hours alone do not tell the tale. For associates there is something called "partner potential" which remains both on the appraiser's mind and on yours. Paralegals may also be evaluated based on billable hours, but they and legal secretaries are also being evaluated on how well they support a partner, carry out support func-

tions, and are team players. How does one evaluate all that?

Let's deal first with the emotions that surface any time you receive a performance appraisal. Unless these emotions are well understood and contained by you at the start, a rational discussion of the performance appraisal as an institutional tool--and how you can successfully deal with it--cannot take place.

Reason Versus The Emotional Self

Nothing is more threatening to one's inviolable sense of self and its importance than to have a relative stranger sit down and dissect you both professionally and personally. First of all, the mere fact of delivering the appraisal solidifies that person's superior rank. This relative stranger also is acting summarily as judge and jury, dispassionately (hopefully) enumerating your strengths, faults, successes, and failures and summarizing all this with either a "thumbs up" or "thumbs down" that leaves you either euphoric, confused, or devastated. Even when an appraisal is flattering, there remains an uncomfortable edge to the process. You may wonder why you feel so uneasy and perhaps even embarrassed. Such a reaction is driven by your knowledge that no one can know you as you do; nor can anyone else understand what you were going through when you wrote X, did Y, or said Z.

To further muddy the waters, performance reviews can often be subjective. They can reflect group consensus or be driven by personal spite and used to settle personal



scores. At times, it can all seem so unfair: A heroic performance against all odds during recessionary times can be considered inadequate; an average performance during spectacular economic times can be considered superior. All of this can make performance appraisals uncomfortable to contemplate, difficult to suffer, and almost impossible to trust. Now that this has been said, let's examine the other side of the equation: the appraisal rationale. We'll briefly discuss this and end with adaptive strategies you can employ to weather the stress and get on with the job.

The Appraisal Rationale

Talk to law firm partners and they will tell you that many positive outcomes can derive from performance appraisals, among them (1) meaningful feedback, (2) improved inter-firm communication, (3) maintenance of standards, and (4) facilitation of career planning. Not all of these claims can be fulfilled all of the time. Some are code for firm agendas the individual lawyer, paralegal, or legal secretary may or may not pick up on. Let's examine each of these suggested outcomes more fully so that you can understand why they exist and what traps they may conceal.

1. Meaningful feedback. The idea here is that if you know what more experienced others think of your work product and conclude about you personally, you'll want to mold yourself into what is expected, and, parenthetically, if you don't want to mold yourself into this image, you'll leave. Either way, the firm benefits. In this instance, the performance appraisal is 'meaningful' as a tool for generating conformity and weeding out misfits. Before you raise a cry of outrage, think about this a moment. The goal is not to turn you into a Stepford Wife. You can be a cross-dresser outside work and secretly pull the wings off of live flies for all anybody cares. The purpose is to encourage you to become part of a team while at work and not a planet circling around some distant star. On your own, you can be as counter-cultural as you wish, unless, of course you

bring unfavorable public attention to yourself and your firm. Do that and you're likely to hear about it on your next performance appraisal if not before.

2. Improved communication. This is a dubious claim. It can happen, but frequently the opposite occurs. Bad vibes are generated. Yet, if the people being reviewed can be convinced that the system is unbiased and the appraisal process conducted dispassionately, the occasional bad feeling will not become part of a rising chorus of smoldering discontent. The component missing here, it ought to be mentioned, is discretion. Rather than create improved communication, which smacks of corpspeak, the goal of the appraisal process should be to remain confidential--a private summing up between appraiser and appraised that hopefully clears the air, establishes base-lines for future on-the-job conduct, and sets the agenda for a less fractious future.

3. Maintenance of Standards. Hard to argue with this one. A firm has a right to set standards, and it has a right to expect you to adhere to them. The problem comes when these standards are not clear at the start. In an article on performance appraisals in the March 17, 2003, edition of the Los Angeles Daily Journal, which specializes in local legal news, the writer, Consultant Ida Abbott, advises any law firm to first assess the competencies desired and then:

"...identify five to 10 specific components to be evaluated for each key performance standard. If one of your standards is 'professionalism,' it must be dissected into specific, observable tasks, skills, attitudes, behaviors and attributes that characterize what a lawyer must do to demonstrate that quality. For example, one component might be 'attention to detail: Is thorough and tenacious in completing complex and multifaceted tasks; work product is neat and free of errors.'"

What Abbot does not address is this: a subjective judgment is still required because

everyone screws up, and not all screw-ups are equal. What needs to be judged is the importance of the screw-up. Did it cause the loss of millions of dollars in client revenue or, say, was the mistake made on a will and trust that had no substantive effect on the efficacy of the document? The firm culture and its guardians must decide. They may disagree among themselves but eventually must reach consensus. That is how the appraisal process works. Thus, note that even the consensus judgment handed down to you on your appraisal may be a matter of dispute among the partners. The fact that there was internal disagreement will most likely not appear on your appraisal, although it may be hinted at during your person-to-person interview.

4. Facilitates Career Planning. In managing associates, this is corpspeak for "Am I Partner Material?" The whole purpose for most associates slaving away at their jobs and conforming to firm production and decorum standards is to eventually grab the metaphorical brass ring: a partnership. If you achieve that, you think that you truly can be considered your own business, your own profit center, with control over your own destiny. Again, there is some deception involved in any process which purports to outline the personal qualities and performance level needed to make partner: Let's say that you are nice to your mother, don't smoke, drink or frequent hookers, don't beat your kids, are still happily married to your original spouse and are punctilious in your weekly attendance of religious services. You have worked your way onto the boards of some small corporations. You are one of your suburb's council members. You have brought in new business, and you bill an ungodly number of hours. Sadly, you can meet all these qualifications and still have your partnership delayed if, say, existing partners do not retire when they say they will, your firm has financial problems, or a new partner arrives from somewhere else accompanied by several big-time, high-margin clients.

For paralegals and legal secretaries, facilitat-



ing career planning is corpspeak for “Do I qualify for a raise or other promotion?” For example, there may be supervisory positions available such as floor secretary or office manager with commensurate pay and/or seniority perquisites. Alternatively, a paralegal may become head paralegal or be allowed to specialize in handling only certain matters or working with only certain partners. Insofar as you demonstrate your value and skills, the firm should try to recognize and reward those efforts. Whether firms will do so or even contemplate such a system varies from firm to firm and will likely be rooted in the simple math of is this person adding value (and real dollars) to the firm or not.

Next week: Part II will provide guidance on how to proceed now that you understand the review process.