

CC associate criticisms spell 'defining moment'

4 November 2002

Ex-CC and Andersen Legal head Tony Williams says his former firm must address its problems head-on

In January I opened my morning paper to read the headline that Andersen in the US had admitted to shredding Enron-related documents. As the head of Andersen Legal, I realised that the old adage 'all publicity is good publicity' was nonsense. The rest, in relation to Andersen and Andersen Legal, is history.

When I opened my Financial Times on Saturday to read the headlines relating to Clifford Chance and the New York associates, I knew that Peter Cornell and Stuart Popham were experiencing their own 'oh s**t' moment.

The first thing to appreciate is that the memorandum did not say that timesheets were being padded. However, it did make clear that the current downturn in work, the targets set and the method of work allocation placed pressure on associates that could cause them to pad their timesheets. Next - and the key point - any lawyer who deliberately pads their timesheet, ie puts down time against a client matter that has not been worked, but for which a client will be charged, is likely to be committing fraud at two levels: fraud against their employer insofar as salary, retention or bonus payments are linked to chargeable hours recorded; and far more importantly, fraud against the client insofar as the client is charged for work done, when in fact no work was done. Not only is the lawyer potentially liable, but so are any others who encouraged such action.

Particularly in the US, the recent corporate collapses have caused a wide range of professionals and their roles in corporate America to be examined. This may have focused on auditors, but includes investment bankers, research analysts, lawyers and non-executive directors. This process is likely to continue for some time. Although to a non-reader of The Lawyer the headline 'Lawyers may be ripping off clients' may appear as newsworthy as the headline 'Dog bites man', the issue must be seen in the wider context of the accountability of professionals for their own activities and for the activities of their clients.

Whatever the real position about time recording in Clifford Chance's New York office, it is clear that the memorandum represented a strong outpouring of associate anger, disappointment and disaffection. This may have a range of causes, but two factors are likely to be important. First, following the Clifford Chance merger, the Rogers & Wells partners were due to slot into the Clifford Chance lockstep earlier this year. The fact that the US economy started to cool before Europe meant that the profitability of the New York office may have been less than predicted at the time of the merger. Accordingly, a number of painful adjustments were required in New York. Some partners left, some were 'de-equitised' (in English, 'booted off equity') and others received less income units in Clifford Chance than they expected.

This process is likely to have caused considerable internal focus, discussion and insecurity at partner level in New York. It is likely that all in the office became aware of this tension. Partners involved in such a process are unlikely to be focusing on encouraging, motivating and mentoring the associates. Indeed, the financial pressures may have caused partners to drive their teams harder and cut out supposedly 'unnecessary' soft expenditure, such as social events. Second, a lack of work makes lawyers insecure and unhappy. There is no reason to believe that Rogers & Wells is suffering disproportionately from the downturn of activity in New York. The complaint of the associates appears to be that the effect of the slowdown is being shared unfairly, with partners and favoured senior associates hogging work to keep busy and meet targets, while others are given little work but are under the same pressure to perform. There is also an unfortunate aside that suggests that some of the work allocation methods could constitute possible discrimination, but they are not elaborated on further in the memorandum. This is primarily a work management issue. Management needs to ensure that work is done by lawyers with the appropriate level of expertise. If senior lawyers are doing junior work, the client may feel it is being overcharged and younger lawyers are being deprived of experience and on-the-job training. If not addressed, clients may object and junior lawyers will leave. Those leaving will go with war stories of the firm that will be repeated long after these issues have been addressed. The firm risks a 'lost generation' of lawyers and a difficulty in getting new recruits and clients, and the latter may start to feel alienated by a perception that the firm might be overcharging them.

In the current climate, hoping for a bigger news story to make the market forget this issue is extremely risky. Very few inside or outside the profession will come out in public to support the firm. The firm needs to act firmly and publicly to retain and enhance its formidable reputation; it must investigate thoroughly the New York office to ensure that no padding of timesheets has taken place; and it must deal with client concerns promptly. In the spotlight of publicity there is no scope for grey areas. If any wrongdoing is found, those involved must go and their clients compensated.

Worldwide, the firm must make clear that budget time recording figures are a guideline only; that remuneration and promotion depend on delegating to others, developing client relationships, training and pro bono work. Chargeable hours are to be seen as just one factor and then to be adjusted for market circumstances. There must be zero tolerance of padding. Partners and senior associates who hoard work inappropriately should have their income reduced or be fired.

Potentially, this is a defining moment for Clifford Chance and a major test for its new management team. It should address this issue head-on and use it as an opportunity to define clearly the values of the firm and to prove to the business community that it lives by those values, whatever the financial cost to the partners. It is a great firm, but then again, so was Andersen a year ago.

Tony Williams runs his own law firm consultancy Jomati