*James D. Cotterman*

# Compensating the Unique Practice Partner

*By James D. Cotterman*

How do you compensate the partner who has a unique practice within a law firm? First, you must determine whether a unique practice exists. The situation usually arises when a partner develops a practice that is outside of the firm's core services or clients. The practice is likely to be:

- **Self supporting —** of sufficient scale to be a stand-alone operation
- **Independent —** it is not dependent on the rest of the firm for the clients and work; although resources of the firm may support it
- **Interesting —** at least for the partner who developed it
- **Sustainable —** economically viable over many years and in varying economic conditions

The unique practice partner should be fairly uncommon. Each practice group (litigation vs. corporate, insurance defense vs. contingent fee, to name just two of the more common and noticeable specialized practices) should not consider itself unique and deserving of a separate economic arrangement, unless that is the nature of the relationships among all of the partners. Such might occur in a law firm organized and operated as a confederation. Specialization does not equal uniqueness.

***"…the methods used can be quite diverse. One is limited only by one's creativity."***

The answer to the question that began this article is — as any lawyer is fond of saying —"It depends." There are two significant variables that affect the best way in which to compensate a unique practice partner. The variables are the method for remunerating partners at the firm, and the nature of the relationships among all of the partners.

If the firm is a confederation of space-sharers, the issue may be relatively simple. This type of firm is likely to make independent economic decisions regarding many issues, and joint decisions only on a few issues, such as space and other common services. It is likely that this type of law firm (actually a firm of many "mini-firms") will allocate receipts and expenses directly to each of the various "profit centers." The profit centers may be individual partners or small groups of partners who have agreed to band together for a common specialty. In this scenario, the partner with a unique practice may not be so unique. The compensation systems in such firms tend towards the "eat what you kill" variety.

More difficult is the firm that operates as a team-oriented firm. This firm type is characterized by client sharing, pooled resources, common philosophies, and the like. In this type of firm, the partner with a unique practice will quite likely operate within the firm's environment for all but the clients of the unique practice and the services offered in that practice. A separate, and possibly more important, discussion is the rationale for having such a unique practice within a firm of this kind.

A team-oriented firm that pays its partners using objective metrics, such as business generated, business managed, personal productivity and the like, will find compensating the partner with the unique practice area a bit easier. This is so because the metrics apply equally to the unique practitioner and to the general partner population.

As the firm adds subjective elements such as management, training, leadership, firm marketing, etc., however, the job begins to get a bit more difficult. Some of these traits may not be applicable to the unique practitioner. The extent to which the compensation decision-makers have latitude in applying criteria will affect the difficulty they have in fairly addressing the unique practitioner.

Some firms desire a team-oriented organization where the economic rewards are shared among the owners (tiered, lock-step and equal-share systems clearly fall into this category). In these situations the unique practitioner's compensation is most problematic.

The best course to pursue is to first identify what you want out of the relationship between the firm and this individual. If the intent is that this is a unique practice but still part of the firm, it would seem logical for the group to assume the risks and rewards. If the intent is to segregate the practice, however, then a separately negotiated compensation arrangement makes the most sense. This is often the case with lawyers designated "special counsel" and "of counsel" in law firms.

When the relationship calls for a special compensation arrangement, each must understand how risks and rewards are to be shared. Also, there are many variations — from the elegantly simple to the technically complex. At the simple end of the spectrum are arrangements that split the fees paid. Three scenarios apply:

- The unique practice partner originates some work that the firm services. Here the unique practice partner is generally entitled to a range from 10% to 33% of the fee.

- The unique practice partner originates and services the work. Here the unique practice partner is generally entitled to a range from 40% to two-thirds of the fee. In both of these first two situations, the remainder of the fee goes to the firm to cover overhead and the value of its time if it services the work.

- The unique practice partner may also have an agreed-upon rate that he or she is paid for servicing firm clients. This is probably the more typical compensation approach for a unique practitioner servicing firm clients. Alternatively, the arrangement for the unique practice partner to service firm clients can be a percentage of the fees paid by those clients (like the two scenarios described above). This is the third scenario. This happens less with the unique practice partner than it generally does with "of counsel." As a rule, the more this occurs, the less likely it is that the practice meets the definition of "unique."

Some firms adopt the profit-center approach, allocating the direct expenses of malpractice insurance, rent (often a bit higher than the firm's rent to provide for some contribution towards general overhead and general office services such as reception), secretary and other staff who, while employees of the firm, are dedicated to the unique practice partner. Directly allocated employee expenses include fringe benefits and mandatory employer contributions and taxes. Fees belong to the unique practice partner and he or she is charged back for the direct overhead and the agreed upon rate of any firm timekeepers who work on his or her matters.

Some firms split the unique practice partner's fee income so that the unique practice partner takes the first "x" of fees, the firm takes the next "y" of fees and then they split anything above "x plus y." The sharing provides cash flow to each party and is agreed to as a simple way to recognize the elements of origination, servicing, and overhead without the bother of tracking and accounting specifically for each.

This very brief sample of what has been done shows that the methods used can be quite diverse. One is limited only by one's creativity. ◆

**James D. Cotterman** *is a principal of Altman Weil, Inc., working out of the firm's offices in Newtown Square, Pennsylvania. He can be reached at (610) 886-2000 or* jdcotterman@altmanweil.com.