MESAFIVE BRIEFING:

The Benefits and Challenges of a Nominating Committee

At year end we always receive numerous questions from law firms about management improvements, leadership changes and increasingly, about the use of Nominating Committees. While Nominating Committees have become common over the last 20 years, we still hear that many firms struggle with the details and operation. We received so many questions about this topic recently that we drafted the following primer to explain how they are used by successful firms, and how to avoid some of the common challenges.

What is a Nominating Committee?

For those unfamiliar with the concept of a Nominating Committee, it is a mechanism whereby a committee solicits and analyzes broad input about prospective candidates to fill one or more leadership positions, and after a rigorous evaluation process, offers their recommendation to the firm. That recommendation is typically then put to a ratification vote of the partnership.

A Committee in Place of an Election?

Law firms seem to increasingly encounter problems while holding open competitive elections for management positions, and as a result, search for a process that is less divisive and more efficient. One of the common problems with open elections is the real or perceived reputational damage to partners who stand for election but who then lose a vote of the partnership. Many firms have had a rainmaker lose an election only to ultimately leave the firm because of embarrassment, or because he/she perceives they are not appreciated or valued by their partners.

Despite the problems that firms sometimes encounter with open elections, the idea of using a committee to narrow down a field of candidates can initially sound very un-democratic. But in every firm an election can be hit or miss, sometimes producing great leaders while at other times producing candidates based primarily on personality, superficial trends or rainmaking ability – none of which guarantees great leadership skills or long-term management success. Many firms have discovered that a Nominating Committee can promote a more constructive process and develop more qualified and ultimately, successful leaders.

Structuring a Nominating Committee

One of our most common observations about successful Nominating Committees is that they are relatively small, having only 3-7 members. We repeatedly notice that firms with large Nominating Committees seem to struggle with their function, tend to pick managers rather than leaders, and often don't realize many of the intended benefits of the process. Ironically, even in firms that recognize they have excessively large, dysfunctional Nominating Committees there is a widespread reluctance to reduce the size as doing so will deprive some constituency of "their representatives."

What prompts firms to create large Nominating Committees? Many firms do so under the assumption that there are democratic benefits from having representatives from every office, practice, age and/or affinity group within the firm. But there is a fundamental difference between *listening* carefully to every group and issue, versus turning over a critical process to a group that may or may not work well together or which may have competing interests.

Our experience shows that large Nominating Committees tend to:

- Be more politicized,
- Involve members who define their views/interests in terms of a single office/practice/issue rather than what is in the best interests of the overall firm,

- Pick leaders who are less likely to change or improve the whole firm, or unable or unwilling to address difficult or challenging issues,
- Advocate for ever larger management or governing bodies, and
- Frequently devolve to act as little more than a superficial polling mechanism.

In addition, as Nominating Committees become larger in size the process tends to become less confidential, defeating one of the primary goals of the structure.

But one challenge in selecting a smaller Nominating Committee is in finding members who are sufficiently known and trusted throughout the firm. This is especially true in large multi-office, full-service firms because such firms tend to have lower levels of teamwork and cross-office awareness than specialty firms. Similarly, finding known/trusted leaders is more challenging in firms that are experiencing rapid growth through lateral acquisitions and mergers.

> ***"… there is little factual evidence to support the assertion that having bigger management structures produce better, happier or more successful firms."***

Is Bigger Management Better?

In North America we have witnessed a trend whereby firms inadvertently transition away from a governance model built around talented, highly involved and communicative leaders, focused on the needs of the whole firm, to a more distributed but siloed model. We see more firms struggling today with a governance model in which an ever-larger number of managers each represent and advocate for a small sub-constituency. Often firms build bigger management structures because they suffer from problems with their existing management or leadership. But rather than address those issues law firms tend to just add to or surround existing leaders/structure with yet more people.

Unfortunately, there is little factual evidence to support the assumption that having bigger management structures produce better, happier or more successful firms. We can't help but notice that firms with bigger managing bodies tend to have more morale and integration problems, lag the performance of competitors, and struggle to make the most basic decisions or changes. This bloating in governance has produced firms that are more siloed, more internally competitive, and less strategically focused. Such firms are routinely characterized by management that accomplishes little yet meets and talks a lot.

So how does a Nominating Committee find people with outstanding, firm-oriented leadership skills? It may sound simplistic, but they start by acknowledging the skills of great, talented leaders. It is worth noting that great leaders tend to be rare – more so than most law firms like to admit. Depending on the source, research suggests perhaps as few as 2% to 4% of the population has great, natural leadership skills. But the difference is that those great leaders tend to produce dramatically better results than mediocre leaders, and not just in terms of profits or expansion:

- They tend to build firms that enjoy better morale and teamwork.
- They constantly solicit and digest partners' views regardless of their constituents' location/practice/age/gender and are known for being highly communicative.
- They go out of their way to listen to the partners whom they may disagree with, under the theory that they shouldn't avoid learning opportunities just because they dislike someone personally.

- They question legacy structures and policies and are not afraid to be self-critical.
- They are client-oriented and seek out every opportunity to listen to clients, even when clients have less-than-complimentary feedback.
- They are strategic in their focus, as opposed to being reactionary or trendy.

While many people claim to have good leadership skills the truth is few people possess them, and even fewer exercise them effectively. Our experience supports the estimate that only 2% to 4% of the lawyer population has great leadership skills, and this seems to hold true for most law firms regardless of size, location, market position or profits. Nominating Committees that understand and commit to finding candidates who have great leadership skills, rather than just collecting names of popular lawyers, tend to produce dramatically happier and more successful firms.

What's a Committee to Do?

Effective Nominating Committees typically solicit input from across the firm, without restriction as to who they can talk to or the subjects they can discuss (as long as those subjects have some direct bearing on the management or strategy of the firm). Typically, any partner who wants to talk with a member of the Nominating Committee can arrange to do so and may even be able to choose the member of their preference. There is no specific requirement that the committee talk with every partner in the firm, and doing so would be quite rare, but they make themselves available to any partner who wants to be interviewed.

It is common for a Nominating Committee to exclude from its ranks the current members of the group/committee it is attempting to fill (the leadership of firms that disregard this concept are more likely to be characterized as self-perpetuating, self-serving and/or ignorant of the feelings of the partners). However, excluding the current members of a leadership group doesn't mean the Nominating Committee won't solicit or listen carefully to their views. Successful Nominating Committees tend to conduct extensive interviews with the members of the management group it is attempting to fill, either by interviewing that group as a whole or by conducting individual one-on-one interviews.

For example:

- It is common when filling a position on an Executive Committee that the Nominating Committee (as a group) will meet with the firm's Managing Partner/Chair to solicit his/her views. Successful firms are cognizant of the concept that a leader should have *some* influence in selecting his/her management team. The challenge is in trying to find the right balance between allowing a leader to select his/her own management team and yet allowing the partners of the firm to influence the direction and leadership of the firm, especially when personnel/strategy changes are warranted.
- Likewise, it is common for a Nominating Committee to ensure that every member of the Executive Committee is interviewed by at least one member of the committee.

Last, Nominating Committees typically work in confidence. They don't publicize who they are talking to, they don't publish interview schedules, they don't provide status reports, they don't preview who they are considering as potential nominees, and they don't publicize when they meet. A committee's communications with the firm consist largely of a communication stating its role/process/availability/timeline, and then a later communication about its recommended candidate(s).

Common Challenges

Two of the most fundamental problems law firms encounter are either i) that the concept of a well-functioning management team has become muddled in an attempt to become more democratic or to make up for leaders who lack real leadership skills, or ii) they don't have the benefit of any meaningful, firmwide strategy.

- While few firms will admit this, many firms operate as a loose affiliation of practices and offices (one of the most common reasons some firms struggle to change their market position) rather than as a highly integrated team. They share revenue and a common name but operate as a team only at the instigation of a client rather than as a fundamental operating style of the firm. This culture tends to produce an internally competitive model whereby partners attempt to fill management roles with "their" representatives as opposed to getting the best integrated, firm oriented, complementary leadership group running the firm.
- The lack of any meaningful, widely supported strategy often results in a firm with multiple, sometimes conflicting strategies. Offices or practices in such firms may each be advocating vastly different tactics and priorities, or each has its own strategic plan that has little correlation to the firm's overall vision other than to get bigger (but not necessarily better). Those conflicts then result in competition between various internal groups, prompting a desire to have one's own representatives in management.

It's Not Just a Polling Function

Another common issue with Nominating Committees is that some firms assume the role of the committee is merely to gather names and then pick a nominee. Again, we see distinct differences in how successful firms use and operate a Nominating Committee. Successful committees not only solicit the views of rank and file partners about who the next leaders should be, they then test those suggestions/candidates. They ask partners tough, meaningful questions about the needs/performance of the firm, assess whether suggested candidates have the qualities the firm needs and ask partners to identify others based on who has various leadership qualities. In healthy firms it isn't unusual for a partner to initially suggest one candidate, and then when pressed to consider and identify who has each of the various leadership qualities the firm is seeking, change their recommendation.

> ***"…successful committees don't just suggest names but routinely interview and rigorously question a candidate multiple times as part of their effort…"***

Last, some Nominating Committees are unsure whether they should interview the candidates or just pick nominees based on existing perceptions. Our experience shows that successful committees don't just pick names but routinely interview and rigorously question a candidate multiple times as part of their effort to assess and reduce a field of candidates down to a single name. Successful committees will often interview a proposed candidate 3-5 times before announcing their recommendation. It is always surprising when we come across a firm where a Nominating Committee selects a candidate but never actually talks with them in depth.

Results

We routinely observe that healthier firms tend to propose only one candidate for each open position. Some firms will use a Nominating Committee to propose multiple candidates for each position, thereby forcing candidates into a public runoff election at the partnership level even though doing so defeats one of the primary intended benefits of the structure.

In many firms the Nominating Committee may also comment on the qualifications of a chosen nominee but does not publicly acknowledge the identity of others who were considered in the process. A candidate, once nominated by the Committee, will often make brief presentations to the partnership about their views and priorities, and the partnership then votes on whether to accept or reject the recommendation from the Nominating Committee.

When a Nominating Committee is tasked with filling multiple positions, most firms tend to vote on each candidate separately as opposed to the entire slate, since voting on each candidate ensures a higher degree of accountability. While it is rare for a firm to reject a nominated candidate, it does happen. This is often a red flag indicating problems with the process and/or composition of the Nominating Committee, but it can also be reflective of much deeper trust and communication issues within the firm.

Like so many issues no one process or structure can guarantee a firm's overall success. And like every organization, it is easy for a firm to follow a process in superficial form but fail to capitalize on the intended function. But if used correctly and when focused on real leadership skills, a Nominating Committee can help a firm find better, more qualified candidates while creating less dissension in the partnership ranks.

MesaFive, LLC is a management and strategy consulting firm focusing on the legal profession. MesaFive assists law firms and in-house legal departments throughout North America, Asia and Europe on issues ranging from management, to strategy, merger negotiations and implementation, economics to compensation.

To read other examples of our published insights, please visit www.mesafive.com/insights

To find out more about our work please email us at info@mesafive.com, or contact us at 415.347.6331.