

# Just Because You Are in Front...Doesn't Mean You Are Leading!



by Anthony K. Moore

We are deluged today with the notion of what leadership is and how we should lead if we are "out in front." The idea is that those that are placed in leadership roles are, by virtue of their position, thought to know how to lead. It is also assumed that those in front have a desire to lead, thus taking charge and delivering results is a part of their natural order.

Practical experience tells us that the mere fact that a person has chosen to be in a leadership role or been placed

there by management, they are not automatically prepared to lead. In fact, our experience leans toward the notion that many in leadership roles are woefully prepared for the challenge of leadership and most often find the challenge of leading exhausting, cumbersome and totally frustrating at times.

One of the main reasons for that frustration is the fact that many have not had the experience of good leadership as they have come through the ranks of their perspective organizations. As a result, many in these positions also are unable to distinguish the skills and behaviors that are critical for effective leadership. Many default to their management skills of Planning, Organizing, Directing and Monitoring as the surrogate for the leadership skills required to build credibility from followers. And while these management skills are important to the success of the enterprise, leaders must be stewards of the culture and drive their organization toward the environment that can achieve the vision through the attainment of mission critical goals.

The lack of these skills and understanding of the importance of leadership, thus has many managers and executives in front of their prospective teams and organizations without the skills necessary to lead. In other words, they are in front of the group, however they are not leading. Instead these men and women are working harder than they should to pull together teams and build coalitions, while also seeking approval from their peers and recognition from their managers. This is a daunting task that keeps them up at night and forces many to wrestle with their competence, their value and their achievements.

Most often, this issue manifests itself in the conflicts and quagmires of leadership. A senior manager that has moved through the ranks without ever having experienced a consistent leadership and management approach is now left to fend for themselves now that all eyes are on them. Not knowing how to articulate a vision or develop a set of values that will drive the culture can make the difference between organizational success and continued mediocre performance. The manager/leader is often faced with this dilemma with little direction or counsel.

On the other hand, leader/managers that have had the opportunity to witness good leadership skills, are prepared for the rigors of leadership. They are also clearly aware of the stature that good leaders have within the organization and proactive to communicate their values, mission and goals. Leader/managers also understand that their consistent leadership behaviors will permeate the management team and staff, thus they must ensure that all are aware of their strategic goals and vision of the future.

The critical need to focus on this leadership development challenge today should compel most organizations to build pervasive and effective leadership development programs. Best practice leadership programs create both intellectual capital and leaders that understand change. They also understand that the goals of leadership are not stagnant. Leadership must be ever-changing and adaptable to the dynamics of the organization and those that are being led. Assessing your leadership development requirements is critical. Are you or others in your firm out in front...but definitely not leading!

-BWT

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When an employer attempts to bind a former employee from competition, then the enforceability of such provisions becomes subject to a host of questions. Was the non-compete signed at the outset of employment, when the employee was considering whether to take the job and had some bargaining power, or was it 'rammed down the employees' throat' later on as a requirement of keeping his or her job? If the non-compete was signed later, was there additional consideration for the employee (e.g., a promotion to a more senior position with more pay and more access to confidential business information), or was it part of a business 'push' to get everyone to sign a non-compete, so that the agreements are handed out to every employee at a particular time with the requirement that they sign and return them by a particular date? How senior was the employee and what was he or she being paid? Did the employee have access to customer lists, pricing and confidential information? Do the customers represent long-term repeat business, or is each customer a once-and-done type of business transaction? Did the employee leave voluntarily to compete, or was the employee fired and is now simply trying to stay gainfully employed? Is the employee truly directly competing and using confidential information, or is the employee simply working in a related field?

Even with a written agreement, enough negative answers to questions like the foregoing will make it more difficult for an employer to enforce such an agreement, even if the agreement is in writing and properly supported by legal 'consideration' (the employee got something they didn't already have in return for giving up his/her right to compete). Usually employers will not spend a lot of money in litigation to stop an employee who is not doing real business harm, even if the theoretical right to do so exists.

On the other hand, if enough answers suggest that the employee had choices, voluntarily accepted the restrictions spelled out in writing for consideration, was senior in pay and responsibility, is directly competing, etc., then a written agreement may (it's still not a slam-dunk) be enforced by a court, usually in the form of a preliminary injunction.

Non-compete agreements arise in many different contexts. Tense litigation frequently occurs when two or more employees leave simultaneously to set up a competitive business or an employee conspires with a new employer to bring business with him/her. In that case, the former employer may have a good argument that it is being injured and the questions in the foregoing paragraph, tending to make courts sympathetic to employees, are balanced with other questions. Were any, all or only some of the departing employees bound by non-compete agreements? Have the departing employees been systematically contacting customers and vendors to induce them to switch their business allegiances? This scenario frequently leads to a 'poison the well' debacle: each side contacts all the existing customers and vendors attempting to gain support, refute what it sees as misrepresentations from the other side, and gather witnesses for the upcoming court fight. The customers and vendors want no part of it, and not surprisingly make the decision to not do business with either the old employer or the new business entity. Both sides in the fight incur big litigation costs, while the business prospects for each are run into the ground. The outcome of this scenario may well be business dissolution, the topic of another article.

On a more positive note, on occasion I have had clients say in essence, 'I know I am bound by this non-compete, but it will be so profitable for me to go into business on my own that I am willing to take the risk.' In cases like that, we discuss what the litigation may cost, what the potential results may be, but the client may make a rational business decision to accept the risk of litigation, and even the risk of tendering a substantial settlement to end the litigation, because the dollars are just too good to pass up. Almost all decisions involving the prospect of business litigation involve questions: How expensive is the litigation expected to be? What is the value we are litigating over? Can a non-monetary settlement be reached? The first role of a business lawyer is to give candid advise at the outset, so the client can plan accordingly. Planning in the context of non-compete agreements is never a certainty, but an attorney can explain the overall parameters of the legal rules and the broad range of possible outcomes, to help the client shape his or her future conduct.

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