

GRANGER AND GERTRUDE POSE SOME DELICATE QUESTIONS

Now three months into their first year as associates at their new firm, Granger and Gertrude caught up for lunch after returning from the year-end break they were both fortunate to take after busy fall work schedules. Granger reported that things had been quite busy in the Litigation Section where he was assigned to one of the firm's tort dockets. Gertrude mentioned that she, too, had been quite busy of late and confided that her schedule was posing somewhat of a conundrum for her.

She explained to Granger that because of the press of business in the Business Transaction Section, she was receiving a substantial number of assignments from partners on the projects to which she was assigned. She allowed that she was thrilled to have the business, inasmuch as that showed she was respected by her superiors. But she was having problems determining the priority to give her assignments. It seemed that every partner who assigned her work wanted top priority given to his work. "How is a brand new associate to determine the priority for undertaking multiple assignments?" she asked Granger. More importantly, she inquired, "Am I supposed to tell one partner that I am prioritizing the assignment of another partner over his own?"

Granger acknowledged that Gertrude was confronting a tough issue. And he confided to her that he was confronting a situation similarly perplexing. He explained that several days earlier he had been invited to attend a meeting between the firm's lawyers and the general counsel of a large corporation the firm was representing in a dispute with another company. The meeting was called to discuss the strategy to be employed in litigation the firm's client was preparing to initiate. As is normally the case, one issue discussed was where to file the lawsuit. The firm's partner who was overseeing the matter explained to the client's general counsel that the suit should be filed in state court because the target corporate defendant had sufficient contact with the client's state of residence to support in personam jurisdiction over the corporation. All in attendance at the meeting knew that gaining state court jurisdiction over the target corporation was extremely important. The problem was—in the discussion with the client's general counsel—the firm's partner cited case law and theories concerning in personam jurisdiction that Granger knew to be clearly erroneous and outdated. In fact, during law school, Granger had written a case note on in personam jurisdiction. The firm's partner was simply wrong.

The dilemma Granger faced was what, if anything, to do about it? He did not speak up at the meeting with the general counsel. But, when the meeting was over, he mentioned to a senior associate working on the matter that the partner was wrong. That associate responded by saying that he would straighten the partner out. Granger informed Gertrude that, strangely, when the first draft of the complaint was circulated it predicated a claim for in personam jurisdiction based on the flawed theory espoused by the partner. No one had listened to his warning. What was Granger to do?

Gertrude's Issue

Many of us have faced the dilemma Gertrude confronts. Everyone wants to have a steady stream of projects. But no young associate wants to be put in the position of having to trump one partner's assignment with that of another. When confronting a situation such as Gertrude's, an associate should explain to the partners involved that she has received multiple assignments and needs guidance on the priority to be accorded those projects. Hopefully that will provide the associate with the requested guidance. But, in the unlikely event that, after seeking such guidance, the associate still feels unduly pressured by one or both of the partners, the associate should raise the issue with the partner in his/her section that is responsible for the associate's oversight. It is the responsibility of that partner to resolve situations of this nature in a manner that will allow the associate to address his/her work unencumbered by pressure from one partner to prioritize work on his projects over that of another.

Granger's Issue

So Granger observed a partner in the firm stake out a position to be taken in a major piece of litigation in front of the client's general counsel only to know that the strategy was flawed because it was predicated on faulty legal analysis. Granger certainly did the right thing by not correcting the partner in front of the client's general counsel. That would not have been wise or tactful. And he did the right thing by subtly bringing the flawed analysis to the attention of a senior associate who was working on the matter, assuming he would straighten out the partner in charge. But, Granger determined that assumption to be incorrect when he received the initial draft of the complaint to be filed and found that its jurisdictional claims were still predicated on flawed legal concepts. What, if anything, should he do now? Should he call it a day and forget the issue? After all—he brought the issue to the attention of his superior. No. He must pursue the issue.

Granger—like all associated with the firm—above all else serves the firm and its clients. Here Granger knows that a firm client is going to be prejudiced in a major piece of litigation. He knows that for whatever reasons the firm has not heeded his admonition. He must now take further steps to address the issue—as uncomfortable as that may seem. He should again review the issue with the associate with whom he previously discussed the issue. If that fails to cure the problem, he should raise the issue with the partner who is responsible for overseeing his work. He should confide in that partner the nature of the issue and the seriousness of the mistake about to be made on behalf of the client. Presumably that partner would solve the problem.

The message here is that one's concern about being placed in an uncomfortable position is trumped by the concern we must all have for the interests of clients of the firm. Sure it is uncomfortable for Granger to have to push an issue that shows that one of the firm's partners was speaking out of school. But, the fact remains that, unless someone listens to Granger, a firm client is going to be prejudiced significantly. Thus, it is incumbent upon Granger to politely, but persistently, push the issue.