Ep #74: Using Kanban to Manage Capacity

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The Agile Attorney with John E. Grant

Today, I'm going to dive into a challenge that I'm starting to see more and more in multi-partner law firms that I work with. And it's where one attorney is using Kanban and Agile and Lean tools to build a more balanced and sustainable practice for themselves and their teams, but the other attorney isn't quite on board. And when they see the new capacity being built in one part of their practice, they tend to want to steal that capacity and use it for their own things. And they wind up pushing the entire team right back up over the red line.

Like I said, it's a pattern I've started to see in multiple firms. You get this tension between calm and chaos, between systems and emergencies or perceived or manufactured emergencies. And the problem is that even when all the work we've done to build and design systems are working beautifully, one person can throw it all back into overload if they're not on board with the tools and the systems we're building.

You're listening to the *Agile Attorney Podcast*, powered by Agile Attorney Consulting. I'm John Grant and it is my mission to help legal professionals of all kinds build practices that are profitable, sustainable, and scalable for themselves and the communities they serve. Ready to become a more Agile Attorney? Let's go.

Hey everyone, welcome back. So, I feel like I should be moving on from this topic of capacity because I've been talking about it a lot lately, but honestly, it just keeps coming up. I keep seeing these problems, running into these problems both in my clients and out in the world. And these situations where a law firm keeps putting itself over capacity. It's taking on more work than it has the capacity to actually handle in a reasonable time frame and to deliver that work in a smooth and predictable way.

And it just causes so many problems. And I'm going to tell you yet another story about this because I think it will maybe help you think a little bit more and drive home the importance of having that honest reckoning with capacity.

So, there's a law firm that's a current client of mine. There are two owners of this firm. One is an older attorney, established, the other is younger. And the younger attorney is a partner in the firm and it's one of those situations where the younger attorney is part of the succession plan for the older attorney. And the younger attorney is expected to be taking over the firm, but the older attorney isn't quite ready to hang it up quite yet.

And from a textbook standpoint, that is a great situation, right? There's a lot of attorneys that frankly struggle with succession planning at all. And so I applaud this firm for doing this. But it's this issue that I run into and it's funny because as I'm thinking about this story, I realize I could actually be talking about any of three or four different firms that I've worked with over the last several years that are in a similar situation as this.

So, here's what's going on. I've been working primarily with the younger attorney as a way to improve the operations of the firm overall. And we're doing great progress, right? We've got Kanban systems in place, we've made the work visible, we've talked about explicit policies, we've made really clear definitions of done and quality standards for different phases of the work. We've improved how we communicate with clients about the work, both as a means of setting expectations for the client, but also to engage the client around the pieces of homework that they need to do.

We work a lot with the team. There is an associate attorney and then some paralegals and some other staff that help deliver this work. And we've got some regular meeting cadences in place. I don't think this particular firm is quite to a daily stand up, but they do review the work on a regular basis, they're working the board. Things are working well, and it's done all the things that these Kanban style systems are designed to do in terms of creating more smoothness, more predictability, and less overwhelm for this younger attorney's part of the practice.

And what I love is the younger attorney is really championing this idea that the firm success isn't just about maximizing the attorney's work, it's about the attorney enabling the team and getting the whole team working well together. But with the older attorney, right? And this is a person whose firm it's been for like 40 years, I want to say. It's fascinating. They think that these methods are kind of newfangled or a little hoity toity, a little woo.

They're on board with it to the extent that they know they need to keep the younger attorney happy in order to keep that succession plan in place. But they're not really engaged with the methodology overall. And in fact, there's a thing that I think is happening that is actually an unanticipated consequence of the success of the things that we've put in place for this younger attorney.

And there's a few things about the older attorney that I don't want to stereotype too much, but I think they're common character traits, personality traits, maybe learned behaviors, whatever it happens to be. But number one, this attorney, again, it's been their practice for the bulk of their lives and mostly it's been a one attorney shop. And therefore all of the support staff are sort of oriented around supporting the work of the attorney as opposed to the whole team getting oriented around supporting the work of the firm.

And I talked about this back in episode 64 and 65 of the podcast where I talk about the different ways of scaling. And again, this older attorney is very much scaling in the me-centric approach, right? The purpose of the team is to support me. And so the sort of unexpected thing that is happening is because on the younger attorney's side, things have become smoother, things have become more predictable, people aren't running around with their hair on fire.

The older attorney is seeing that as a signal that maybe those paralegals and the associate have more capacity and therefore the older attorney is grabbing that capacity and taking the people who in the world of the younger attorney have this nice and smooth and predictable thing. And he's coming in, the older attorney's coming in as kind of this chaos agent where he's like, look, if you're not running around with your hair on fire, then clearly you've got some spare cycles and I'm going to take those and I'm going to put work on your plate and I'm going to get you to the point where you're running at the red line again.

Now, of course, that's not what he's actually trying to do, but that's, I think psychologically what's going on is that over the course of the life of the practice, that's kind of his experience as what being a lawyer should be, of what running a law firm should be. And so when we finally get to the point where we're not running there, it feels so strange to him. And because he's not fully engaged with all of these processes and the methodology to begin with, it's this really awkward situation. And the upshot of it is that the associate and the firm just gave notice, right?

And so even though we'd done all these things on one side of the practice, and frankly, the bulk of the work in the practice because the older attorney is stepping back, but even though we were successful at introducing smoothness and calm and flow, because this other attorney wasn't comfortable with it, wasn't on board with it, doesn't comport with his mental model of what a law practice should look like, they kept dumping work on the associate and the associate finally had enough and gave notice.

And I'm just heartbroken frankly for the younger attorney because it now introduces this whole new set of problems and chaos around, now we have to replace that capacity and we have to train up a new person and what are we going to do? And all of this is in the context of a world where the older attorney already doesn't like saying no to new work. They already have a tendency to push too much work into the system. And now they're likely to continue that tendency even though they're down a resource.

And it's a real problem. And like I said, I had a specific firm in mind when I started to write the story for this episode, but I frankly have run into the situation at least two other times in the last three or four years in similar firms doing the succession planning or where there's a situation where one attorney feels like again, if your hair's not on fire, you're not busy enough. And it just breaks my heart, right? It's no way to run a law practice and it's obviously a little frustrating for me as a consultant and a coach.

I know it's super frustrating for the other partners in the firm and especially, even though they're partners, they still sort of feel like they're maybe a junior partner, or the second partner because they are the ones taking over the practice and they do want to defer and in some ways have been put in this really amazing situation by the senior attorney that has built this thing up. But the newer folks don't want to run and live their lives the way that the last generation of attorneys did it, and I think for good reason.

And the other thing that comes into play and again, I don't want to over generalize, but I know that there are some older members of my own family that are feeling this way. And I don't know if it is a generational thing or if it is something that is more common with folks as they get older and maybe start feeling a little more out of touch. It might be a function of inflation where things just cost so much more.

But these older folks, right? And I'm talking people in their 70s and 80s at this point. I run into it a lot where they have this wolves at the door mindset and they're worried, they're really, really worried to the point of probably clinical anxiety about money and running out of money and not having enough. And so again, how this manifests with this one older attorney is that he doesn't like to say no to anything.

And again, as I already said, that continues this loop, this vicious cycle of the firm is over capacity, we're not getting work out the door, people get burned out, people leave, now we have even less capacity, but the owner feels like he's got to bring in more work to cover. I don't know, it's a really, really tough situation.

The other thing with this one attorney in particular, and this isn't necessarily true across the board, but he's really resistant to data driven evidence. And I don't know exactly where it comes from. Certainly, he's run a reasonably successful practice for 40 years. So I understand that he has a good intuitive understanding of what a successful practice looks like. But that intuition isn't necessarily steering him in the right way, right? Or putting him towards the right behaviors.

And again, there's all sorts of human psychology and behavioral science that comes into this where when people have a certain level of expertise, they're really reluctant to give up that expertise or the feeling of expertise even when they're confronted with data. And again, in this situation, the data that we have has to do with the profitability spreadsheet that I've talked about before on the podcast. And we've had some issues getting that spreadsheet built out for this firm, partly because they haven't done the best job of doing record keeping in their practice management software.

They're not always good about closing matters out. They're not always good about time tracking and getting the other data points in there. But still, doing what we can to draw the insights that we can from the data that we have, it's pretty clear that inside of this practice, there are a few matter types that are definitely more profitable than others.

And the younger partner totally gets this and has steered their practice towards taking more of this higher profitability and also quicker cash flow work. But the older partner just is resistant to what the data is saying and what the spreadsheet, the graphs and the outputs from this thing are saying. And even though intellectually it's pretty clear what the behavior should be, it doesn't comport with how he's run the practice for the last 30, 40 years.

And even when presented with new evidence, it isn't enough so far. We haven't figured out the way to tell the story of the data in a way that allows him to overcome his past behaviors, his preconceived notions. And again, I don't want to discount the value of his experience, but I really do think it's sort of leading things in the wrong direction sometimes here.

I want to give you one other quick example, and this is another one that I've pulled from Reddit. As I keep saying, right? I read Reddit for fun and punishment. This particular one is from the paralegal subreddit, which is an often interesting one. And it really captured this dynamic of the owners or the attorneys, whatever, the managing elements of a firm putting someone over capacity and burning them out.

And in this particular case, the paralegal posted they were actually put on a performance improvement plan after like four years with their firm. And the issue that was cited was specifically that this paralegal was not responding to attorney emails quickly enough. And then weird things like there would be an occasional typo in emails. But the side of the story that the paralegal tells is that they are drowning in an inbox. It is constantly filling up with new demands for work from multiple attorneys inside of the firm.

And the paralegal is doing everything they can to stay on top of the hard deadlines, but the less urgent stuff inevitably gets pushed backwards. And that's the reality of having a finite capacity. But I think because this particular firm has such a strong email culture, and I won't go on a tangent that I'm tempted to go down about how terrible a planning tool email is.

I've talked about it before in some of the episodes where I mentioned Cal Newport work. But email is a terrible tool. Let me just say that. It is really, really hard. And part of the reason it's terrible is that it allows, in this case, the attorneys of the firm to push work onto the paralegal with no feedback loop about whether that paralegal is already at or over capacity.

And it's bad enough if it's just one attorney pushing that work, but then there's multiple attorneys and they're all acting as if this paralegal is their own personal resource. And of course, they're not coordinating with each other, and the paralegal doesn't feel empowered to push back. And so the poor paralegal is in this situation where they're drowning in requests and the system itself is constantly putting them over capacity.

So, I didn't actually respond to this post, and I don't think I will. It was a couple days old by the time I came across it. If I were going to give advice to this paralegal, I would really strongly suggest that they implement a Kanban system. I've done this in the past in bigger firms, working with what I sort of think of as line workers, right? Associates, paralegals, support staff that are having to juggle multiple demands from different parties inside of the firm.

And the thing that can be really effective is to build what sometimes is known as a personal Kanban board, sometimes is known as a productivity Kanban board. But either way, it's a pretty basic Kanban, right? It's designed to work more at the task level than at the matter level. And the thing that I would advise is that this person use a different color card or at least some visual indicator for requests that come from different people.

And two things, right? So number one, the basic Kanban board, as you may know, consists of just three columns, right? To do, in progress, and done. And that's the basic Kanban board, but generally, I will advise making a little expansion on that fundamental concept. And the first thing I would suggest is to take that to do column and stretch it out to the left. And so have a few columns, not too many, and you need to dial in what the right time frames are for you.

But instead of to do, I might have a today, and then to the left of today, I might have a next three days. Maybe it's tomorrow, maybe it's next five days. Again, you got to figure out what makes sense in your workflow. And then to the left of that, I might have later this week or again, to the left of that, and this is where I usually get intentionally vague. I might have a column called soonish or later.

And you can sort of use that expansion of the to do column to create a funnel of work into your active capacity for today. And then you also can use WIP limits or work in process limits, which is basically a way of saying, I'm not going to let more than X number of requests come in. Those requests represented by Kanban cards. I'm not going to let more than X number of requests come into each column so that I can understand when I'm over capacity.

And I've talked about before, the last several episodes, one of the great reasons to have these WIP limits is it then forces you to prioritize. So, that's expanding out the to do column on the left. I then might do a little bit of expansion on the in progress column in the middle. And so instead of just in progress, I might have an actively working or I'm working or something that's like, okay, these are the things that are truly on my plate. And then to the right of that, I might have a waiting on others or some other sort of parking lot phase that's like, okay, I finished my bit, I've put it out for maybe quality review, maybe client feedback, whatever it happens to be.

But it's kind of off my active working plate, but it's still is something I need to monitor because I'm expecting something back from somebody else. Again, you might have more than just those two, but I think those two are a good starting point. And then the done is the done, right? I think the done column is fine.

So, let's say we have a good maybe five or six or seven column Kanban board that is funneling work into your active capacity, is tracking work that you've got out with other people, but is also really focused number one on setting WIP limits for that active capacity to make sure that you don't bring too much onto your plate. And then ideally moving things through to done as a way of reclaiming capacity so that you can apply it to new work, to new requests, new demands that come in.

The reason this would work for this paralegal from the Reddit post, and I've seen this work in practice in other places, right? Is if you have a request from attorney A and it is at the top of your ready column. This is the next thing that you're going to work on, and you've actually prioritized it appropriately, right? So you kind of understand whether that's using a first in, first out method, which of course is what I like for a default priority.

Maybe you've broken that first in, first out because there's an actual deadline coming up. And so it needs to jump the queue for a legitimate reason. Whatever it happens to be, let's say you've got that attorney A project or task set at the top of your list. And then attorney B comes in waving a file like it's on fire and saying, “I need you to drop everything and do this right now.”

What the Kanban system does, well, it kind of does two things, right? Number one, if you can share it with other people, if other people can see how you have accepted demands into your capacity, how you've prioritized that work, that then helps them understand that you are at capacity, that you're actually tracking it and that you understand something about how to prioritize work within it.

And if attorney B were to come up and the thing that was at the top of your list were actually an attorney B project, then you can have a pretty interesting conversation where you say, “hey, I can drop things, but this is what's going to drop. And which one of the two things you've asked me to do you actually want me to do first?” Now, I recognize that that requires a healthy culture, healthy relationship. There are lots of attorneys out there who would say, “I don't care, do them both,” right?

That is part of what's broken about lawyer culture. So, I fully recognize that could happen. Hopefully, that's not what happens in this situation, and I've seen it where it's not what happens. They're sort of confronted with the reality that you can't do two things at once. You do have to choose, and they can make a rational choice about which thing you should do and which thing you should de-prioritize because the act of prioritizing one thing is inherently the act of de-prioritizing everything else.

But going back to my original scenario where attorney A has something at the top of the list, the thing that is powerful about using a system like a Kanban system is you can then say to attorney B, “hey, I have made a commitment to attorney A. This is the next thing on my plate. You don't get to demote attorney A's work. If you need me to drop attorney A's work, you have to go clear it with them.”

Now, again, that assumes a certain amount of maturity, a certain amount of psychological safety. I'm not saying that that will automatically work in every situation, but logically, intellectually, it should work. And I think you all recognize that is the case. Now, in a healthy environment, what I've seen work is it only takes one person to start using that approach for other people to start to catch on and to maybe start using their own personal Kanban.

And then that often is the impetus for combining and creating sort of a central board where different people can see what's on each other's plates and you can start load balancing and managing for capacity and making sure that you aren't taking on too many commitments relative to capacity. And it absolutely can work.

I've also seen it go sideways, right? I've seen it where the person that is trying to effectively set a healthy boundary using a useful tool like a Kanban board, if that is too far outside of the culture, which is likely an unhealthy culture, but if it's too far outside the culture of the firm, then ultimately it's not going to work, and I think it's probably a good thing if the person does wind up going and finding work elsewhere. Hopefully, they don't get fired in the process.

All right, the last thing I want to hit on today before I let you go is this difference, and I've talked about it a little bit before, I think too. But there is a difference between software tools that have a Kanban board interface and software tools that actually support the Kanban methodology. And the interface is relatively simple. I just described it to you verbally, right?

It's columns that represent phases of work or maybe a funnel of work into a capacity depending on what level you're designing the board around. And then cards that represent units of work. And whether those units of work are at the task level or a set of tasks or whether those units of work are at the matter level, all of it can be effective, right? And there are more and more software tools that have this Kanban interface. But just having the interface isn't the same as supporting all of the Lean and Agile and systems thinking tools that make the method work.

And so examples of this, right? You've certainly come across Trello or Asana or Microsoft Planner. If you're in the Office 365 world, there's ClickUp, there's lots and lots of productivity tools that use a Kanban interface. Monday.com is another one. But they don't really support things like work in progress limits or explicit agreements or quality policies or service level expectations or the various metrics that you can get out of a good Kanban system, managing for flow and cycle time and things like that.

And so, I don't necessarily want to dissuade you. I think that Kanban boards are amazing, and I think getting started with whatever tool you have easy access to is the best place to get started. But over time, as you mature in your use of not just the tool, but as you mature in your mindset and your understanding around what the methodology is helping you accomplish, then I think you're going to want to move to a tool that is really specific to the Kanban method.

And one of my struggles as a consultant over the last decade now is that there are a few tools that I like that are really good Kanban tools, but they're not really written, and they're not really designed for the specific needs of lawyers. And so the last thing I'm going to leave you with today is a little bit of a teaser and maybe a little bit of a pre-pitch, but I have been involved with a couple of co-founders of a project to create a truly Kanban-based, Agile-based matter management system designed specifically for the needs of lawyers. And we're calling it Greenline.

And so we have a landing page up. We don't have the software available quite yet. It is still in development. We're getting through some alpha things, hoping to move into a beta very, very soon. But if you're interested in what I've been working on, and frankly, one of the things that's been taking up my finite capacity these past few months, you can go to greenline.legal.

I'd love to get your feedback, your thoughts about the landing page, the product, how we're messaging it, whatever it happens to be. And then if you're interested, there'll be a button you can click on there to be first to know when we actually do launch this thing for everyday use by lawyers and legal teams like yours.

Okay, that's it for this week. I'm not going to berate you with the tool that I'm developing. I want you to be using these systems regardless of what tool you have. As I said, I think it's more about mindset and about your approach and your mental models as it is about the tools, although certainly having the right tool can help.

If you have specific questions about tools, mindset, practices, principles, whatever from the Agile method and how you can apply them in your practice, please don't hesitate to reach out to me. You can reach me at john.grant@agileattorney.com or you can schedule a call with me through my website at agileattorney.com.

As always, this podcast gets production support from the fantastic team at Digital Freedom Productions and our theme music is Hello by Lunara. Thanks for listening and I will catch you again next week.