

Report to Legal Management

OUR 34TH YEAR

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Do Associates Still Care About Making Partner?



Eric Seeger

By Eric Seeger

Whether the frequent gripe is true that “associates today don’t want to work hard and pay their dues like we did,” what is certainly true is that a number of forces have conspired to make equity partnership less attainable and less desirable in many firms than it used to be. As the typical law firm career path becomes more fluid, less traditional and less predictable, law firm leaders and associates alike are struggling to come to terms with what the changes mean for recruiting, retention, professional development, promotion, capitalization, individual contribution and compensation, just to name a few of the many question marks. It seems that the ultimate prize of equity partnership is not sufficiently motivating for associates in many firms. What does that mean for law firm leaders?

When Is a Partner Not a Partner? Defections and NEPs

The first challenge is to make sure we are all talking about the same thing. “Partner” used to mean “equity partner”—those who shared directly in the profits, risk and capitalization of the firm and had full or limited voting rights concerning firm matters. Traditionally equity partners joined the firm while young and inexperienced and then rose through the ranks, ultimately becoming “one of us.” The partners held all the

cards. Good citizenship was important—in some firms, most important.

Times have changed. The growth imperative has become more urgent for many firms. The drive toward bigness has been driven in large part by globalization (the need for competent, connected lawyers in more places), corporate consolidation (larger clients needing or wanting larger law firms to handle the breadth and depth of their legal needs), convergence (law firms shrinking their preferred outside counsel lists from hundreds of firms to a more manageable few) and specialization (requisite level of sophisticated technical expertise in a variety of disciplines). Firms’ voracious appetite for partners in order to staff, build and grow big-time practices led to the now-familiar “lateral hire” (so called by the hiring firm), also known as “partner defections” depending on your point of view. The notion of defection implies the breaking of a fundamental bond. It speaks to the quaint old notion

continued on page 8

Inside This Issue

2008 InnovAction Awards Announced	2
How a Law Firm Learned to Train Its Leaders	3
General Counsels’ Pet Peeves	4
Merger Line™ Pace of Law Firm Mergers Up Sharply	6
Corporate Law Department Expert Joins Altman Weil	7

Making Partner... *continued from cover*

(again, depending on your point of view) that partners are in it together, for the long term, through thick and thin. In view of lateral mobility, associates may conclude that the wiser strategy is to hitch their wagon to a key partner than to a firm.

ground, a safe haven, or something else? Can NEP status be permanent, or is it up or out? If the latter, how long does one have to prove their merit? What contributions are expected annually and longer term? Do NEPs attend partnership meetings? Do they have any voting rights?

and then \$160,000. Expect an even bigger jump with the next round of increases, as a select group of firms tries to make the climb too steep for other firms to follow.

Salaries have gone higher and farther afield. Since 1985, the New York-based firms in the *AmLaw* 200 have more than doubled their number of US offices (to 140 non-New York offices) and more than doubled the number of lawyers in those offices (from 15 to 35). In the old days, if salaries went up in New York, the increase was largely confined to New York. Now when salaries go up in New York, they also go up in those firms' other offices to avoid associate unrest and to convey to clients that the firms' practices are national in scope. That sets the new compensation benchmark in cities across the US.

Because demand for new law school graduates has exceeded and will continue to surpass supply, intense competition for talent forces smaller-market firms to keep up with escalating associate salaries as best they can. In a seller's market, now the associates hold the cards. Why care about making partner if you're already making upwards of \$200,000 in total compensation with none of the commitments and responsibilities of ownership? High levels of law school debt increase the focus on short term compensation from the associate's perspective.

With all the money being thrown around and the high level of mobility, the problem for the profession is that, for associates and partners alike, people who will come for money will leave for money, fueling a free agent market that diminishes even the expectation that a firm will hang together for the long term. Firms of all sizes need to worry about their viability and stability should they lose their key rainmakers. "Do I want partnership? In what? This firm won't exist in fifteen years!"

"Large classes of non-equity partners can send the message inside and outside the firm that mediocrity is tolerated in your firm."

When partner meant equity partner, it was pretty simple. You were either a partner or you weren't. Or maybe you were "of counsel," which had its own clear meaning: part-time or experienced but with limited clientele. Now we have fuzzy, in-between, something-else categories, and a lack of shared definitions between firms. Large law firms created non-equity partnership tiers in earnest in the 1990s for lawyers who were talented and productive but not quite equity partner material, or to accommodate demotions. By 2006, nearly 80 percent of *AmLaw* 200 firms had a non-equity tier. Frequently these are lawyers who would be tough to replace but are not contributing significant value to the firm in excess of their own billable hours. Sometimes called "contract partners" or "income partners," NEPs arrive at that status on an upward trajectory (often as a lengthening of the partnership track), a downward trajectory (de-equitization) or as a probationary status (say, for two years after lateral hire).

It is important for firms to clearly determine what their NEP tier is for. Is it a holding tank, a proving

We recommend that firms avoid these classes becoming too large, for a couple of reasons. First, if these lawyers are not likely to ever become equity partners, then they are blocking opportunities for your talented associates by doing work that could and should be pushed down. Second, NEPs frequently contribute to morale problems in the firm. They complain about not being valued for their "other" contributions, and their positions can be seen as sinecures by others in the firm. Large classes of non-equity partners can send the message inside and outside the firm that mediocrity is tolerated in your firm. That's not good for business.

Salary Increases and Compression

Not only are fewer equity partnership slots available for associates to attain, but the financial disparity between senior associate and new partner has closed in many firms as well. This removes an important incentive for making partner, as well as the urgency to do so.

Associate salaries have migrated higher and higher as the largest, most prosperous firms took starting salaries into six figures, to \$145,000

Profit Per Partner

Some blame the *AmLaw* 200 and its kin for causing firms to obsess about their published profit per partner (PPP) figures as a recruiting and marketing tool, and indeed, algebra confirms that profit per equity partner goes up when the number of equity partners goes down. It follows, then, that firms can appear more profitable by de-equitizing marginally contributing partners and raising the bar for entry from the associate ranks. But published rankings did not cause the split of large law firms into haves and have-nots — differences in financial performance always existed, the rankings just made the comparisons easier to make. It is true, however, that profit per partner has become a number that people use (fairly or unfairly) to compare firms and that firms have incentive to keep their PPP number high and growing.

Hard Working Partners

In the new reality, partners have to keep earning their keep. It's like NFL training camp, where even the veterans have to keep proving themselves each summer because there are only so many roster spots available. Last year's *Survey of Law Firm Economics* showed partners billing an average of 1,710 hours compared to the associate average of 1,802. Among high performing (ninth decile) firms, however, partners outbilled associates by a count of 2,193 hours to 2,159. Across all firms in the *Survey*, the average number of annual charged hours decreased for associates by 40 hours from 2002 to 2006.

The billable hour is fully entrenched in the profession as the measure of a lawyer's worth if not their value. Because most associates have limited business development capability due to their relative youth and inexperience, their way to stand

out among their peers is to bill more hours than the rest of their class. To excel in that contest means little time for anything else. Meanwhile, in many firms, partners are billing more hours than associates, so the reward for all that effort as an associate is to produce all the more effort as a partner. Small wonder if that prize is less sought after than it used to be.

Generational Differences

On top of all this, there are profound differences in how Gen X and Gen Y lawyers view work, life and relationships. They don't expect to work their whole career with one firm, or even necessarily to practice law forever. Most expect to leave the firm that hired them within five years. They are more short term and opportunistic in their thinking, more open to change and to pursuing new opportunities as they arise. They value independence and autonomy more than collegiality and competition. They are willing to work hard and they also want a life outside of work. They want early, hands-on experience with sophisticated work and client interaction. They expect frequent feedback from partners who matter. They want to be heard.

Despite the fact that 88 percent of them do not expect to become equity partners in their firms according to one survey, they nonetheless require a great deal of care and feeding. Is all that attention really necessary? Only if you want them to stay. Associates with options (which means all the good ones) will not tolerate being treated as fungible units of production rather than as individuals with unique motivations and needs, and they don't really care about the proud traditions of the firm and how things used to work around here. They're not wired to care and they don't have to care.

What's a Law Firm to Do?

From the associate's perspective, the result of all these changes is a narrower door into equity partnership, a higher contribution threshold for getting and staying there, generous compensation whether they get there or not, and less long-term security if they do. For some good, talented keepers, the motivation just won't be there. The "brass ring" of equity partnership has already lost its luster in their eyes. To keep all your keepers, then, you need to reward and satisfy them in other ways.

When it comes down to it, the situation isn't all that different than it ever was. Successful equity partners who are now surrounded by other successful people inside and outside the firm may forget that a small percentage of any population goes on to become that successful. Most of their classmates didn't become highly successful equity partners in law firms. Every generation has its high achievers at the narrow tail of its bell curve who accomplish more than others, and in the end Generation X and Gen Y will be no different. The challenge remains, however, to make your firm a place where high achievers will stay and achieve.

Conclusion: Acceptance, Clarity, Communication and Flexibility

The next generations see the world differently than you do. You can rail against their different perspective or accept it as a fact of life. (Hint: facts of life are not affected by your unwillingness to accept them.)

Gen Y is a new breed and you can't wish them away. They are your current associates and the future owners of your firm. You can't make them care about what you cared about, or what you think they *should* care about. Get over it. You can try to give them what they want — and let them know what is expected in return.

Do associates still care about making partner? Ask them. But be

continued on page 10

Making Partner... *continued from page 9*

fair — define what partnership means in your firm, what non-equity partnership and other employment categories mean, how to get into and out of each, and the consequences of nonperformance at each level. Make the effort to understand your associates both generally (by studying generational characteristics) and specifically (by engaging in regular direct dialogue and feedback). Speak to their immediate needs and their longer term interests. Despite their strong desire to control their own destinies, they do recognize and desire strong leadership and will follow leaders who serve their own interests. Give them clearly defined goals and a work structure that gives them frequent opportunities to succeed. Recognize their small successes like their highly involved parents did. Provide the technology they say they need to be productive. Find ways to give them some authority. Answer their many questions and encourage them to keep asking. But don't let them get too comfortable. One study concluded

that “the more secure or content an associate feels in his or her job, the less profitable it is for the firm, after controlling for market segment, leverage, firm prestige, and hours billed.” (Henderson, 2006)

There is still value in partnership status, both tangible and intangible. Be clear what the benefits and obligations of partnership are in your firm and what alternatives your lawyers may have as they mature. Explain why ownership in your firm is different and better than in other firms. Allow for the fact that some care about equity status more than others. Also allow room for them to change their minds as they move down the path. Discern which among your associates are your future partners and invest heavily in them.

Defining the terms will make for a more constructive dialogue, and while having this dialogue, do your best to put aside your own preconceptions of what your younger lawyers ought to want and listen to what they really do want. Those things may be easier and cheaper to provide than you think. ♦

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