

Business & Careers

The path to partnership is getting tougher



David Namkung

As the path to partnership has become less certain, a growing number of talented associates who in previous generations would have easily become partners are becoming less inclined to commit to the journey. If your firm is known for a challenging path to partnership and attrition of star talent to competitors, the onus is on you to provide clarity on associates' career prospects, whether on or off the partnership track.

Here are some key principles for firms grappling with partnership admission issues, and how best to attract and retain talent for the long run.



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Communicate paths to success

The default definition of success at a law firm is partner-

ship. But with the path to that goal becoming more difficult, whether through the introduction of income partnership,

arbitrary admission criteria, or a national (not local) level of determination for partnership, many associates assume they

can't succeed at their firm.

While your partnership criteria may be strict, it can be advantageous to clarify those considerations as early and as specifically as possible, in order to provide objective targets to help motivate your talent towards a clearer goal. Better yet, clarifying the standards will allow them to direct themselves on the most appropriate path. The constellation for partnership entry typically involves a certain amount of originated billings, involvement with management, recognition in the bar, industry and within the firm, and if applicable, enough political capital within your team to convince decision-makers nationally to agree to adding another partner to the table. Clearer criteria will allow your associates to assess why their personal path may be

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Deception: Classic signs not foolproof with all witnesses, warns lawyer

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tions. When they were done and the person was asked to spit it out and if the powder was dry, it was determined they were lying.

Another indicator could be what a witness does when asked a question while holding a pen in their hand. The further the line of questioning goes, the tighter they grip the pen, to the point where it could break.

"You don't need to be an expert to observe this. There is something there to develop a hypothesis," Denault says.

It's not as easy to detect lies as it's made out on American crime shows, he says.

"It's much more of a process. You want to better observe and ask better questions at a better time," he says.

Patricia Harris, a forensic accountant and business valuator at Toronto-based accounting firm Fuller Landau, recommends asking open-ended questions when searching for the truth.

"It's fairly easy for somebody who wants to lie to provide incomplete answers to closed questions. It's easier to leave something out than having to tell an active lie.

"If you make them commit to an answer, you could put them in a position where they're not just providing incomplete answers but actually having to lie. That's where you see the non-verbal clues," she says.

That could include dry mouth, a heightened level of anxiety and a stern face. She recommends having two people do the interviewing — one can take notes while the other can observe the non-verbal clues that will be followed up.

"Sometimes if you ask somebody a question that should result in a very easy answer and they don't provide it, you can tell they're building a story. They might look down or up to the right, you can see the wheels are moving. They're trying to create, especially if you

take them out of sequence, so they don't have the opportunity to go from the beginning to end," Harris says.

The end of an interrogation is key, she says, because that's when everybody is tired and witnesses are more likely to let their guard down.

"They might start dropping other names. They might feel 'I'm going down so I'm going to set them off the trail and give them another name' or 'it's not just me going down,'" she says.

"That can happen once they've been really made uncomfortable or when it's clear their story isn't hanging together."

But these classic tell-tale signs aren't foolproof, particularly with police officer witnesses, Vijaya says.

"They're used to a courtroom setting and have been trained to answer questions in a calm and deliberate manner. They are also generally aware of questions that they are likely to be asked," he says.

"If you watch them at trials, they don't talk to the defence lawyer, they'll turn and answer the questions to the judge and make eye contact. With a jury, they'll turn to them and answer to them because it enhances their credibility. The experienced officers are very good at testifying."

In order to expose potential inconsistencies in police officers' testimony, Vijaya recommends examining what they wrote down in the notebooks at the time of the incident in question and how that compares to their testimony months or years later.

"Sometimes there are subtle yet important differences in their testimony under oath as opposed to what is contained in their notes," he says.

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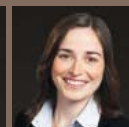
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Retention: If associates don't see a plan, they will leave

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delayed or diverted, allowing them to genuinely consider whether it's something they can strive for.

If a valued associate isn't likely to make partner in the firm, but there is still a valuable role for them to play, the onus is on the firm to provide clarity regarding why they should nonetheless stay.

If the goal is to keep star associate talent even when partnership may not be an option for all associates, your firm must articulate the specific benefits it can offer over the medium to long term that are comparable to partnership prospects with another firm in your market. Distinguishing factors include file leadership (which tends to facilitate unique access to high-profile work), flexible working arrangements, no expectations for business development or firm management, a collegial firm environment, or a competitive and transparent compensation model. In respect of the lat-

ter, in lieu of equity partnership, many firms offer alternative career tracks including associate counsel or non-equity partnership and combine them with aggressive billings-based remuneration models.

Target the right individuals

With a clear and realistic sense of what your firm can offer relative to its competitors, the key is to ensure you are attracting the lawyers whose goals and values align with your firm's needs. Most law firms instinctively and consistently seek out star candidates, often to the exclusion of all others.

Astute firms are aware that, like sports teams, they need a mosaic of talent and deep bench strength in order to succeed for the long run. Rather than impulsively chasing star candidates, it can be equally important for your firm to understand what qualities are most valued and needed to maximize team performance. Often, what a team

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The Counsel Network

actually needs is a stay-at-home defenceman type—a steady, reliable, and perhaps less ambitious lawyer who will ensure work gets done in an efficient and effective manner.

The best managing partners and practice group leaders typically possess the self-awareness to know when to hire such a personality, and can resist the usual desire to hire yet another star performer.

Review and listen

To maximize the success of your team when partnership is not a foregone conclusion for all associates, it is critical firms become more active in their associates' career development and set out attractive alternatives at earlier stages of practice. You may only be able to take certain associates to a particular point in their careers. This might suffice, so long as the firm is clear on this path and takes proactive steps to ensure such associates are helped into a new role beyond the firm—whether it is with a smaller firm, or in-house to a client.

Associates can appreciate that not everyone will make partner. What frustrates them is a lack of transparency on that point. What they appreciate most is a firm which, notwithstanding the limited number of partnership seats, will take active steps to help them manage and grow their career beyond the firm, if partnership is not in the cards.

Study the market

Our most astute clients assume their associates have options in

the market—they are able to keep them by constantly studying their position relative to competitor firms, to ensure that they offer the most attractive package for its associates.

While gaining knowledge about your competitors can be challenging, thorough exit interviews can help shed light on why your associates cross the street, and arm you with better information to better managing your remaining talent pool.

Several strategic relationships with recruiters in the market can further compliment this knowledge base as well.


Conclusion

Lack of partnership opportunities is one of the top reasons ambitious associates give for leaving their firms.


However, on closer analysis, it is often more simply the case that a firm has simply failed to present clarity on the associate career path at the firm, whether as a path to partnership or to other compelling alternatives within the firm or beyond.

If your firm can't or won't articulate a compelling career path for your associates, the reality is that your competitors most likely will.

David Namkung is a director with The Counsel Network in Vancouver, and vice-president of the Federation of Asian Canadian Lawyers (B.C. chapter), with a practice focusing on the recruitment of top tier associates and in-house counsel in the Canadian market. Follow him on Twitter @DNamkung.



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