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## **Creative Alternatives When the Partner Class is Too Large**

By Susan G. Manch

Timing is everything. Last year, record numbers of aspiring senior associates ascended to the ranks of partnership. Even branch offices made partners as firms reveled in the booming demand for high-priced legal services. In Silicon Valley and beyond, there were reports of new partners who were only four or five years out of law school. Partnership potential looked very bright at this time last year—but as the year wore on, everything changed.

As this year's eligible senior associates and counsel assessed their chances for promotion, the odds looked worse and worse. Early in the year, some firms saw work in the pipeline dry up, while others were still swamped. In the spring and summer, more firms saw their corporate practices go idle and began worrying about huge classes of new associates due to arrive in the fall. No one could have predicted what happened in September. And from that point forward, wariness developed into full-blown fear. Careful personnel decisions became more radical. The severe measures that the California firms had adopted—tough performance evaluations and layoffs—became the norm at most of the largest firms in the rest of the country.

It was in this environment that partnership decisions were made, at the end of 2001. As the fall evaluation season wrapped up and partners began considering who would be invited to join their ranks, the senior associates waited and watched. Every class of candidates suffers over the outcome of this all-important vote, but last year's class had good reason to be anxious. When the votes were counted, many great candidates were disappointed.

The reasoning for elevating fewer people to partnership is solid: Revenues are down or flat for many firms, there is no clear indication of when this recession will subside, and the classes of senior associates were very large.

Equally suffering corporate clients are pressuring firms for lower fees and cost controls, making it ever more difficult to amortize those high salaries for junior associates. And finally, the slowdown in work has made it more difficult for senior associates to make that last push to impress the partnership by billing outrageous hours. Many senior corporate associates who easily billed 2,800 hours making deals last year found it tough to bill even 2,000 hours this year, making them ineligible for bonuses, let alone partnership.

But firms did make some partners and the days of “up or out” appear to have disappeared for most firms. Many firms have tried to do a better job of giving associates a clear message early in their careers about. The days when partners disappeared into a dark room and took a fraternity-like vote on candidates have ended. Committees charged with

these critical personnel decisions now spend time gathering information from supervisors, clients, subordinates, and the candidate. Many have written partnership standards and requirements, and discuss these qualifications with associates in their annual reviews.

The good news is that these changes have brought us to the point that usually very few associates are shocked to learn that they did not make partner. The bad news is that in this particularly tough year, attorneys who might have been a sure bet in 2000 may not have made it for reasons beyond their control.

So what are firms doing with their talented, highly productive senior class who didn't make partner this year? Each firm's approach is slightly different, but the forward-looking ones are approaching it with creativity. Recognizing they would have to make tough, economically driven decisions, firms adopted the following strategies:

### **Nonequity Status**

Beginning with the downturn of the early 1990s, many firms have added another tier to the partnership structure, whose members are not shareholders in the traditional sense. This season has seen **even** more firms move to this strategy for recognizing an attorney's level of achievement and contribution without diluting the firm's equity pool.

Nonequity status allows the attorney to feel as though he or she has reached a new level of distinction within the firm. It also provides greater marketing opportunities as clients are more likely to respond to a partner than an associate in business development overtures.

In some firms, nonequity status is presented as an advantage for junior partners, by shielding them from the vagaries of uncertain economic return that determine equity shares. Sometimes nonequity status is yet another promotion track to equity partner, but generally nonequity partnership is considered an end in itself.

### **Enhanced Counsel Role**

Many firms have created what is essentially another management tier in the counsel position. For years, the title "of counsel" or "special counsel" has existed, but these titles meant something different in each firm. In some, it signified almost an emeritus status for very senior attorneys who wished to slow down or whose practice was not very busy. In others, it was a slot for attorneys too senior to be considered associates but not likely to make partner.

Recently, more firms began using this title to convey almost a "partner in training" status. Worthy senior associates who are on track to become partner are promoted to counsel and provided with training in management, marketing, and business development. The counsel level can also provide firms with an appropriate place for attorneys who want to go "off track" for a period of time. It also allows for promotion in practice groups that are partner-heavy or whose revenues will not support additional partners (or whose clients will not support the attendant billing rate increases).

### **Stretching Out the Partner Track**

While the late 1990s saw the partner track begin to shorten in firms focused on the high-tech industry, most firms continued to lengthen the track to partnership. Eight to ten years has become the norm at the larger firms, with as many as 12 years not uncommon in very prestigious firms.

A longer track for promotion has advantages for both the firm and the associates. The firm gets more time to evaluate each attorney, assessing his or her evolving skills and experience and whether they fit the firm's needs. Associates get more time not only to prove themselves, but also to determine whether partnership is the right goal for them.

A more flexible partner track allows for individual differences in development, as well. We all know that some associates "get it" sooner than others, but late bloomers can still make significant contributions to the firm. An arbitrary drop-dead date for promotion rarely serves the best interests of either the firm or the individual.

### **Flex-Time Options**

Too many attorneys have found themselves worked to the burn-out point in the past few years. This slowdown offers the firm an opportunity to approach some senior attorneys with the option to bill fewer hours or work a less-than-full-time schedule. In practice areas that are temporarily stalled, creatively redefining attorney roles allows the firm to retain experienced legal staff while giving its hard-working attorneys a break. The reduction in compensation for the attorney is offset by time to recoup and refresh for busier times ahead. These shifts in schedule or status usually do not affect the attorney's chances for partnership, but may prolong the journey.

### **Time Away**

Really creative firms are offering opportunities for travel and learning until the work picks up. Senior attorneys who may benefit from spending time in a foreign office of the firm, taking courses to advance specialized knowledge, or pursuing a scholarly subject or pro bono matter are being given that opportunity. Though they have to take a cut in pay, these attorneys are rewarded with the opportunity to build valuable skills and experience—which will ultimately benefit the firm as well. As with flex-time, those who take time away may remain on an extended partner track, if they choose to do so.

### **New Ventures**

More and more firms are finding it profitable to develop associated businesses that complement their strongest practice areas. Some of these subsidiaries are consulting on business formation or financing, strategic business planning for emerging companies, and lobbying/lobbying and legislative issues. Attorneys whose practices may have slowed, but whose knowledge and experience are valued by the firm, may find more opportunities for business in these offshoots. Some will likely remain in these businesses and advance within the management structure, but others may choose to move back to their legal practice and resume their path to partnership at some point in the future.

Senior attorneys don't have to wait to find out what their firm may have in mind for them. Some of this year's thwarted partner candidates saw the handwriting on the wall and came up with creative responses of their own. Some are taking a sabbatical to write a book, travel, or learn a language, some have taken leave to serve in public service or join the war on terrorism, and a few have decided to use this time to retool their practice specialization, with the firm's blessing and support. Proactive attorneys may find they have more career options than they thought.

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