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Partnership Decisions in an Uncertain Climate: Choices and Creative Initiatives

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 in the midst of booming demand for high-priced legal services from the top firms. There were reports from Silicon Valley and beyond of partners being made as early as four and five years out of law school. Partnership election potential looked very bright for the class of 2001—but as the year wore on, everything changed.

As this year's group of senior associates and counsel assessed their chances for promotion, the odds looked worse and worse as 2001 unfolded. Early in the year, some firms saw work in the pipeline dry up, while others were still swamped. As spring and summer arrived, more firms saw their corporate practices go idle and firm managers began worrying about huge classes of new associates due to arrive in the fall. No one could have predicted what September brought the nation. And from that point forward, wariness developed into full-blown fear and careful personnel decisions became more radical. Tough performance evaluations and layoffs that had begun with the California firms became the norm among most of the largest firms.

It was in this environment that this year's partnership class arrived in the winter of 2001. As the fall evaluation season wrapped up and partners began gathering information for partner decisions, the senior associates waited and watched. Every partner class suffers from insecurity and doubt regarding the outcome of this all-important vote, but the class of 2001 had better reasons than most. When the votes were in, partners were made. Congratulations to all those whose career goals were realized! But many great candidates were left disappointed. The final count shows it was a more conservative year for advancement than last. The firms' reasoning is solid—revenues are down or flat for many, there is no clear indication of when this economic slump will subside, and there were very large classes of associates on their way up the ladder. Suffering corporate clients are pressuring firms for lower fees and cost controls, making it ever more difficult to amortize those high junior associate salaries. Plus the slow down in demand has made it more difficult for senior associates to make that last all out effort to bill outrageous hours in their final years as associates. Many senior corporate associates who easily billed 2800 hours making deals in 2000 found it tough to hit the thresholds expected for top bonus dollars this year.

But firms did make some partners and the days of a purely "up or out" decision appear to have disappeared for most firms. Firms are doing an ever better job of giving associates a clear message regarding their chances for advancement early in their careers. They are also becoming more open with information on the firm finances and the economic reasoning behind promotion decisions. Fortunately, 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 spend time gathering information from supervisors, clients, subordinates, and the candidate him or herself. Many have written partnership standards and requirements that are discussed with associates in their annual reviews. The good news is that today you find very few senior associates who are shocked to learn that they did not make it. The bad news is that *this* year, attorneys who might have been a sure thing to make it may not for reasons beyond their control.

So what are firms doing with their talented, highly productive senior class who may not have made partner this year? New titles, different approaches, and expanded time frames were the order of the day. Each firm handles it slightly differently, but the forward-looking firms are approaching this season with a spirit of creativity. The following are a few of the strategies in play as firms made tough, economically driven decisions:

Equity vs. Non-equity

Beginning with the downturn of the early 1990's, many firms have adopted an additional tier within the partnership whose members are not shareholders in the traditional sense. This season has seen more firms move to this strategy of recognizing an attorney's level of achievement and contribution, while not diluting

the firm's equity pool. Non-equity partnership 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, non-equity partnership is presented as an advantage for junior partners, shielding them from the vagaries of uncertain economic return that determine equity shares. Sometimes entry into the non-equity ranks means the beginning of yet another promotion track to equity status, but generally, non-equity partnership is considered an end in and of itself.

Enhancing the Counsel Role

Many firms have taken the strategic step of creating what is essentially another management tier in the Counsel position. For years, "Of Counsels" or "Special Counsels" have existed within firms but the title meant something different in each firm. In some firms, it signified almost an emeritus status for very senior attorneys who wished to slow down or who lacked a vibrant book of business. In others, it was a slot allotted to attorneys too senior to be considered associates, but who were not likely to make partner. Recently, more firms began using this role as almost a "partner-in-training" status. They promote worthy senior associates who are on track to become partner and provide them with training in management, marketing, and practice strategy development. The Counsel level can provide firms with an appropriate place for attorneys who want to go "off track" for periods of time. It also allows for promotion in practice groups that are partner-heavy or whose revenues will not support additional partners (and the attendant billing rate increases).

Stretching Out the Partner Track

While the late 1990's saw the partner track begin to shorten in firms focused on the high-tech industry, most firms continued the elongation of the partnership preparation track. Eight to ten years has become the norm among the larger firms, with up to twelve years not uncommon in very prestigious firms. A longer track for promotion has advantages for both the firm and associates. The firm gets more time to evaluate each attorney, assessing his or her evolving skills and experience as they fit the firm's needs. Associates get more time to prove themselves, but also have time to determine whether partnership is the right thing 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 later bloomers can still make significant contributions to the firm. An artificial drop-dead date for elevation to the next level rarely serves the best interests of either the firm or the individual.

Flex Time Options

Too high a number of attorneys have found themselves worked to the burn-out point in the past few years. A slow down offers the firm an opportunity to approach some senior attorneys with an option of billing fewer hours or working on a less than full-time schedule. Creative approaches to redefining attorney roles in practice areas temporarily stalled allow the firm to retain its experienced legal staff while giving its hard working attorneys a chance for a break. The reduction in pay for the attorney is offset time to recoup and refresh for busier times. These shifts in status usually do not affect the attorney's future path to partnership, but may prolong the approach.

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 the firm's offices abroad, taking courses to advance specialized knowledge, or pursuing a scholarly subject or pro bono matter are being given the opportunity to do so under firm auspices. Operating under a reduced pay schedule, the attorneys are building valuable skills and experience—which will benefit the firm in the future. As with the flex time attorneys, these individuals may remain on a longer partner track if they choose to do so.

Exploring New Options

More and more firms are finding it profitable to develop associated businesses that complement their firms strongest practice areas. Consulting on business formation or financing, strategic business planning for emerging companies, and legislative issues are the focus of some of the subsidiary entities. Attorneys whose practices may have slowed, but whose knowledge and experience are valued by the firm may be able to find more opportunities for business in these offshoots. Some of these individuals 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.

In addition to these firm-generated strategies, some of those thwarted partner candidates saw the handwriting on the wall and came up with creative approaches on 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 in 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.

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