

Lateral Hiring: Changing Expectations and Incentives

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Potential lateral partners take heart: Firms are still on the hunt for a few good men and women -- as long as they come with a hefty book of business that will goose the bottom line.

Hiring managers and legal recruiters agree that firms have become pickier than ever about lateral partners -- a byproduct of the economic downturn and the large number of would-be laterals looking to make a move. The bar for lateral partners has risen in several areas, including the ever-important book of business as well as a potential hire's ability to tap into and grow the firm's existing practices, they said.

"People are being a lot more selective in 2010 than they were in 2007," Julie Zammuto, global director of lateral recruiting at Nixon Peabody. "I think the due diligence process has tightened up across the industry."

Most firms are no longer willing to take a chance on so-called "investment hires" -- partners who are on a good career trajectory but have yet to fully flesh out their client lists and solidify those relationships, said Jon Lindsey, managing partner of the New York office of legal recruiting firm Major, Lindsey & Africa. Instead, they want laterals who can quickly integrate into the firm and generate business and billable hours.

Unlike the moribund lateral associate market, the lateral partner market has remained strong during the recession despite the plummeting profits per partner at many firms. Firms on relatively solid financial ground have used the weak economy to lure attractive laterals seeking stability. According to *The National Law Journal* affiliate *The American Lawyer*, lateral partner hiring among the most profitable 200 U.S. firms increased by nearly 11 percent in 2009 compared to the previous year, with 2,775 lawyers making moves (the implosion of several firms during that time contributed to that figure). Litigators were most in demand, followed by banking and finance attorneys, corporate lawyers and intellectual property lawyers.

Flagging profits per partner contributed to much of the lateral partner activity since the recession hit. "To drive those numbers up, you've got to have lateral partners with books of business," said Gary D'Alessio, president of Chicago Legal Search.

"That creates an immediate infusion of capital. There's never been such a premium on partners than in the past year and a half. Firms need the business."

Indeed, recruiters across the country say the threshold for lateral partners' books of business has grown more this year than in previous years, although those who do the hiring at law firms contend that the book of business is only one of several criteria that they consider when examining a potential lateral. The desire for lateral partners with a proven track record of

developing business has created a situation in which the competition among firms is relatively stiff, but only for the very top echelon of lateral candidates.

"I'm seeing firms that want to bring in partners with between \$3 million and \$5 million in business," said Delia Swan, founder of Swan Legal Search, with three California offices.

D'Alessio said that lateral options are limited for attorneys in Chicago who have books of business smaller than \$1 million. "Expectations were higher in 2009 and they have been even higher still in 2010," he said.

For laterals coming out of the government, firms want lawyers in relatively high positions in hot practice areas, such as Securities and Exchange Commission enforcement, Lindsey said.

The lateral partner vetting process has become more involved at firms of late, with a greater focus on billable hours, collection rates, client lists, growth potential and ability to integrate into existing operations. "We have a sharper eye. We're really checking that these are the people who have the connections and the relationships with the clients that they say they have," said Ari Katz, national director of legal recruiting at Bingham McCutchen. "Now, more than ever, there are partners on the market who we know have been asked to leave because their practices are not big enough."

Bingham is not interested in laterals who are being pushed out of their current firms, Katz said. Rather, the firm is focused on partners who will build on the firm's existing strengths, and whom it can "cross-sell" to clients.

Just as the approach of law firms to lateral partner hiring has changed, so have the compensation conversations surrounding lateral moves. The partner guarantees that were not unusual three years ago are largely unpopular these days, said both recruiters and law firm hiring managers. Partners are no longer willing to risk guaranteeing new laterals certain compensation levels for three or four years when yearly revenues and profits per partner are uncertain.

"The heyday of the three- and four-year guarantee deal has passed. Two or three years ago, that was seen as a great way to lock people in," Lindsey said. "But that money comes out of partners' pockets, and some ill-advised deals were made."

Some firms have turned to a less risky financial incentive for lateral partners in the form of forgivable loans. For example, a firm might offer a lateral a \$1 million loan when they start with the firm, Lindsey said. If the partner performs up to expectations, the firm might forgive \$250,000 of that loan each year until the loan is completely forgiven. This arrangement functions as something of a reverse signing bonus, giving the firm an opportunity to recover its investment if the new lateral partner doesn't work out.

Firms are also offering potential laterals carrots that aren't strictly financial, from flexibility on retirement policies and access to pension plans to promises of certain leadership positions and the ability to bring along members of their team. Still, bringing along associates can be a

sensitive situation at firms that have laid off their own associates during the past year, several recruiters said.

Detailed financial questions are likely to be part of the conversation with potential lateral hires, more so than in the past, several firm recruiters said. A solid financial base is a great bargaining chip to use when speaking with potential laterals coming from firms where profits per partner have fallen off, they said. "A lot of laterals have asked us about the firm's financial stability, which they wouldn't have done three or four years ago," said William Haft, the partner in charge of lateral recruiting at Orrick, Herrington & Sutcliffe.

Laterals aren't likely to ask for as many perks these days, said Jones Day firmwide hiring manager Gregory Shumaker. "In tougher markets, it's fair to say lateral partners seem to make fewer demands, but they have the same set of concerns as they've had in the past."

When Jones Day is attempting to bring in a lateral, it emphasizes the firm's stability, its closed compensation system, its team atmosphere and its focus on long-term success, not short-term financial gains. "In the past three years, I've seen an increased level of dissatisfaction among partners at firms focused only on the bottom line," Shumaker said. "They thought their firms shared their values, only to find out they didn't."