

## THE LATERAL PARTNER CONUNDRUM I

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This monograph is the first of two papers that take a look at lateral partners – how to effectively select, recruit, and retain the best candidates for your firm.

### Summary

As we speak with law firm leaders around the country, we hear a constant refrain – “one sure way to increase firm revenues is to bring in a lateral partner.” Managing partners frequently tell us that a goal of many firm and practice group plans is to add a capability, discipline or new area of practice, through the recruitment of one or more lateral partners. And yet, with so much interest in lateral partner recruitment, it seems a bit ironic that law firm success rates with laterals is extremely low.

This monograph examines the process of recruiting and selecting lateral partners with the goal of improving that success rate. It will look into why the failure rate of laterals is so high and provide you with a variety of tools and approaches to improve upon the process.

### Why a Conundrum?

- The seeming overreliance on lateral recruiting as essentially the sole or primary “growth” strategy is a primary reason. Everyone trying to do the exact same thing is not strategic.
- The surprisingly poor success rate of laterals in their “new” firms almost serves as the perfect example of “doing something over and over again until you get it right.” It should be obvious that the low success rate is not the laterals’ fault but rather it is a refusal by most firms to manage the process comprehensively, so that it works effectively.
- And recently, law firms have been fueling the problem, in part, by coming to terms with chronic underperforming partners, thereby swelling the ranks of potential lateral candidates.

Hence, a conundrum. An increasing supply of candidates seeking “greener” pastures (sometimes the “green” really is the color of money), combined with strategic growth plans that lack process, effective execution, and adequate management.

The solution is to make changes that dramatically improve the process (from beginning – selecting and recruiting – to end – integrating and retaining) and, thus, contribute to a greater success rate. Absent process improvements, there is no promise that the success rate will go any higher.

### Why the Lateral Partner Hit/Success Rate Is So Low

Citibank and others (including Smock Law Firm Consultants) have pegged (i.e. – estimated) that the success rate for lateral partner hires to be about 25% (higher for some firms and lower for others). There are, we believe, some very straightforward reasons why the lateral partner success hit rate is so low.

Lateral partner movement over the past few years has increased at an alarming rate. The economic crisis that began in 2008 launched a variety of factors that have contributed to the rise in lateral movement. Some of these factors are:

- The need to increase law firm revenues
- Programs to address the issue of underperforming partners
- The growth in practice (by area of law or by industry) and client service teams
- Increased pressures from clients to “add value” to their enterprise
- Increased globalization of the legal marketplace
- Conflicts resulting from mergers or other lateral acquisitions
- The slowdown in the rate of growth of or the decline in average partner compensation at many firms
- Finally, cost containment programs that negatively impacted the ability of lawyers at some firms to service or support their clients as they did pre-2008.

The natural resistance to change has hindered the ability of most firms to make their lateral partner recruiting activity more successful. There are more lateral partners on the market and more firms are looking for lateral partners, but most have not analyzed or improved the process by which they identify, hire, and integrate laterals.

### **And Now, an Additional Factor – a Wave of Underproductive Partners on the Lateral Market**

The legal marketplace is still feeling the impact of the recent economic crisis. Some would say law firms are still in the midst of this crisis, as revenues are flat, profits are not increasing as they did during the early part of the 2000s and clients are increasing their pressure for more predictability in costs and a lower legal spend. And, law firm costs, especially for technology and marketing, are continuing to increase. As firms plucked the low-hanging fruit for cost containment and cost reduction over the 2008-2010 period, many firms realized that they had to directly address the issue of underperforming partners, because efforts at adjusting income to reflect that underperformance had clearly not motivated underperformers to perform.

As we have said in prior monographs, downgrading the compensation of an underperforming partner (often by an insignificant amount) does not come close to balancing the ledger.

- More and more of our clients have come to realize that downgrading the compensation of an underperforming partner only takes an underperforming partner and makes her/him “a ticked off underperforming partner.”
- Other firms have chosen to combine the reduction in compensation of such underperformers with a change in status to non-equity partnership. Those partners now must reveal to their spouses and others that they have been “kicked downstairs,” thus suffering a loss in dignity and self-esteem.
- Recognizing the inability of compensation adjustments to address the issue, many firms have become more aggressive in telling underperforming partners that it is time for them to begin seeking a new home or a change in career objectives.

As more of these more aggressive “hard” or “soft” terminations of partners occur, those underperforming partners are seeking out recruiters with an eye towards making a change in firm and seeking greener pastures.

As can be expected, these partners are sending out resumes that contain glowing descriptions of their prior professional experience. For all of the years I have been involved in the lateral partner hiring process and during the four years I spent as the president/COO of a retained executive search firm, I have yet to meet a candidate who, when asked “why are you seeking to make a change,” responded with “because I am failing in my current position.” It is not human nature to admit such a failure to others, especially during a job interview – even though that is the reason they are looking.

Candidates offer a variety of reasons for their interest in making a move. Among the more frequent we have heard are (1) “conflicts with my key client;” (2) “I need a different/larger/more geographically dispersed platform to better develop my practice;” (3) “my current firm is stagnating – I need a more growth oriented environment;” and (4) “disagreements with firm leadership over policy or firm direction.” But, candidates underperformance is never on that list.

### **Improving Lateral Partners Success – the Recruitment and Selection Process**

Recruiting selecting and retaining lateral partners are all part of a process that begins with a determination of the type of lateral you seek in terms of practice area, skills, experience, personality traits and characteristics. And, selection of the recruiters that you will work with requires a similar process.

The first stage of the recruitment and selection process for lateral partners requires skills that will enable recruiting partners to “predict” (with some accuracy) the future performance and behavior of a candidate, before making the selection decision.

To understand the implications of the selection process on a lateral candidate’s potential for success, we need to first understand why most selection decisions are ill-conceived. There are two fundamental reasons for the failure of selection decisions – (1) unclear specifications and (2) faulty evaluations.

We hear law firm leaders state that they want to be “opportunistic” when it comes to lateral recruiting. But in most cases, such opportunities present themselves without any basis of comparison, somewhat like an election where only one candidate is running (remember Saddam Hussein). And, we hear those same law firm leaders say that while they have reasonably well defined and articulated specifications for promoting an associate to the partner ranks, there are considerably less clear specifications associated with lateral partner searches. Hiring partners, the Recruiting Committee, and practice group leaders or others tasked with the responsibility for lateral partner recruiting do not have defined and written descriptions of the search specifications. Stated reasons include – “we want to keep a fluid atmosphere” for the search; “we will know what we want when we see it so let’s just see how the search develops;” and my favorite “we cannot be too specific for fear of missing a good candidate.”

Unfortunately, the above signals and lack of clarity in the specification for the lateral partner candidate mean that it is virtually impossible to evaluate all candidates against the same criteria. And it is similarly impossible to successfully communicate with recruiting professionals (inside and out) who produce the candidates for your consideration.

When the recruiting professional is told that a candidate produced for the firm is “the wrong candidate” something is amiss. The time to develop the specification is before the search begins. Otherwise, too much time is wasted seeing “the wrong” candidates. To be told at this early stage in a strategically driven lateral partner search that a candidate is “wrong” is a good indication that either a firm is using the wrong recruiter or that the search specifications were not adequately developed and communicated.

Interviews focused on capability at the lateral partner level will most likely involve discussion of the candidates practice, client matters currently open, significant matters, transactions or victories achieved by the candidate and such other related subjects that enable the interviewing (or hiring) partner to evaluate “performance potential” for this lateral candidate in the firm.

- “**Capability**” interviews focus on “can do” or performance aspects of a candidate’s current and prior positions.
- “**Personality**” oriented interviews focus on those characteristics that identify what the candidate “is like” and yield indications of the candidates behavior in their current and prior positions.

Over eighty percent of the people who fail in a new position (at senior levels, such as executives or law firm partners), fail because of personality issues and not due to a lack of capability.

It is very important to understand a lateral candidate’s practice and how that fits a firm, but it is just as important to be able to understand the candidate’s personality and how that fits with the firm.

When it comes to lateral candidates, the past is an unreliable indicator of the future. This is primarily because no-one succeeds or fails in a vacuum. All successes (and failures) are influenced by forces external to the candidate including management style, peer structures, the mission and strategic objectives of the candidates present and prior firms, and others. One other factor that always changes and impacts performance are the “boss/subordinate” relationships experienced by the candidate within their firm and with their clients. So we need a way to “predict” how a candidate will perform in the future. The process starts with setting the specifications.

### **The Lateral Partner Acquisition Process – Specification**

The process begins with setting the specifications for the position the firm is seeking to fill – as follows.

- **Musts** – the absolute minimum, non-negotiable requirements in terms of practice size, hours recorded, or such other metrics that are viewed as critically important
- **Preferreds** – the extra criteria that your firm might want in a candidate, but is willing to compromise on
- **Special considerations** – the subjective judgments regarding a candidate’s profile and experience that can become very important considerations, but can only be effectively explored during an interview and are not readily communicated in a resume.

“Musts” are used during the evaluation as eliminators or deal breakers for the consideration of a particular lateral partner candidate. Examples might include:

- A minimum of 10 years as a partner in another firm.
- Experience managing at least two substantive matters at the same time
- At least three years of experience managing and closing specific types of transactions each valued at more than \$50 million.
- A minimum of three consecutive years with originations of at least \$2 million per year
- A track record of 1,800 billable hours as a working attorney for each of the past three years.

But remember, if you have six or more “*musts*” in your specifications, you probably have eliminated the entire population of the legal marketplace as potential candidates and if you have no *musts*, theoretically, everyone will fit the specifications.

“*Preferred*” characteristics are those that, once your “*musts*” are established, will help you differentiate between qualified individuals. We suggest firms identify as many “*preferreds*” as necessary to assist in the search for the best candidate. Some “*preferreds*” might include:

- A track record of using project management techniques to complete matters within budget
- A demonstrated commitment towards diversity and inclusion when staffing matters
- A track record at their present or prior firm in leadership positions on bar association or firm committees or practice teams.

When it comes to the “*additional considerations*,” it should be noted that these tend to be qualitative and, as such, cannot be learned from a resume. That does not mean that they are less important characteristics, but rather that they involve making subjective judgments. By the time you are (a) making final judgments, (b) fine tuning the position description and (c) seeing final candidates, these are basic issues you should be addressing. They might include:

- Has the candidate demonstrated that she/he is a self-starter?
- What experiences can the candidate relate to demonstrate good interpersonal skills with other partners? Associates? Staff? Clients?
- Is the candidate trustworthy?
- In what ways do you see this candidate making contributions as a partner?

### **The Lateral Partner Acquisition Process – Standards of Performance**

It is estimated that as much as seventy percent of performance problems are caused by an individual not knowing what is expected of her/him. People (and lateral partners are included in this characterization) who do not know what is expected of them are under considerable tension and confusion reigns.

- Discussing the firms performance standards with a lateral partner candidate during the interview process can be used to help understand what the candidate can do and communicate what is expected.
- Reviewing the candidates business plan and discussing the plan with the candidates during the interviews either before or as part of the offer process can allow the candidate to learn how she/he will be measured.
- And, explaining the performance appraisal and evaluation process against that business plan will allow the candidate to understand what matters to a firm.

### **The Lateral Partner Acquisition Process – Interviewing Candidates**

There are many books and articles geared towards helping the candidate be a good interviewee, but we want to help the interviewer gain the information necessary to successfully evaluate candidates. The interview cannot be considered productive and/or successful until the interviewer can put into writing – (1) what **speaks for** the candidate – the candidates’ strengths, (2) what **speaks against** the candidate – the candidates’ weaknesses, and the reasons for both, as there is a reason for everything.

Why is this so? Interview questions that begin with who, what, when and where produce snapshot responses – but the questions that start with “*why*” especially the rolling “*why*” – means that the interviewer never runs out of things to discuss, or ask, or probe or pursue. The “*rolling why*” is a technique for probing by using “*why*” to start your follow-up questions.

Selection decisions are frequently misplaced because the interviewer does not have enough of the right information to make an informed decision. But by using the "rolling why" you will get more and better quality information from the candidate. Also, the first answer to most questions is a programmed answer. So, if the answer to a question is a quantitative response, a qualifying follow-up question is required. An example would be:

*Question: How long were you on that products liability case?*

*Answer: Four years*

*Follow-up question: What did you enjoy and not enjoy about working on that case for that period of time?*

If the answer to a quantified question is qualitative, a quantifying follow-up question is a must:

*Question: How long were you on that products liability case?*

*Answer: For too long (or long enough)*

*Follow-up question: When did you start working on the case and when did your involvement end?*

Appropriate follow-up questions will generally start with who, what, where or when, except when you are probing with the "rolling why."

### **Listening During an Interview**

Remember when your mother always knew exactly what you were up to when you were a kid - even when she had her back to you? Well, my mom always said she could watch me with her third eye (the one in the back of her head) and listen with her "third ear." I never could get the hang of the eye in the back of the head, but I did learn to listen with the third ear and it is useful in the context of lateral candidate interviewing. This "third ear" kind of listening during the interview process entails listening not to what is said but rather to what is meant. So if you want to know about the candidates relationship with his practice leader, as an example, ask "why are you interested in leaving your present position?" The first answer is programmed - so remember to ask "why?" And be mindful of being friendly or the interviewee will become defensive. And remember, when a person is not speaking the truth, there is a tendency for people to (1) not lie loudly, (2) not look you in the eye, and (3) and to "improve" the answer. But if you follow-up with "why," improvising on the part of the interviewee becomes difficult.

The next key factor for successful interviews requires that the interview must be an **information gathering experience**. During the first few meetings with a lateral partner candidate you will need to learn as much pertinent information about the candidate as possible so as to make a knowledgeable selection decision. It is critical not to give a candidate information about the opportunity with your firm that gives the candidates clues as to the responses that you seek. For example, if you begin your first interview with the lateral partner candidate by saying "we are looking for a self-starting partner with a high energy level, who can manage multiple matters under pressure, while taking on the challenges of a highly charged environment," in all likelihood, the candidate will play this back to you at the first opportunity. This does not mean that you do not provide information to the candidate. It does mean that you have to give enough information to the candidate to turn them on. You need to speak about the opportunities in a positive way but not provide a detailed description of the qualities that you are looking for. Or, you can give them information which will not draw out programmed answers (e.g. - "we need a partner with six years of M&A transactional experience at the partner level who can run deals and manage clients."

In fact, it is generally a good idea to set the stage for the interview by setting the agenda at the outset of the interview. For example, you can say "our discussion today will be important so that we can both make a knowledgeable decision as to whether this is an opportunity that you would enjoy and succeed in. I need to gather as much information as possible and then we can turn the tables and you can ask any questions that you may have."

### **The Lateral Partner Recruitment Process - Identifying the Candidates Weaknesses**

Candidates would rather not discuss their weaknesses, but it turns out that candidates are actually relieved at getting those topics off their chest - if the questions are properly posed and if the candidates believe it is safe to discuss them. Research has shown that people who are aware of their problems in a present or prior position, do not want these same problems to surface after they start in a new position. Yet they fear that if they divulge information of this type during an interview, they will not get the new position.

So, how do we create a comfortable, safe atmosphere where a candidate is willing to reveal weaknesses?

### **The Lateral Partner Acquisition Process - Orchestrating the Interview**

First, the interviewer must make the candidate feel important.

- Do not keep the candidate waiting, as it only heightens their anxiety.

- Do not accept phone calls or respond to e-mails during the interview. Tell your secretary, in front of the candidate, to hold your calls as you are going into an important meeting.
- Next, use relaxing small talk at the start of the interview.
- Find something on the candidates resume that you want to share
  - *"I see you went to NYU – my sister went there as well..."*
  - *"I was very impressed that you..."*

These icebreakers take only a few minutes, are more impressive and effective than general comments about the weather, sports or other such topics and show the candidate that you are prepared and that you have read her/his resume. In fact, help your preparation by circling items on the resume that you want to explore and prepare a list of other topics that you intend to cover. You must prepare for the interview in advance.

- Read the CV/resume – you cannot make the candidate feel important if you start the interview by saying *"give me a moment to read your resume."*
- Manage the interview and prepare an agenda.
  - First discuss the *"musts"* from your position specification.
  - Explain to the candidate that you will be asking questions about professional issues and then will be available to discuss questions from the candidate. This prevents having to wrestle control of the interview back from the candidate, if the candidate tries to run the interview.
- Note taking can be very threatening to a candidate because she knows that what you are writing down is important, secret, and can influence whether or not she will be offered the position.
  - When people do not know if something is good or bad, they (especially lawyers) assume it is bad.
  - But in all likelihood, you will need to take notes so, consider asking the candidate for permission – *"do you mind if I take a few notes as we talk?"* This will go a long way towards creating the safe secure environment wanted for the interview.
- Insure privacy for interviews. The interview is a one-on-one relationship and you cannot expect someone to give you in-depth information if others can hear. Interviews by committee rarely work out well. And avoid interviews in restaurants or airline lounges. A private office or a small conference room is best.
- Do not use the *"question – answer – question"* approach as it comes off more as an interrogation as opposed to creating a warm, secure atmosphere where the candidate will give out sensitive information.
- Conduct the interview using the *"rhythm method"* – that is, *"question – answer – comment (innocuous "I see;" "that's interesting")"*. These should be non-judgmental but supportive comments.
- Use empathy, but not sympathy, during the interview. It is important that our interviewer *"feel with"* rather than *"feel for"* the candidate.

If you have successfully created a warm, safe, secure environment, you will have increased the likelihood that the candidate will, at some point during the interview, say *"can I tell you something in confidence?"* It is important to keep in mind that the confidence is most likely something negative about the candidate or her/his present firm. You need this information to help you make a knowledgeable decision about the candidate. It should be noted, however, that a proper response to this question may well be that *"as an agent of the firm, and an officer of the court, I cannot accept a confidence because I may have to relate this to others as appropriate, but if you tell me, I will deal with the information as sensitively as possible."* The simple fact is that most people will still give you the information. However, if they decide not to tell you, pass on this candidate.

- Avoid asking ineffective questions during the interview that give you no information at all and for which the candidate is programmed to give the *"right"* answers. These are questions such as:
  - Do you like to work hard?
  - Do you object to travel in your work?

- Are you looking forward to...
  - Finishing this search?
  - Getting away on vacation?
  - Starting in your new position?
- Use open-ended rather than closed-ended questions.
  - Open-ended questions cannot be answered with a “yes” or “no” – open-ended questions get information
  - Closed-ended questions can and generally will produce a “yes” or “no” response. Closed-ended questions only set-up programmed answers.
- Questions about what the candidate “likes” doing relate to areas of strength while questions about “dislikes” relate to areas of weakness – so, ask them. And these strengths and weaknesses are directly related to personality.

### **Pushes and Pulls**

Every lateral candidate experiences “pushes” and “pulls” during their search for a new position. “Pushes” are those factors that are driving the candidate away from their current firm, while the “pulls” are those factors that will draw the candidate to a new firm. It is important that before you make your selection decision, all of the pushes and pulls have been identified for a candidate. Failure to do so creates the risk of:

- Extending an offer to someone who will find the same or similar circumstances in your firm that are driving them away from their present position
- Extending an offer to someone who has expectations about a position or career in your firm that cannot be met.

### **A-B-C Methodology**

One of the techniques that can be employed to identify the pushes involves evaluating whether a candidate can do what he/she claims to be able to do. This technique is called the “A-B-C methodology.”

During the interview, ask the candidate to share with you three relevant and significant accomplishments of their present position for which they are particularly proud. For each accomplishment ask the candidate to describe the situation or case, the legal and business issues involved and the roles of each of the key players. Be sure to ask the candidate to explain each accomplishment in as much detail as they can – because what a person is willing to explain in detail – he can duplicate.

The key, of course, is whether the candidate gives specifics.

Candidates who have been working as part of a team (client service teams, practice teams, industry teams) will frequently use the phrasing:

- We won the case
- We closed the most complex and largest transaction in the client’s history
- We beat our budgeted revenues for each of the past three years.

And while teamwork is a necessary and laudable attribute, you are concerned with the accomplishments of the lateral candidate before you. In order to separate the “I” from the “we,” ask the candidate, in a non-threatening way, to tell you more about her/his accomplishments and what the candidate personally did – not what “we” did.

A person who persists in talking about “we” may be raising a red flag as to whether she was indeed responsible for this accomplishment.

Another interview trap to watch out for involves speech delay patterns. These may be a classic sign, albeit a bit tricky, that the candidate is trying to bluff his way through an interview with responses to questions with phrases like “I am glad you asked that,” “that’s a good question,” or she/he simply repeats the question.

Some of these patterns are perfectly natural and acceptable while others are a true sign that the interviewer is being manipulated. It is quite normal to use speech delay patterns, especially when responding to complicated questions, but if the technique appears too frequently for what should be fact based responses, the interviewer should be cautious.

## Intuitive Ability

Another key element of interviewing a lateral partner candidate is to ascertain the candidate's intuitive ability. You need to know if this candidate can make good decisions, that is why intuition comes into play. Intuition (or "hunch" or "gut feeling") is the ability to make reliably good decisions without all of the information that might otherwise be needed to ensure certainty.

Some of the indicators of intuitive people include:

- The use of gut feel or instinct, in addition to facts, in approaching life situations
- The willingness to go out on a limb when there is little information available
- Spontaneously generating ideas without having to first consider facts and figures logically
- Being aware of other people, feelings, and emotions
- Coming up with their own options rather than relying on accepted notions
- The ability to act on their own impressions, rather than what they read.

Among the ways to test for intuitive ability is to ask a series of questions to the candidate for which you know the answers but the candidate cannot possibly know the answer. Some examples of such questions are:

- What do you think I will report back to my (Managing Partner, Lateral Recruiting Committee, etc.) colleagues on what speaks for and what speaks against your being offered a partnership in this firm?
- Having already discussed **your** avocational interests, what do you think mine are?
- If we were to agree to meet again over lunch or dinner for the purpose of discussing anything other than our profession, what specific discussion subjects do you think I would find interesting?

## Healthy and Unhealthy Needs

One of the more critical aspects of the interview process involves the identification of the candidates "needs." Recalling Maslow's hierarchy of needs, we are all driven to satisfy certain needs. Initially they are biological, such as food, shelter, and personal safety. After those needs are satisfied, we move on to recognition by others and self-realization. By the time a lateral partner candidate is talking to you about a position in your firm, I suspect it is these latter two types of needs that we are addressing. The candidate has certain "needs" to satisfy by joining your firm.

Certain of these needs can be satisfied within your firm's environment and satisfied needs are generally healthy. Other needs, however, can never be satisfied within your firm's environment. This creates a problem because the person will always be dissatisfied.

It also must be noted that a candidate may have healthy needs (i.e. - they are satisfied) but they cannot be necessarily fulfilled in your firm. "Needs" have a certain amount of immediacy to them. They must be satisfied now, or at most, in the near term - not later. Some examples of healthy and unhealthy needs are listed below.

Healthy Needs	Unhealthy Needs
The need to: <ul style="list-style-type: none"><li>• Be competent</li><li>• Be fair</li><li>• Be sensitive to others</li><li>• Be respectful</li><li>• Team up</li><li>• Be independent</li><li>• Teach</li></ul>	The need to: <ul style="list-style-type: none"><li>• Manipulate</li><li>• Be powerful</li><li>• Feel superior</li><li>• Be isolated</li><li>• Prove masculinity or femininity</li><li>• Be verbose</li></ul>

It is very important that the interviewer ask probing questions that are designed to see if a partnership in your firm can satisfy a candidate's needs. Such questions might include:

- Why do you want to be a partner in my firm?
- What are your three areas of concern about joining my firm (unrealized expectations)?
- Why do you think a partnership in my firm is good for you?



- What personal rewards or recognition do you expect to receive from a partnership position in this firm and by when would you expect to receive them?

As the conclusion of the interview, it makes sense for the interviewer to end on an up-note with a compliment, even if the candidate just interviewed is obviously deemed to be of no further interest. This is recommended both for the public relations impact that a negative interview can have when the candidate relates his/her experience to others (especially the recruiter who made the introduction) and for humanitarian reasons. If you have applied the techniques outlined here you will have done a pretty good job of "opening up" the candidate to allow you to take a good look. It behooves you to put the candidate back together by saying something nice. The interviewer has had the upper hand throughout the interview - which includes the obligation to give the candidate "a pat on the back."

This completes our discussion of the lateral partner recruitment and selection process. In a future monograph (The Lateral Partner Conundrum II), we will discuss the issues of integrating and retaining new lateral partners into your firm. That will complete our presentation of the "lateral partner conundrum."

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