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How to Evaluate the Veracity of Information from Partner Candidates

Although it is uncommon, recruiters handling partner level searches for law firms must be able to identify when a potential partnership candidate is misleading or misrepresenting information to the recruiter in an attempt to secure an interview or opportunity with a law firm looking to expand. Partner candidates do not necessarily intentionally give recruiters inflated or inaccurate information, but it does happen, and it may happen because of the lawyer's failure to think through all of the relevant issues involved in being represented to a firm for partnership.

The recruiter handling the initial evaluation of the partner must do everything in his or her power to test that the information that will potentially be conveyed to the firm is both accurate and complete. It is quite embarrassing to decide to represent a partner to a law firm, and then go back to that same law firm to revise information that was initially inaccurate or incomplete.

Here are the categories of information a recruiter must have before a) making the determination that a partner candidate may be a good fit for any given firm, and b) approaching a law firm to discuss that partner's candidacy. These items will be discussed in the context of how to evaluate whether the information being conveyed is truthful, accurate and complete.

Portable Business

Portability of clients

It is true that sometimes it is difficult to evaluate whether a particular client is portable, i.e., will follow a particular lawyer to a new firm. There may also be ethical issues concerning approaching clients to make that determination. However, it is generally not likely that a partner with a solid client relationship will not have an educated opinion about who would and who would not move with him or her. At a minimum, a partner candidate should be able to identify on a client-by-client basis what the prospects are for keeping that work.

More to the point, if a partner truly believes and represents whether certain clients are portable, and those uncertainties make it impossible to define the total amount of portable business, then a recruiter should not and can not represent that partner to a law firm (at least to the extent that the law firm is looking for portable business).

Amount of Portable Business

Partners with excellent relationships and substantial business will make conservative, but definite projections concerning the amount of potential business. Most accomplished business developers underestimate their collections, and mark their success by exceeding those numbers. Because compensation at the partner level is almost always based in part on actual business generated, a highly successful partner will have a pecuniary gain for his or her results, and need not oversell them at the beginning of the process.

How does one evaluate whether the 'portable business' number is exaggerated? There are several ways. First, is that number consistent with the partner's current situation? For example, it is unlikely that a solo practitioner is billing \$2 million in business without any help from other attorneys and/or a substantial billing rate. Therefore, it is important to ask the partner how many other lawyers actually handle the work that constitutes a book of business. Moreover, a partner should and will know what his billing rates are from client to client. If he is moving to a firm where the rate structure is higher, the partner should also have an idea whether his clients would be able to pay a new firm's higher rate.

The other significant tip off that a partner's book of business is not what it appears is his current salary and/or compensation expectations at a new firm. A lawyer may perceive that by representing that he has a certain amount of business he can secure a larger base salary. This may be the case, but the expectations must also be in line with the projected business. In addition, if it is substantially more or less than he is currently receiving, this may be a significant red flag.

Business Development Track Record

Often, the single biggest red flag that a lawyer's book of business is not what it appears to be is that attorney's track record. If he or she cannot easily talk about what his or her business has been over the past three years, that's going to be an issue. Generally, unless the attorney has had a stable client base, and/or a client base that has consistently increased with time, firms are going to be quite skeptical that you have presented them with a 'proven commodity.'

Some attorneys will hedge on this question, usually by saying that they are in a practice area that is not amenable to a constant or predictable amount of work. While it is true that certain practice groups tend to be more consistent than others in terms of average billing per client, attorneys in every practice group have developed consistent books of business that can be quantified and that do remain consistent over time. For example, although it may be hard to predict how many lawsuits will be filed against a corporation in a given year, an attorney who secures that client can usually predict what that company's overall litigation costs are from a historical standpoint.

Diversity of Practice

An attorney should also be able to talk about the diversification of his client base. Is the partner relying on one particular client or many to support his or her book of business? Conventional wisdom is that a diversified client base is more secure, since the loss of any one client will not greatly affect the overall business. However, a solid relationship with one large client presents an easier case in terms of conflict clearing, and can be quite attractive.

If a lawyer isn't able to break down how much of his business goes to any one particular client,

then there is a problem. Either he really doesn't have a significant connection to that client, or he hasn't thought about it. At a minimum, it is the recruiter's job to make sure those questions can be answered, and answered truthfully.

Estimated Future Portable Business

Even in the 'less predictable' practice areas, a lawyer should be able to conservatively estimate what his book of business will look like in the next three years. There are two main reasons why a partner would not be able to project what his billings will be over time. First, he or she may not have given it much thought. Second, he or she may lack confidence in his or her abilities, and be unwilling to make projections. If it's the first, it's important to understand that these issues need to be determined before even approaching a firm.

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One last issue to look out for when discussing future projections is an estimate of future business that is greatly out of proportion with the partner's history of business development. Unless a dramatic increase can be explained in a concrete fashion (i.e., the partner was just able to secure a national client's entire book of litigation business) then law firms will be immediately suspect of numbers that are simply too high.

A corollary issue is this: a candidate who expects a significantly 'better deal' at a new firm than at his or her current firm will raise eyebrows. Lawyers are rarely brought in as full equity partners without a year or two as a trial period. Even so, an expectation to immediately go from an associate or of counsel at one firm to a partner at another, especially when it's unsupported by an explanation of why the lawyer couldn't earn the higher title at his or her current firm, should be a signal that there are unreasonable expectations. Obviously, the same may be true for compensation, although it is frequently the case that a lawyer is able to increase his or her compensation when moving to a firm with a different business model more suited to reward for that partner's business development efforts.

Why a New Firm?

Sometimes, a partner with a book of business is interested in changing firms because there is something about their current firm that keeps them from developing their book of business to the fullest extent possible. This is not unusual. However, it's very important to be able to answer the following question: What can a new firm do (that your current firm does not) that will help develop the book of business? If there is not a concrete answer to this question, then there will be a good deal of suspicion whether the book will increase at all upon transitioning to a new firm.

Business Plan

All of these issues must be discussed and a recruiter should be able to answer each of these questions on their candidate's behalf before the first phone call or meeting with a potential new firm. The failure to get this information is either an oversight on the recruiter's part, or omissions on the partner's. One way to summarize this information is to create a business plan that can be delivered to potential firms (at the appropriate time in the negotiation), and importantly, can be supported by underlying documentation. A smart recruiter will ask, at one of the first meetings, what documentation will be available to law firms at the later stages of the process so that the law firm can perform its due diligence. Although a partner's concerns about confidentiality are well founded, too much reluctance to provide this type of information

at any time smacks more of an inability to provide the back up than a concern about confidentiality. At a certain point, a law firm must understand what business comes from which clients to make a determination about whether there is a good fit. A partner who tells you that they need to simply take it on faith is a risky candidate to assume.

In addition, business plans can be complicated, and a lot of work. Some partners may simply be unwilling to put the time into doing such a plan. However, especially given the importance of developing business and growing a book of portable clients, it is somewhat suspicious that a savvy lawyer would not want to spend the time defining all the issues surrounding their client base. Moreover, much of the information that would be included in a business plan is readily available to a partner with an existing book of business, and protestations that the information would be too hard to find are unreliable and suspect.

Conclusion

This article is not meant to be read as suggesting that lawyers are by nature deceitful while looking for recruiters. However, past experience shows that in this process, either a lack of information or an exaggeration of abilities is something that must be addressed immediately in a recruiter and candidate's relationship. If these issues are discussed initially and completely, the likelihood of success for both the candidate and recruiter increase exponentially.