Becoming partners in law firms: The interplay between transparency and strategic considerations

Summary of main results

“First who, then what”!¹

What kind of support do law firms provide to their lawyers as they seek to become partners? What criteria have law firms developed for partner selection and how do they evaluate these criteria when selection is pending? This study attempts to answer these questions with systematic, qualitative analysis of a selected group of law firms. The study’s aim is to analyze how firms of different sizes approach the partner selection process and to develop concrete proposals for the improvement of this process by comparing the results with well-established practices.

Choosing an equity partner is one of the most important, if not the most important decision made by a firm, regardless of the firm’s size or profit distribution model. According to a study by Prognos on the legal services market 2030, 65% of large firms with international reach utilize the possibility of making partner as a means of attracting and retaining skilled personnel.² Partners determine the firm’s strategy and clients increasingly want access to them. The rule of thumb in law firms “clients first, people second, partner (interests) third” still applies to a certain degree, but appears to us to be out of date. We believe instead that firms today should focus on the selection, evaluation and advancement of employees, an approach that has positive results for client relations.

Focusing on employees is also essential because the evolving job market (keyword Generation Y) presents a challenge to law careers in their current form: the number of well-qualified people who enter large law firms with the explicit expectation of eventually becoming a partner is decreasing. As a result, law firms are reconsidering the performance-oriented and motivational “up or out” policy. In order to ensure the continuation of effective partnerships, law firms must focus their attention on identifying, observing and training the right candidates. Considerations regarding the proper (and also prognostically valid) criteria for selecting a partner and an objective process for becoming a partner are becoming increasingly important.

An adjustment of values in the period leading up to partnership

The long period of 7 to 8 years proceeding promotion to partner allows for an objective assessment of the partner criteria and corresponding development measures. This period of time offers many opportunities to observe the performance, work results and development of associates, to gain valuable impressions and to give objective and transparent feedback.

During this period of time, a conflict of values arises between a firm’s entrepreneurial freedom on the one hand, and transparency for individual employees on the other. The establishment of maximum transparency for associates, both in terms of the selection criteria and of the selection process, may under some circumstances lead to strategic inflexibility and potentially to the early loss of qualified staff with low prospects for becoming partners. In contrast, although a non-transparent process for becoming a partner has strategic flexibility, it can have a negative impact on associates’ motivation and does not contribute to the wider acceptance of decisions made by partners. The way in which a firm approaches this conflict influences the way in which the partner selection process is structured, particularly with regard to transparency.

The two fundamental criteria for the assessment of partner aptitude

The study confirms the market’s well-known observation that law firms base their decision to make someone a partner on two fundamental criteria: (1) the candidates’ qualifications and (2) the importance of the potential partner for the strategy and development of the firm. These two criteria often become a source of conflict as every firm ultimately accords greater importance to one of the two criteria.

The basis for assessment of a candidate’s qualifications varies depending on a firm’s criteria, which generally fall into the categories “technical”, “business” and “personal”. Thus the criteria can be attributed to the current model of decision making and responsibility and create a solid basis for the evaluation of employees with respect to human resource development. Professional competence plays a crucial role. To what extent technical expertise compensates for below-average business performance is handled differently by different firms. None of the firms surveyed stated that number of hours or business volume were requirements for acceptance into the partnership. To the extent that business volume does play a role, according to the firms, it serves only as an abstract measure or average value. According to these firms, the evidence of a promising future business volume is more important to partner selection. With regard to a candidate’s personality, firms differ on the question of how to deal with someone who has an excellent business volume, but a difficult personality. Some firms take very clear positions on this subject whereas others allow more leeway. The results of the study also show that the working environment has gained importance in those firms which made clear that they do not want a rainmaker with dubious social skills in their ranks.

In addition to assessing a candidate’s qualifications, the importance of a potential partner for the firm’s strategy and further development must also be considered. When dealing with this second fundamental criterion, a firm first requires a strategy for determining which areas of law they want to further develop in the coming years, with which clients, in which classes of business, with which personnel and what kind of business volume and profits they would like to see. This determination is a primary and essential task of partnership. Only when the firm has a clear strategy in this respect, can it be assessed whether the orientation of the individual fits with the firm’s strategy. This consideration is independent of the individual’s qualifications and the quality.

3) Erpenbeck und Rosenstiel (Hg.): Handbuch Kompetenzmessung, 2003, p. XVI.
4) This refers to the Business Case of the Law Firm, M. Hartung, Kanzleimanagement in der Praxis, p. 129, 60ff.
5) This refers to the Business Case of the Individual, M. Hartung, Kanzleimanagement in der Praxis, p. 130, 65.
of his or her work. Depending on the strategic consequences, an individual who otherwise meets the qualification requirements for partnership may not be made a partner.\(^6\) Talented people may thus not be eligible to become partners because they have no place in a firm’s (current) strategy.

The concrete application of this second fundamental criterion varies significantly between firms. On one end of the spectrum are firms that give clear priority to the strategic and economic importance of a new partner. On the other end of the spectrum are firms that primarily assess an individual’s qualifications and only secondarily assess whether an individual’s orientation fits with the firm’s strategy.

**Basis for evaluation of an individual’s qualifications**

Firms have different ways of assessing whether a lawyer meets the necessary qualification requirements for partnership. The minimum requirement for assessment is written formulation of qualifications. The research revealed that this is the case in most of the law firms. The maximum standard is the development of so-called competency models and regular and immediate feedback, as well as additional evaluation methods based on these models. Competency models consist of the criteria\(^7\) necessary for achieving a career level, divided into multiple stages of competency. The stages of competency are described using behavioral indicators, such that the completion (or failure) of each stage can make concrete (or more concrete) within the resulting feedback. Competency models can also be used to systematically train employees and to identify (alternative) carrier paths, within the firm or elsewhere. Competency models and additional models based on them can only be found in a few larger (in terms of business volume) firms. Smaller (in terms of business volume) firms tend to use descriptions of ideal partners or at best a list of qualification requirements. Whether an individual corresponds with these partner descriptions or not is, however, not measured using competency stages, scales or even grades. These firms have some catching up to do. One way for them to do so is to organize the qualifications necessary for partnership into competency models.

**Transperency of criteria**

In certain firms, qualification requirements are clearly communicated to associates and published on the intranet. In others, they are indirectly accessible. The study also revealed that none of the firms had explicitly incorporated the criterion of strategic compatibility into the list of partnership criteria, let alone discussed the importance of this issue.

**Internal methods for career assessment**

Carrier development prior to nomination as a partner candidate is evaluated differently in different firms. The most common method is annual interviews as a form of feedback from senior employees. Immediate and regular feedback is less common, as is 360-degree feedback (online). In larger firms, partners are encouraged by management to give informal feedback after cases are closed, as well as regular “situational lessons learned”. Only one of the firms surveyed conducts assessment center at this career stage. Structured interviews are seldomly applied. Another means of assessment is an (informal) exchange between the partners.

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\(^6\) Also according to R. Furter, *Management von Anwaltskanzleien*, p. 489f (490).

\(^7\) The criteria could consist of specialized knowledge, abilities, talents and other characteristics that are necessary for a professional carrier or for professional success.
The procedures employed by different firms following the nomination of a partner candidate differ to a greater degree. Only a few firms employ the most comprehensive approaches; these last for one year and consist of several steps, such as assessment centers, online feedback and candidate interviews. The latter methods are not employed in all firms. It is, however, customary to submit written reports about the candidates to be circulated internally. Differences between the cultures of different firms are evident when it comes to dealing with potential competition within a group of partner candidates. Additional contrasts can be found in the number of people who assess candidates (from a single partner to all lawyers who have worked with the person for a given amount of time). It is worth noting that no firm systematically includes feedback from clients in the evaluation of associates.

**Internal methods for career development**

The study also shows that firms support their associates in very different ways in their development towards becoming partners. These range from comprehensive programs with systematic mentoring, early inclusion in the partners’ business planning, assistance in the preparation of their own professional profile, the long-term assignment of clients by partners to associates and internal training programs, as well as less structured training meant to supplement case work (training on the job). Coaching is less common. The methods for development following nomination for partner consist mostly of special offers for partner candidates such as coaching offers and, in some cases, practice interviews (mock interviews). Candidates are also frequently incorporated into projects in which they are able to distinguish themselves. An entanglement of development methods with the evaluation criteria is less common. This applies in particular to the above-mentioned integration, as well as the areas of non-legal training, immediate feedback, coaching offers and long-term assignment of clients by partners.

**Outplacement and counsel function**

As an alternative to partnership, associates may opt to become counsel. If a candidacy for partnership or a counsel position is declined, outplacement is considered.

In response to the changing market, law firms have reacted in different ways with alternative career and development models. As a result, law firms offer the position of counsel – defined as a permanent position for highly qualified lawyers. This position can be reached in most firms within 5 to 6 years. All surveyed law firms, with one exception, generally offer the position of counsel as an optional intermediate step. Only in one case was the position of counsel offered as a final step and as an alternative to becoming a partner, rather than as an intermediate step. With regard to the criteria for becoming a partner, a counsel must be as good as a partner with the exception of corporate requirements. The introduction of the position of counsel (as a “third way” in addition to equity partnership and leaving the firm) is referred to as the sole exception to the “complete” up or out principle.

Some firms provide lawyers who have to leave with active support in the search for a job during outplacement. This occurs out of mutual interest.
Conclusion

It has already been noted that law firms should make significant efforts in the assessment and development of staff. Additional conclusions can be drawn from this.

According to the formula: \( \text{performance} = \text{motivation} + \text{ability} + \text{environment} \), motivation is an important factor in performance. If motivation is lacking, the performance of the individual suffers and with it, that of the company.\(^8\) A law firm thus has a strategic competitive advantage if its lawyers are motivated. It is therefore important that a law firm structures its process of partner selection in order to create a motivating environment and encourage associates.

Every partner selection process runs the risk of rapidly becoming subjective, politically motivated or driven by power or emotion. According to the results of this study, the examined firms have only partially created and implemented a balanced process for partner selection based on skills, and which meet the demands of objectivity; only a few have considered the assessment of qualifications. Only a few have established competency models, systematically integrated different assessors into the process, combined different methods of evaluation and used different assessment criteria. This is consistent with a common accusation made by associates – more frequently by women than by men – that the decision to make someone a partner ultimately rests on “opaque variables such as self-promotion, a ‘me-first’ mentality and firm-internal networking” along with “enormous personal commitment and a profitable business of one’s own”\(^9\). Because law firms do not consistently employ the basis for objective assessment (by determining relevant qualifications), the process continues to lose quality and reliability, either partially or completely.

In order for the process to having a motivating effect on associates, the methods employed must be perceived as transparent, objective and fair:

1. For forward-looking personnel management, firms must seek a solution to the above-described conflict of values between transparency for the individual on the one hand, and the firm’s entrepreneurial freedom on the other. Driven by both economic changes for law firms and societal developments, the process for becoming a partner is no longer a matter of course (not every associate can become a partner), nor is it necessarily the stated goal of every candidate (not every associate wants to become a partner). In order to ensure long-term business success, law firms require a solid strategy aimed at encouraging growth in selected areas of law, class of business, type of case etc., as well as strategic flexibility. At the same time, law firms must provide the coming generation with an attractive and motivating working environment in order to attract and retain the professionals of tomorrow. In order to do this, they must ensure transparency. An honest and structured process for dealing with the above-described points of tension would be a good starting point for firms to attract professionals.

2. The introduction of carrier steps (e.g. principle associate and counsel) as an expression of an individual’s positive development is important.

3. Assessing the suitability of partners
   a. Law firms must develop consistent criteria as the basis for objectively choosing a partner, and communicate these criteria internally.

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\(^9\) N. Parzinger, JÜVE Rechtsmarkt, 06/2012, p. 38f.
b. Law firms must consider the way in which they assess individuals’ qualifications. Competency models or scales are suitable for this task. Subsequently, appropriate methods of assessment (such as annual meetings, evaluation by colleagues, structured interviews, work samples and tests) must be defined and various assessors must be systematically incorporated into the process. Being state of the art requires not only assigning the task of assessment to relevant partners, but also to paint a more detailed picture of the candidate (360° feedback) by including other partners, associates and potentially even clients.

c. As for the second fundamental criterion concerning the suitability of partners (see above), law firms should make clear to candidates how important this criterion is to their particular selection process. Additionally, law firms require a clear strategy in order to align the particular orientation of an individual. Finally, law firms should evaluate the compatibility of candidates with a law firm’s strategy in a way that is consistent to all candidates.

d. Overall, law firms should ensure an objective and consistent application of criteria, a transparent process and detailed communication of the individual steps of the procedure.

4. Law firms should offer diverse development programs as a minimum of support to a lawyer seeking to become a partner: systematic training on the job, regular feedback, long-term assignment to clients by partners, and close mentoring by a (additional) partner. In addition structured training in technical and legal matters, managerial, economic and business knowledge and professional skills such as negotiation, presentation, communication with clients, network and acquisition expertise is necessary.

5. Only a marginal number of the surveyed law firms explicitly addresses the question of how partner candidates’ potential can be determined in a structured way. Coordinated interviews and personality and motivation tests are available methods for determining potential. Such interviews and tests are obviously not recognized in law firms. This can likely be attributed to skepticism on the part of lawyers with regard to methods that appear to be psychological in nature. A systematic analysis of a candidate’s potential would provide valuable insight into a prospective partner’s contribution to a firm’s future viability. Our recommendation is that law firms place far more emphasis on the systematic analysis of potential and make it into an additional criterion for decision, if not the most important criterion.

In order to respond to market economic dynamics with the constant reorientation that is required, a law firm is best positioned when it ensures that lawyers who bring the strongest potential for development to the table are incorporated into the partner team. Research by Jim Collins10 into the success of law firms (“from good to great”) suggests that firms are successful when they change their order of approach to personnel with “first who, then what”. The first step is, in other words, to place the emphasis on the person and his or her development potential, and then to decide where he or she will best fit.

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