

# PROM TRACKS



**"Make me partner or I'm out of here."** Never want to hear another associate say those words? Create a promotion track that ensures every lawyer in your firm has an important and rewarding role to play. And don't keep your policy a secret.

# PROMOTION

## Best Practices in \_\_\_\_\_ Promotion Policies

“Up or out” policies no longer make sense for most firms.

### What are the alternatives?

The reliable, experienced—and profitable—senior-level associates. They produce collectible revenues that far exceed their compensation and overhead and contribute favorably to the “leverage” ratio. They often play key roles in managing work, meeting deadlines and interfacing with in-house lawyers or other managers of the client’s business. Market driven, they are developing specialized skill sets. Meanwhile, they may be supervising and training younger lawyers, ensuring timely, sound work product.

Despite the value they bring, not all associates can or will become partners. Even “superstars” may have to wait. Many law firms have either elongated the path to partnership or created interim or alternative categories. Why?

- Firms needed to decelerate the rate at which they promoted partners in the 1980s to avoid diluting partnership votes or profit sharing.
- The qualities and standards of merit for partnership have become more stringent. It takes more time to

develop and evaluate skills in practice management, profitability, supervision and business origination.

- Many firms have hired or developed lawyer specialists who provide critical technical expertise but who may not have the ability or interest to fulfill other key partnership roles or standards.
- In the case of senior laterals—including those who were partners at previous firms—waiting allows firms to evaluate the successful transfer of skills and/or portable business. It also averts resentment among homegrown associates and avoids the partnership/management politics associated with making full/capital partner decisions. This means large, multi-office firms can recruit aggressively and bring laterals in quickly.

For most associates, becoming a partner in a good law firm is still the ultimate goal. But they recognize that firms are employing interim categories or alternatives to partnership.

How can you ensure that these valuable assets stay around until you agree it is no longer mutually beneficial?

You must approach the process of developing and administering partner promotion practices thoughtfully and carefully. Too often, partners mistakenly consider associates to be fungible. Also too often, partners still shroud the process of partner promotion in a veil of mystery. While this may protect partners from having to clarify and articulate their standards and practices, it puts the firm at great risk of losing many people who provide significant value. These associates leave their firms because:

- Tired of waiting, they are lured by a competitor willing to take some risk and invest in them;
- They seek safety in a more “secure” environment;
- They decide as long as they are going to work long, stressful hours without being promoted to partnership, they will seek the highest compensation.

At this important juncture, firms carefully must consider and imple-



ment programs and policies that jointly satisfy the needs of the firm and associates.

**Prepartner or Alternative Partner Positions**

Traditionally, lawyers were either associates or partners (except retiring partners, who were senior counsel or of counsel). Today, firms have created numerous titles and positions within their lawyer ranks: senior associate, permanent associate, participating associate, counsel, of counsel, participating of counsel, prepartner, non-equity partner, partner, principal. Senior associates, for example, may be those with anywhere from 5 to 12 years of experience.

Among these categories, the prepartner or of counsel category is most common. It often is shared by three types of lawyers:

1. Associates who may be on track to partnership;
2. Associates who are valued for technical or service skills but cannot or will not contribute significantly to other key functions and may remain in this category permanently;
3. Senior laterals who are too experienced to come in as associates but must put in their time before becoming partners.

Homegrown and lateral associates now may follow one of several promotion paths, depending on the program their firm has adopted. Some of the models currently used by firms are summarized in the accompanying table.



### Disadvantages of Prepartner Categories

While acknowledging they may be necessary, associates are wary of alternative categories. Many who are promoted into prepartnership, intermediate categories are never promoted out of them. They remain unclear on the criteria used to determine partnership eligibility. For associates who strive to become partners, an interim category such as of counsel or counsel will be disadvantageous if it:

- is used as a way to avoid making partners;
- becomes a pool of permanent, stagnating people;
- provides a title but diminishes opportunities for raises/bonuses;
- is the first place a firm cuts in a downturn, so there is less job security;
- is not well designed and administered;
- is regarded by the outside world as a “passed-over” category;

- causes partners to avoid giving them work, preferring either to do it themselves or to delegate only to associates.

### Benefits of Prepartner Categories

Associates are more open to prepartner categories if the program does not become a substitute for promotion to partnership. Associates measure their own self-worth and accomplishments in part by the degree to which partners value their work and long-term association with the firm. As long as individuals are being promoted to partnership from an interim category, the of counsel designation can symbolize a partnership “vote of confidence.” It can serve as a signal that the partners do not view the individual as dispensable. And it can provide an added level of job security.

There can be other potentially positive aspects of an of counsel designation. It can serve as:

- A reward for loyalty that indirectly preserves institutional continuity;
- A signal you’re on track, you’re being groomed toward partnership;

- Recognition for work very well done;
- An opportunity for those who contribute significantly but are not willing or able to contribute to the firm’s management/marketing at a partnership level;
- A boost in status that can reinforce existing client relations and further business development.

### How to Do It Right: 16 Best Practices

Good clients and credentialed partners alone can’t ensure that your firm develops its most valuable asset. You must identify and articulate goals and desired outcomes. You carefully must develop, measure and administer performance criteria, partner standards and promotion practices. Associates will need effective mentoring, supervision and training.

To ensure that your greatest assets stay with your firm, serving your clients and preparing to become future leaders and client managers, consider these ideas:

**1. Clarify your goals and be sure they are good ones.** Are you instituting a prepartner category to elevate associates as a reward or symbol of stardom, and as a retention tool? Are you creating a category to delay making associates partners until they have proven they can develop business? Are you elongating the partner track to avoid watered-down profit splitting? Are you creating this category to retain good associates who likely will not make partner but who will leave if you tell them that?

**2. With input from existing associates, determine and articulate the titles and parameters.** What are your associates most interested in—security, status/title, the financial package, an indication of mutual respect and commitment, full

partner participation (voting/management, stake/risk, profits)? What will this position be called? What year will associates be eligible for promotion to of counsel? On what criteria will that decision be based? On what criteria will of counsel be considered for partnership? Will all associates have to pass through the of counsel position before becoming partners? Will associates who are not promoted to of counsel be asked to leave? Can they ever make partner? How and when will the review process be administered and decisions made? Will some of counsel remain in that position permanently?

**3. In addition to the title, determine what other perks come with the position.** For example, will of counsel receive new business cards with the new title, an expense account for client or marketing entertainment, club or association memberships?

**4. Evaluate and define existing partnership standards and success criteria.** Does your performance appraisal form and process adequately measure the skills and attributes you value and require? What skills, characteristics and values does a successful partner at your firm embody?

**5. Review existing partners in the context of new or revised standards.** Ensure that associates are not being held to an unrealistically higher standard than recently promoted partners. It is not uncommon to see firms applying partnership standards that are higher than those used in the past (particularly in firms where standards were more lax during the 1980s boom). Consequently, many *current* partners may not meet the firm's new standards. This is perceived as an unfair practice or double standard.

**6. Develop and articulate a set of skill standards.** Ideally, associates should

develop specific legal, personal and management skills at different stages in their careers. Determine the skills necessary for election to the prepartner category and to partnership.

**7. Develop an effective, formal performance review process.** Evaluate required skills and counsel associates on how to improve or acquire them. Make sure your written appraisal form seeks input on skills and values you have deemed essential. Establish goals for each person, along with specific areas of improvement and strategies for improving. Monitor and discuss this progress throughout the year.

**8. Provide adequate in-house mentoring, supervision and training.** Supplement internal training and supervision with outside CLE on legal/technical, management, supervisory, leadership and marketing skills. Provide resources to associates at every level. Delegate appropriate cases to associates to help them develop their skills.

**9. Make careful, honest decisions at critical points on the partnership path.** At fifth-through seventh-year performance reviews, make decisions about associates who a) will not make partner, b) may make partner if a few remaining skills can be acquired and c) are likely to make partner.

**10. Provide options for associates who don't warrant prepartner or partner status.** You may offer to let them stay indefinitely, with no hope of promotion and very clear limits in compensation. Otherwise, actively assist them in their search for another position. Present both the interim and permanent alternatives as positive options that are more attractive than leaving the firm immediately.

**11. Groom potential partners and help them move from the of counsel position to partnership.** Give them specific input on which skills they need to develop,

how they can get help or training to improve and how they will be measured in order to be electable.

**12. Involve of counsel and senior associates in key areas of firm management.** These might include recruiting and retention, professional development, marketing, *pro bono* work, technology, personnel, etc. Even if a firm does not have formal committees for each of these areas, involving associates in them benefits firms in several ways. Associates bring important perspectives and insights that can make policy design and administration more effective. Placing them on a committee or task force can be a reward or symbol of recognition. Early involvement helps train associates for partnership and leadership roles, improves communication and boosts their morale.

**13. Identify disparity among practice areas and partners.** In any firm, there are differences among partner work styles, delegation and mentoring practices—to say nothing of personalities. This becomes problematic when associates have significantly different experiences which often result in different career options and opportunities. Expose associates to a broad variety of partners, particularly those who are effective mentors.

**14. Do not consistently give preference to laterals.** Associates often infer, perhaps correctly, that laterals are of greater value to a firm than long-term, homegrown associates. You need associates who are loyal to your institution and bring stability to the servicing of clients. Remember that laterals may or may not deliver the portfolio of business the firm anticipates.

**15. Don't let internal politics dictate partner promotion.** A partner who has portable or sizable billings, or who yells loudest or threatens most, may

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tend to promote his/her associates over other senior associates who are equally or more qualified. This will erode morale and may cause unwanted defections.

**16. Demystify the process and communicate!** Law firms are notorious for poor internal communications. Partners seem to enjoy the secrecy and privilege surrounding the promotion process. Evaluation and promotion always will be partly subjective and should be fluid enough to respond to economic trends, but the process must have integrity. List and articulate your criteria. Define your procedure clearly and administer it properly. Be able to fairly justify each partner promotion outcome.

### Act Quickly and Carefully

Most associates are not profitable to their firms until their third year. They can become most profitable in the fifth through tenth years, when their skills are honed and they are supervising others but are not yet taking partner draws. It once was difficult for associates to move from firm to firm after the fifth or sixth year. However, many associates at that stage now—particularly those in busy practice areas—often receive four to five calls a week from headhunters.

This is not the point at which you want to lose these valuable resources. Act quickly and carefully to institute effective partner and interim partner promotion practices. ■

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### Managing the Cost of Associate Attrition

Law firms of all sizes are struggling to control the cost of associate attrition. Unfortunately, identifying all the economic components of attrition and calculating their value is difficult. As a result, firms often underestimate the cost.

**DIRECT AND INDIRECT COSTS OF ATTRITION.** Law firms face both direct and indirect attrition-related costs. Direct costs involve unanticipated outlays—for example, advertising for a replacement, paying a referral bonus to an existing employee or paying a commission to an external recruiter. The firm will lose revenue because one or more lawyers must write off the time needed to get a replacement up to speed on a particular matter.

Indirect costs, on the other hand, are allocations of existing expenses: the allocated value of time spent in an exit interview, the value of administrative time spent deleting an individual from the firm's personnel systems, the value of time spent processing applications for the vacant position and interviewing applicants, and the replacement's training costs (which may have a direct component). Because they are based on subjective allocations, indirect costs are less quantifiable than direct costs. (Firms often attempt to calculate indirect costs based on an employee's average hourly wages and overhead rates.)

Still, many costs cannot be quantified. Excessive attrition hurts the morale, cohesiveness and motivation of those remaining with the firm. Attrition can also damage client service, productivity and relationships. Placing an economic value on these costs is virtually impossible.

All of this leads to the question: "Is all attrition bad?" Of course not. It depends on who leaves and who stays. Often, attrition successfully replaces poor performers and malcontents. And in a system where not all associates can become partners, some attrition is necessary. Odd as it seems, some firms may actually benefit from attrition. In most instances, however, the costs of attrition outweigh the benefits.

**THE ECONOMICS OF TURNOVER.** Few firms track the economics of turnover. Of those that do, their studies often end with the calculation of direct costs and a stab at the indirect costs. Still, these studies often reveal that each incidence of attrition can cost up to \$200,000 (depending on geographic region, lawyer seniority and other factors). Firms that analyze attrition costs understand the potential positive effects of controlling turnover.

Smart firms are trying to lower attrition by honoring different routines (e.g., part-time arrangements, flexible work schedules, casual dress), providing enhanced training and education, encouraging individuals to work in "teams," doling out cash and noncash incentives and providing access to the firm's strategic plans. Many of these firms have realized that in these ways they can reduce turnover, improve morale and enhance profitability.

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