

NALP 2009 Annual Education Conference
April 1-4, 2009, Washington, DC

**PARTNER RECRUITING and
 FINANCIAL CONSIDERATIONS**

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**Partner Recruiting and
 Financial Considerations**

- When do you look for new partners?
- How do you go about it?
- Understanding the issues that matter to the partner candidates
- How do you compare apples and oranges
- Search firms
- First contacts
- Recruiting Department's roles

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**Threshold Partner Search
 Questions**

- Acquisition Drivers – why is the firm looking?
 - Expand firm's expertise
 - Extend geographic reach and presence
 - Diversify client roster
 - Deepen firm's bench in core areas

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Threshold Partner Search Questions

- Strategic Growth Plan
 - Proposed acquisition consistent with stated goals?
 - Is the partner the “best” partner or the partner that’s “available”?
 - Does the acquisition maintain and/or advance the level of work sophistication

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De-Mystifying Partner Recruiting

- How many partnership tiers
 - One tier
 - Equity partners
 - Two tiers
 - Income partners
 - Equity partners

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De-Mystifying Partner Recruiting

- Income partner
 - Entry level partners
 - Typical requirements
 - Minimum number of years of practice
 - Minimum level of portable business
 - Service partner – book of business requirement may be modified or waived

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De-Mystifying Partner Recruiting

- Equity partner (*a.k.a.* Capital Partner)
 - More experienced
 - Minimum level of annual business generation
 - \$1M - \$5M
 - Annually
 - 3-5 Year average
 - Some firms restrict Equity status to “generators”
 - Minimum number of years with firm
 - No requirement – 3 years
 - Used to set initial Equity compensation/points

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De-Mystifying Partner Recruiting

- Capital Contributions
 - Dollars paid into a firm's Capital Account
 - Amount of cash each partner has invested in their firm
 - Almost exclusively paid by Equity Partners
 - Recent reports of some firm(s) requiring capital contributions from Income Partners – artifact of current economic conditions

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De-Mystifying Partner Recruiting

- Capital Contributions
 - Fixed amount
 - \$50K - \$500K
 - Paid in as lump sum
 - Cash
 - Loan from firm w/ repayment schedule
 - Partner's personal line of credit w/ financial institution
 - Paid in over time
 - Payroll deductions
 - End of year “retention” from annual “hold-back”

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De-Mystifying Partner Recruiting

- Capital Contributions

- Variable amount

- \$50K - \$500K (tied to tenure with firm)
 - Paid in as lump sum
 - Cash
 - Loan from firm w/ repayment schedule
 - Partner's personal line of credit w/ financial institution
 - Paid in over time
 - Payroll deductions
 - End of year "retention" from annual "hold-back"

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De-Mystifying Partner Recruiting

- Capital Contributions

- Typical purposes

- May be specified in firm partnership agreement or by-laws
 - Additional acquisition or upgrading of office space
 - Purchase of capital assets
 - Funding the acquisition of additional partners
 - Firm agreements likely specify "how" the firm must pay back expenditures from its capital account

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De-Mystifying Partner Recruiting

- Capital Contributions

- Payouts

- Variable – voluntary/involuntary separation
 - Leave for other firm
 - Retirement
 - Fixed over time
 - Quarterly over period of years
 - ½ within 90-days, balance at future fixed date
 - Lump sum at
 - » 90-days
 - » 1-year

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De-Mystifying Partner Recruiting

- Partner or Shareholder?
 - Partnership has partners
 - Corporation has shareholders

WHY DOES THIS MATTER?

TAXES
EXPENSES

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Partner Compensation

- Draw
 - \$500K (*example*)
 - \$33,333/month gross = \$400K draw
 - End of year (calendar or fiscal) additional \$100 distribution...based on firm performance
 - No distribution in a month that firm doesn't perform
 - Draw may be guaranteed – no "claw-back"

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Partner Compensation

- "Points"
 - The percentage (of 100%) in which the partner may share in the profits of the firm
 - *e.g.*, 1 point of \$1M = \$10,000
 - Point setting mechanisms
 - Set at beginning of year based on previous year(s) performance – *e.g.*, 1-year avg - 3-year rolling avg
 - Set at end of year to "true-up" annual performance
 - Additional points for tenure with firm
 - Points may be available to Equities only

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Partner Compensation

- Distribution...or Salary less Hold-Back

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Partner Compensation

- Distribution...or Salary less Hold-Back
 - \$500K less 40% (Equity) or 20% (Income)
 - \$25,000/month gross = \$300K draw (Equity)
 - \$33,333/month gross = \$400K draw (Income)

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Partner Compensation

- Distribution...or Salary less Hold-Back
 - \$500K less 40% (Equity) or 20% (Income)
 - \$25,000/month gross = \$300K draw (Equity)
 - \$33,333/month gross = \$400K draw (Income)
 - Rationale:
 - Equity partner has a higher “points” distribution possibility when firm makes / exceeds budget
 - As an Equity owner of the firm
 - “The greater the risk, the greater the reward.”

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Converting Distribution to Salary

How do you value a Partnership
"Distribution" amount as compared to a
corporate Shareholder (Partner) Salary?

Apples or Oranges?

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Converting Distribution to Salary

Partnership Distribution	\$500,000
Less FICA – Employer	(6,572)
Plus Tax Benefit – FICA	2,196
Less Medicare – Employer	(7,250)
Plus Tax Benefit – Medicare	2,393
Less Medical Insurance	(18,600)
Plus Tax Benefit – Medical	6,138
Less Disability Ins. – Short Term	(950)

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Converting Distribution to Salary

Partnership Distribution	\$500,000
****	****
Less Disability Ins. – Long Term	(1,184)
Less Life Insurance	(162)
Less Meals & Entertainment	(5,000)
Less Incidentals (BBerry, parking)	(3,500)
Corporation – Equivalent Salary	\$467,481

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Converting Distribution to Salary

Partnership Distribution	\$500,000
****	****
Less Disallowable Expenses (100,000)	
Less Life Insurance Premiums (100,000)	
Less Meals and Entertainment (50,000)	
Less Incidental Expenses (3,000)	
Corporation – Equivalent Salary	\$467,481

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Partner Compensation Analysis

- Other Compensation Components
 - Retirement / Pension (deferred comp)
 - 401(k) contributions
 - Matching up to specified limit
 - Lump sum payment in lieu of 401(k) match (“profit sharing”)

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Partner Recruiting Approaches

- Search Firms / Headhunters
- Firm Targets
- Blended approach
- Over the transom

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Partner Recruiting Approaches

- Search Firms / Headhunters

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Partner Recruiting Approaches

- Search Firms / Headhunters
 - Most common approach

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Partner Recruiting Approaches

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 - Most common approach
 - Negotiated percentage paid by firm

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Partner Recruiting Approaches

- Search Firms / Headhunters
 - Most common approach
 - Negotiated percentage paid by firm
 - Preliminary due diligence
 - search firm
 - law firm

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 - Guarantee

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Partner Recruiting Approaches

- Search Firms / Headhunters
 - Most common approach
 - Negotiated percentage paid by firm
 - Preliminary due diligence
 - search firm
 - law firm
 - Guarantee
 - Future prohibitions

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Partner Recruiting Approaches

- Firm Targets

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Partner Recruiting Approaches

- Firm Targets
 - Internally identified

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Partner Recruiting Approaches

- Firm Targets
 - Internally identified
 - Determine who makes contact

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Partner Recruiting Approaches

- Firm Targets
 - Internally identified
 - Determine who makes contact
 - Determine how contact made

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Partner Recruiting Approaches

- Blended approach

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Partner Recruiting Approaches

- Blended approach
 - Introduction intermediary (*i.e.*, neutral third party)

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Partner Recruiting Approaches

- Blended approach
 - Introduction intermediary (*i.e.*, neutral third party)
 - Hourly rate to facilitate initial introduction and meeting(s)

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Partner Recruiting Approaches

- Blended approach
 - Introduction intermediary (*i.e.*, neutral third party)
 - Hourly rate to facilitate initial introduction and meeting(s)
 - Negotiated success fee
 - One partner
 - 5 partner practice group
 - “Merger” of small firm

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Timing Of Offers

- Negotiation phase

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Timing Of Offers

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 - Generally, candidate does not have a fiduciary obligation to disclose “negotiations” to current partners

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 - Generally, candidate does not have a fiduciary obligation to disclose “negotiations” to current partners
 - Discuss potential offer terms and conditions

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Timing Of Offers

- Negotiation phase
 - Generally, candidate does not have a fiduciary obligation to disclose “negotiations” to current partners
 - Discuss potential offer terms and conditions
 - Salary, points allocation, marketing support, any guaranteed bonuses, moving expenses, bar exam or bar association payments or reimbursements

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Timing Of Offers

- Offer
 - Generally, receipt of your offer letter by the candidate will trigger a fiduciary obligation on the candidate's part to disclose "intent" to current partners

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- Offer
 - Generally, receipt of your offer letter by the candidate will trigger a fiduciary obligation on the candidate's part to disclose "intent" to current partners
 - Confirm that the candidate is "ready" to receive/accept your firm's offer

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Timing Of Offers

- Offer
 - Generally, receipt of your offer letter by the candidate will trigger a fiduciary obligation on the candidate's part to disclose "intent" to current partners
 - Confirm that the candidate is "ready" to receive/accept your firm's offer
 - Partner's obligation is to act in the best interests of the partnership (or the corporation)

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Timing Of Offers

- Offer
 - Result of Partner's "Notice" to current firm

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Timing Of Offers

- Offer
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 - Partner may have obligation to give 30-60-90 day notice

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 - Stay for a period of time to wrap up on-going, short-term matters / transition "remaining" files to current firm partners

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Timing Of Offers

- Offer
 - Result of Partner's "Notice" to current firm
 - Partner may have obligation to give 30-60-90 day notice
 - Stay for a period of time to wrap up on-going, short-term matters / transition "remaining" files to current firm partners
 - Walk to the door

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Recruiting Department Roles

BE PROACTIVE

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Recruiting Department Roles

- Engage Practice Group leaders and members in discussions:

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Recruiting Department Roles

- Engage Practice Group leaders and members in discussions:
 - Current needs

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Recruiting Department Roles

- Engage Practice Group leaders and members in discussions:
 - Current needs
 - Where are there gaps in expertise

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Recruiting Department Roles

- Engage Practice Group leaders and members in discussions:
 - Current needs
 - Where are there gaps in expertise
 - Future needs
 - What are their thoughts regarding trends that may drive hiring needs/criteria in both the near and long term

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Recruiting Department Roles

- Firm Targets

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Recruiting Department Roles

- Firm Targets
 - Develop list of names of who your current partners would like to practice with

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Recruiting Department Roles

- Firm Targets
 - Develop list of names of who your current partners would like to practice with
 - Who would fit with your firm's culture and core values

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Recruiting Department Roles

- Firm Targets
 - Develop list of names of who your current partners would like to practice with
 - Who would fit with your firm's culture and core values
 - Who was a talented adversary in recent litigation or exceptional attorney in latest transaction

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Recruiting Department Roles

- Firm Targets
 - No one is "off the table"

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Recruiting Department Roles

- Firm Targets
 - No one is "off the table"
 - Your firm may be a very attractive option

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Recruiting Department Roles

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 - No one is “off the table”
 - Your firm may be a very attractive option
 - May be looking to down-size/up-size

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Recruiting Department Roles

- Firm Targets
 - No one is “off the table”
 - Your firm may be a very attractive option
 - May be looking to down-size/up-size
 - Current firm’s client list may pose conflicts that limit partner’s ability to bring in new client(s)

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Recruiting Department Roles

- Firm Targets
 - No one is “off the table”
 - Your firm may be a very attractive option
 - May be looking to down-size/up-size
 - Current firm’s client list may pose conflicts that limit partner’s ability to bring in new client(s)
 - Partner may have just had a “last straw” moment at current firm

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Recruiting Department Roles

- Additional role as new partner's liaison
 - Any associates (staff) likely following the partner?

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Recruiting Department Roles

- Additional role as new partner's liaison
 - Any associates (staff) likely following the partner?
 - Help the incoming partner prepare in the event of an immediate "walk to the door"
 - Files to be requested
 - Former firm clients to be contacted
 - Input Partner's files into your system

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Revenue Analysis

- Salaries and Benefits
 - Legal staff/support (amount per FTE)
 - Retirement Plan Participation (contribution to Partner retirement / pension)

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Revenue Analysis

- Annual Variable Costs per Attorney
 - Administrative comp and benefits
 - Administrative Expenses
 - Communications costs
 - Professional activities
 - Marketing

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Revenue Analysis

- Annual Semi-Variable & Fixed Costs per Attorney
 - Space costs
 - Fixed Assets
 - Other (excluding Income Tax)

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Revenue Analysis

2009 (Remainder)				
	Total	Equity	Assoc	Paralegal
Revenues				
Salaries/Benefits				
Gross Margin				
Variable Overhead				
Net Income				
Fixed Overhead				
Net Income (or Loss)				

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Revenue Analysis

2009 (Remainder)				
	Total	Equity	Assoc	Paralegal
Revenues	768,520	402,653	258,493	103,374
(LESS) Salaries/Benefits	665,040	444,583	165,131	55,326
(EQUALS) Gross Margin	103,480	(41,930)	93,362	52,048
(LESS) Variable Overhead	158,636	84,938	73,699	----
(EQUALS) Net Income	(55,156)	(126,868)	19,664	52,048
(LESS) Fixed Overhead	89,373	53,625	35,750	52,048
Net Income (or Loss)	(144,531)	(180,493)	(16,086)	52,048

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Revenue Analysis

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Revenue Analysis

2010 (Full Year)				
	Total	Equity	Assoc	Paralegal
Revenues				
(LESS) Salaries/Benefits				
(EQUALS) Gross Margin				
(LESS) Variable Overhead				
(EQUALS) Net Income				
(LESS) Fixed Overhead				
Net Income (or Loss)				

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Revenue Analysis

2010 (Full Year)				
	Total	Equity	Assoc	Paralegal
Revenues	1,483,650	765,450	491,400	226,800
(LESS) Salaries/Benefits	916,114	596,208	232,767	87,138
(EQUALS) Gross Margin	567,536	169,242	258,633	139,662
(LESS) Variable Overhead	216,803	116,081	100,722	---
(EQUALS) Net Income	350,733	53,161	157,911	139,662
(LESS) Fixed Overhead	146,575	73,288	73,288	---
Net Income (or Loss)	204,158	(20,127)	84,624	139,662

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Conflicts

- Need to confirm no existing conflicts

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Conflicts

- Need to confirm no existing conflicts
 - Waivers

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Conflicts

- Need to confirm no existing conflicts
 - Waivers
 - Chinese walls
 - Not all jurisdictions recognize
 - Matter of state law or state bar rule
 - May vary for private attorneys and governmental attorneys

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Conflicts

- Need to confirm no existing conflicts
 - Waivers
 - Chinese walls
 - Not all jurisdictions recognize
 - Matter of state law or state bar rule
 - May vary for private attorneys and governmental attorneys
 - Leave client behind / your firm fire client
 - Business conflicts

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Due Diligence

- Employment verification
- Educational verification
- References
 - Candidate provided
 - Reputation in the legal community
 - Public sources incl. Google, facebook, etc.

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Due Diligence

- Financial due diligence
 - 3 year look-back (4-year w/ current economy)
 - Originations
 - Working Attorney
 - Billing Attorney
 - Discuss
 - Hours
 - Utilization
 - realization

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Due Diligence

- Financial due diligence
 - Most recent year end K-1 or W-2
 - Current distribution/salary stub
 - Credit report?

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Due Diligence

- Financial due diligence
 - Most recent year end K-1 or W-2
 - Current distribution/salary stub
 - Credit report?
- Malpractice claims / judgments / settlements

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On-Boarding

- Goal
 - PART OF THE FIRM FROM DAY ONE

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On-Boarding

- Goal
 - PART OF THE FIRM FROM DAY ONE
- Firm Orientation
- Scheduled lunches with own and other Practice Groups
- Meetings (internal)
- Social events

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On-Boarding

- Present written “New Partner Plan” – a.k.a. “What should you expect during your”
 - First Week
 - First Month
 - First Quarter
 - First Year

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On-Boarding

- Resources
 - Loyalty by Design: A Practical Guide for Developing an Effective Associate Integration Program
Caren Ulrich Stacy, Dusti Plunkett, 2005
 - Partner & Practice Group Acquisition: A Primer on Management & Administrative Practices
Susan Manch, 2004.

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On-Boarding

- Resources

- Anatomy of a Law Firm Merger, Third Edition: How to Make--or Break--the Deal, Hildebrandt International (ABA Law Practice Management Section).

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