

NALP 2009: Stronger Links in the Chain: Lawyer Evaluation to Professional Development to Career Planning

Do Your Associate Evaluations Exceed Expectations? by David Cruickshank and Diane Costigan

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INTRODUCTION

An associate evaluation process can serve many purposes ranging from state of the art talent management to “check the box” compliance. Your process could be closely aligned with your firm’s strategic plan or it could be there simply for the sake of having one--because every other large firm has one, and your employment lawyer tells you so. In this review of reviews, we ask you to turn the mirror on your evaluation process. Do you measure the effectiveness of your process? And when measured, is your evaluation process first-rate? Our views are based on Kerma Partners’ discussions with law firms and on a talent strategy survey with other professional services firms. As always, we welcome responses, contrary views and best practices.

THE PURPOSES OF EVALUATION

There are three key reasons to have a first-rate evaluation process. Beyond those reasons, this article will focus on measuring how well a firm should execute on evaluations (see Report Card insert). The key purposes of evaluation are:

- To align talent management with the firm’s strategies
- To make merit-based bonus decisions
- To create an internal talent knowledge base for the benefit of the associate and for the firm’s assessment of associate development.

1. Alignment with the firm’s mission and goals:

Top firms understand the importance of having talent management and development as key components of their mission and goals. They follow through on this by incorporating talent management and development in their annual strategic plans. They understand that it is impossible to manage or develop talent in the absence of information and they rely on their evaluations process to fulfill this critical need. Whether your firm's goal is rapid expansion, globalization, increased profitability or downsizing—you need to know who you have, what they are contributing and how they are contributing it. Does your firm have enough meaningful information on the current landscape of talent? Who stays? Who goes? Who needs to be deployed in more strategic directions (e.g., getting one associate more engaged in business development while involving another more in leading effective teams.) Who makes partner? What is being done with that information? How is progress being tracked?

2. A basis for merit-based bonus decisions:

Calendar year 2007 saw some of the legal industry's highest associate bonuses to date. While the current market may course-correct for that in 2008 by paying lower bonuses, 2007 shows that bonuses can be a surprise revenue drain for firms. Firms in New York, for example, may have had a lockstep bonus program, and they suddenly had to pay a "special" bonus to match the 2007 market. Tying bonus decisions to performance is one way firms can prudently manage this budget buster. If done effectively, an evaluations process should allow firms to weed out underperformers and give above market bonuses to the star performers. Applying the bonus budget in a new way could be neutral in total cost.

Merit-based bonus decisions that are tied to evaluation systems are not without their challenges. Clear guidelines and baseline hours need to be set in order to determine who does not qualify for merit-based bonuses. Each level of a bonus awarded has to demonstrate justification at every stage of the process – data gathering, quality and range of comments and "scores", verbal review and message. By contrast, some firms give vague messages, like "not in good-standing", to which the proverbial associate response is, "What does that mean?" Where a bonus might be lower or withheld, early timing is a key element. From a fairness and morale perspective, firms need to give advance warning that a bonus may be withheld for performance issues so that the associate has a chance to improve.

There are many ways for firms to get it wrong, and when they do, associates talk to each other, go to the blogs and become skeptical of the process for the rest of their years at the firm. In fact, we suggest that many firms should use entirely objective means to decide on bonus (e.g. attorney hours) until they can execute well on evaluations. Our work on compensation strategies offers many illustrations of the principle that performance must be fairly measured before pay and performance are strongly linked

3. Internal Talent Knowledge Base

Having put great efforts into gathering evaluation data, how effectively is the data used internally? Participants at all levels do not always see and appreciate what happens to the information

after the fact. One fundamental internal use of data is for the partner selection process. Yet, we observe that some firms “start afresh” in year 5 or 6 and do not look in detail at past evaluation data.

If the use of data is well planned, we would expect these people or groups to see summarized evaluation information:

- Partners and senior associates with significant working relationships with the associate
- Practice Group leaders
- Practice Groups for overall strategic talent purposes (e.g. Do we need lateral recruits to fill areas of weakness? Are we mentoring adequately?)
- Professional Development Committees and Directors
- Recruiting Committees and Directors (Are our hiring preferences proving successful?)
- Business Development leaders (Where is the promising new talent in business)
- Partner nomination or selection Committees
- Mentors responsible for providing support to associates in their career development
- Training Partners responsible for the Firm’s curriculum
- Assigning Partners

We hasten to say that keeping and sharing information still has to follow confidentiality procedures and safe-keeping of files and electronic documents. We have no widespread information (nor a legal opinion) on the retention of evaluation documents, but we know that the range is from destruction within a month up to retention for five years.

YOUR REPORT CARD: MEASURING THE EVALUATION PROCESS

The American Lawyer Midlevel survey asks just one question about evaluations – whether associates think the process is fair. In 2007, any score above 4.0 on this question would put you in the top 9 for that question. And there is a strong correlation between a top 10 score and an overall Midlevel satisfaction ranking in the top 50 law firms. How would a firm set out to attain a top 10 score? We propose more detailed measurements – not of perceptions, but of measurable practices that firms can adopt. A high score on these ten measures, we suggest, will produce a high perception of fairness and overall effectiveness of evaluations.

1. Partner Contributions

Partners always mean well when it comes to associate evaluation. Many perform beyond expectations as well; we have seen partners who complete 25 or more written evaluations and other partners, in leadership positions, who log 100-125 hours in evaluation “season”. But when partners miss deadlines, do not complete evaluations for key associate working relationships, and do not deliver verbal reviews, the whole firm’s reputation suffers.

Partner contributions can be measured and shown to them for each evaluation cycle. With online tools such as Vi Desktop, administrators know who completes reviews on time, what verbal reviews are

complete and what quality of commentary goes into the reviews. Just measuring and reporting these statistics to senior firm management will be an accomplishment.

We recommend that firms adopt a minimum standard of on time completion of written reviews by 90% of partners and on time delivery of verbal reviews to 90% of associates. This 90-90 standard should be accomplished without false deadlines and extensions. Furthermore, for delivery of verbal reviews, the lagging 10% should be delivered within two weeks of the missed deadline.

2. Transparency: Communications, Self-Evaluation, Written Record

Transparency has a number of elements; all of them will reduce paranoia and increase perceptions of fairness.

(a) Communications

Associates should receive communications which outline all the steps of the evaluation process. They should know or suggest the senior lawyers who will evaluate them. They should know what they can expect of the whole process, including the timing of bonus decisions and verbal reviews. Best practices include sending a management memo describing the criteria that go into bonus calculations. Some firms have “open house” meetings to discuss evaluation procedures each year.

(b) Self Evaluation and Career Plans

We believe that self evaluation is a best practice. Ideally, the self evaluation will be converted into the associate’s ongoing career plan after a verbal review. As with evaluations themselves, the key to self-evaluations is to make sure those involved have a clear understanding of what is going to be done with the information. How will it be used? Who will have access to it? Why is it being solicited? What results is it likely to yield for individual associates? Self-evaluations can be a powerful tool but their purpose has to be made very transparent at the outset.

Self evaluation will be trusted if the associate and the partner involved participate in a discussion in the verbal review that refers back to the self evaluation and forward to a career plan.

c) Written record

It is apparent to associates that a significant written “file” on them exists. Some firms do not give associates information in writing, and will read verbatim from the file in the verbal review, but not share the record. This contributes to a belief that there is a “real review” being held back. This perception leads to paranoia among associates, even when there is little factual basis to support their fears. Again, the firm’s reputation for fairness can suffer.

We suggest that best practice requires giving the associate a copy of any summary written review. The individual partner reviews may later be deleted, and the summary remains on file. One leading firm permits associates to see any written comment or summary that is kept on file. This level of transparency may well inhibit frank commentary and judgment, but it builds trust in your system of evaluation.

If your firm is transparent on all three of the above criteria, give yourself an “A”.

3. Manage the Quantity and Timing

Firms that succeed at keeping partner burdens reasonable and getting on-time delivery have great management of the evaluation function, and staff to support it. This is hard to measure without having an outside review. But when partners in administrative positions can't meet deadlines, when partners consistently feel overworked and behind on evaluations, and when the 90-90 rule is always broken, we have the symptoms of poorly managed evaluations.

One obvious requirement is senior management leadership. If, for just one month, senior management made evaluations as important as billing and business development, partners may give greater priority to the evaluation process. It has the same degree of self-interest for partners; the reward of a loyal, excellent associate and potential partner just seems farther away.

Adequate professional staffing is another measure to apply. Since some firms evaluate their attorneys twice a year or split their process, to say nothing of laterals and first years that may be reviewed off-cycle, an evaluations process can be in progress all year long. Following up with attorneys on their evaluation duties often requires that firm leaders and staff get involved. With partners investing a significant amount of non-billable time in the evaluations process, whatever can be done to lessen their load and focus their efforts is money well spent. Professional staff can be instrumental in helping to:

- draft communications
- go to partner offices to help with technology or deadline challenges
- summarize data for evaluation meetings
- follow up on outlying comments
- prepare career plans
- suggest interventions based on the information yielded in the evaluation
- track the need for partner follow up with underperformers.

Several firms have added year-round career counselors and are direct contributors to the process.

4. Quality Delivery of Verbal Reviews

The nation's best evaluation data collection system will be of little use if verbal reviews are mishandled. It is an anxiety-laden moment for both associates and partners.

Four best practices in the delivery of verbal reviews are standards to consider. First, are all partner reviewers trained in the delivery of feedback and evaluation delivery? Many firms expect partners to take "just-in-time" training in evaluation skills. Second, while it is common to deliver verbal reviews in pairs, a review may be better received if one reviewing partner works regularly with the associate. Third, the partners who are delivering feedback must have very specific performance evidence from the summary record. Ideally, the feedback on past performance will be no surprise. Finally, the reviewing partners should always refer back to the self evaluation and forward to the associate's goals and career plans.

5. Specific on Performance: Captures Specific Feedback Evidence of Performance

Vague comments can be easily dismissed or equally obsessed over by associates—neither of which helps productivity. Often an associate hears a general comment (particularly one they do not agree with and had not heard prior to the review), but they cannot put it in context. The associate will miss hearing the real message because they are busy trying to figure out who said it and about what. If they cannot figure it out, they may dismiss it as not being true and infer that the evaluation process lacks legitimacy. Or, the associate will spend the entire review meeting obsessed with this one comment and will miss the rest of what's conveyed. In short, little action is taken so the comment was likely made in vain.

Whether talking about an associate's strengths or improvement areas, specifics are essential. What was the exact behavior the associate exhibited? How did it come up? What was the impact? What was the result? Keeping in mind that feedback delivered in a review can already have a shelf life of six months to a year, the more specific performance evidence that can be provided to give the associate a context for understanding the comment, the better. In an evaluation form, this type specific feedback can only come from written comments, not straight grading. This requires more investment time by evaluators. Compared to the general question, "How is this associate doing overall?" a request for concrete evidence of performance can yield information that an associate can really put into action.

Feedback does not always have to be constructively critical. Giving specific feedback on their strengths can boost morale and productivity. The formulation of feedback can follow the same pattern as critical feedback: "When you made this (specific) contribution, it had this (specific) positive impact, and we would like to see that continue."

6. Clear Message

For each associate, what summary message for the future should be conveyed? Here, clarity in communications is important. Not surprisingly, negative messages are difficult to deliver, so partners may generalize or avoid the message. To cite one "outlier" example, a partner was asked to tell the associate that he was to be out placed in three months. Six months later, the practice group leader saw

that the associate was still on the monthly time sheets, with the lowest hours in the group. Message not delivered, time and money lost, and the firm had to start over again with a three month period.

Firms that follow best practices manage the formulation of messages. One to three partners sit down to review all written reviews and decide on the message. They then review each message with the partners who have supervised that associate. When the message is delivered in the verbal review, one of the small group is in the room, especially if the message is “on probation” or out placement.

A clear and consistent message is particularly important if you are giving a review together with a bonus that is above or below “standard bonus”. Associates in both these categories will compare notes and be quick to note differences.

In addition to managing the clear message, the content of the message concerning career must be well articulated. Good evaluation systems have a strategic purpose - to use the information to tackle performance gaps and to create a career roadmap with associates. Effective reviewing partners highlight where an associate’s performance currently is and where it is expected to be. The review may also take into account any non-performance career goals that an associate or that the firm may have in mind for an associate (e.g., making partner; rotation to another office; becoming a U.S. Attorney; etc.) During a verbal review, the goal is to promote a discussion, more than a unilateral message, about advancing the associate’s career ambitions.

While many firms will say that that clear messages and career messages are core to their evaluation programs, the reality, as seen by measuring firm performance and associate perceptions, is different. Some associates never receive an annual verbal review, except to communicate the bonus. Others tell us that the message is ambiguous and not forward-looking. And most firms would be hard pressed to tell you how they measure this purpose. Measurement in these areas often requires scrutiny from outside consultants.

7. Measures by Career Stages: different evaluation criteria for each career development band

Keeping in mind today’s typical partner track of 8 to 10 years, one size does not fit all when it comes to the forms that evaluate associates. The natural distinction of associates in most large law firms falls into “junior”, “mid-level” and “senior” associates. Each stage involves a certain progression through the ranks and may involve different skills or, at least, a different degree of skill than other stages. For example, with respect to legal writing, a junior associate may do a significant amount of drafting while a senior associate will do more editing. Junior associates may not yet be negotiating whereas mid-levels will.

In addition, the focus on particular skill sets may vary at different stages. Junior associates, for example, are expected to put a majority of their focus on acquiring and refining their technical skills. They are not expected to be putting a lot of time and attention into business development efforts. On

the other hand, senior associates are expected to have already mastered their technical skills so there is more of an expectation that they will focus on business development skills. The same holds true for leadership skills. Junior associates do not have significant opportunities to work on leadership skills, whereas mid-level and senior associates are expected to make that a priority.

Accordingly, it would be challenging to evaluate all associates based on the same evaluation form. A more effective approach is to design forms by seniority level highlighting the skills that are expected to be developed, the degree and level to which those skills should be developed. Such forms set forth clear expectations regarding performance at each level. Progression to the next level is not possible if there are serious deficiencies at the previous level. Firms who implement forms by seniority level are better positioned to let associates know exactly where they stand vis-à-vis their colleagues and the firm's expectations.

8. Bonus and Advancement Decisions

As noted under key purposes, the ability to make justifiable merit-based bonus decisions is the hallmark of a first-rate evaluation system. At the same time, we admit that, at present, most firms do not make bonus decisions primarily on merit. Many have an automatic lockstep system or hours-plus-merit. Nevertheless, we think that the market will follow the investment banks and accounting firms in time – advancement and bonus will be decided primarily on merit. Norton Rose in the U.K. is the first international firm to announce that it is moving to merit for advancement and compensation levels. Why might this happen in other law firms? Most other professional service firms do not set compensation based on years from entry to the profession. We suggest that law firm management will ask why firms are paying high salaries and automatic bonuses to average and below-average performers, while holding back their most promising and hard-working associates.

The measure for law firms at present is a modest one: Does your firm use merit, as determined in the evaluation process, to decide on some part of an annual bonus? If yes, that's an A-. If the bonus is entirely based on merit, give your firm an A. If you also assess advancement through associate ranks based on merit, go to the head of the pack – A+.

9. Beyond the Annual Review

Two best practices are emerging in going beyond a single annual review. First, some market leaders, such as Latham & Watkins, have adopted two full reviews each year. Between the reviews, they give feedback on engagements that is formally recorded in the evaluation system. We see other firms adding an informal mid-year verbal review on top of the annual review. In addition to convincing associates that the firm takes development seriously, this double review practice forces partners to look for feedback opportunities more often and keep track of ongoing progress and messages.

Second, we find that some firms are rigorous about following up on evaluation messages, while others leave it to chance. In some cases, such as the out-placed associate, the follow up work is obvious. However, too few firms follow up on the goals and improvements of average and top associates. In small practice groups, the follow up work is done better because associates are well known to every partner. In larger groups, it falls down unless it is managed by staff and a practice group leader. In a first-rate system, we would expect to see every associate who gets an “improvement message” to be flagged for follow up within two months. Ideally the associate’s mentor would be advised to coach and follow up with meetings over the entire year ahead. The firm should be able to answer the question from the associate’s point of view: Did someone in the firm regularly check in and assist with the improvements recommended in my review?

10. Ownership of the Evaluation Process: Partner Buy-in and Execution

One of the biggest enemies of an effective evaluation system is billable time. Partners in large law firms have tremendous expectations placed on them—both billable and firm investment time. The investment time in these key activities may not be adequately recorded or recognized - filling out evaluations in a timely meaningful way, taking time to deliver clear messages and following up with associates after a review. To exacerbate matters, associates may have the best intentions of following through on their improvement areas only to come up against their own billable time expectations. So, partners may end up investing their non-billable time only to see the lack of results on the part of associates. In addition, they may end up being disappointed by their fellow partners who do not take the process seriously. At the end of the day, partners experience a downward spiral: time invested that does not yield results is time wasted which leads to decreased likelihood of investing further time.

Evaluation systems then cannot be designed solely with the goal of yielding results that will make associates happy. Without partner buy-in, even the most well designed system will fail. The process needs to be time efficient and user-friendly. This can range from minimizing the number of evaluations assigned to a partner, to shortening the forms, to providing resources and training. Their time will still be required and their input and execution has to be encouraged from the highest levels of the firm. This often includes not only a strong message from the Chairman, Executive Committee or Practice Group Leader, but a clear understanding of the business need to do evaluations. Talent retention is at stake and the quotidian tasks to get to that goal do count. Thus, firms with best practices think of how to make partners happy with evaluation systems. The measures of this achievement will be:

- Specific time recording and measuring partner time investment
- Recognizing partners who out-perform in the discretionary components of the compensation system (and not recognizing the under-performers)
- Managing the work load with good timing, staff support, work distribution, etc.
- Surveying or interviewing partners every few years to check their satisfaction levels and buy-in
- Holding practice group leaders accountable for broken components of the system in their part of the business.

CHALLENGES FOR FIRM LEADERS

Firm leaders often start a conversation about change with this question: “Who else (among our peers) is doing this?” We answer that they are on the right track when they ask about measuring where they stand compared to the competition. So the first challenge is whether the firm is ready to measure up against peers or leading firms. The report card suggested here is only a broad self-measurement. Internal measures such as surveys, partner interviews, staff assessments and critical review of evaluation tools can help.

We believe that partner buy-in is another major challenge. If your system is weak, a revitalization may have to start with getting partners recommitted.

A significant future challenge will be to compete for talent as the market shifts from lockstep compensation and bonus to performance-based advancement. We believe that some large firms will break from the pack by awarding bonuses primarily on merit. Next, some firms will shift upper year base compensation to a merit system (first year will be on a market scale). We do not see an appetite for “up or out”, as is practiced in other professional service sectors. But in a merit advancement system, we foresee some associates moving up faster than the “years from graduation” standard.

The question today is whether your firm is building an evaluation process infrastructure that will permit you to keep up with rapid competitive changes – and perhaps even lead the competition.

REPORT CARD ON YOUR EVALUATIONS PROGRAM

- A (4.0) Exceeds expectations, a leading firm**
- B (3.0) Meets expectations, a capable performance**
- C (2.0) Below expectations, shows potential but needs improvement**
- F (1.0) Failing, at a serious competitive disadvantage**

Criteria for Firm Performance	Letter or Number Grade	Does not do this at all (F)
Partner contribution		
Transparency: Communications and written record		
Timing: meet most deadlines, most of the time		
Quality delivery: Verbal Reviews		
Specific feedback on performance		

Clear message about future		
Measures performance by career stages		
Bonus and advancement decisions consistent		
Beyond annual reviews: additional features		
Partner ownership of process and structure		
OVERALL GRADE		