

Report of the NALP New Career Models Task Force

I. Introduction

Mindful of a growing industry trend, NALP's New Career Models Task Force was assembled to investigate the proliferation of non-traditional job opportunities for lawyers. The Task Force was charged with examining the benefits, challenges, structure, and implications of these programs and positions to the individual and to the industry as a whole and presenting this information to NALP members. The Task Force conducted extensive research and interviewed many NALP members from law firms and law schools, as well as industry consultants and experts. Our work produced a plethora of information. Perhaps most importantly, we learned that no one size fits all. Rather, the Task Force learned that there are as many proprietarily held titles and job descriptions for these roles as there are law firms employing them.

The goal of the Task Force is to give the membership a detailed overview of our research, followed by a practical Resource Guide with general guidance on exploring, establishing, and/or refining an effective and successful program for these new types of positions. For purposes of this overview, the Task Force agreed to categorize these attorneys into two global, intentionally generic, groups: "traditional (partner) track" and "non-traditional (non-partner) track." We don't assume these monikers to be an industry standard as firm practices vary greatly. Our expectation is that this evolution will result in increasing job opportunities for attorneys in non-traditional roles but that these non-traditional roles will differ from firm to firm.

II. Rationale and Business Drivers

As the market for legal services stabilizes and settles into the "new normal," there has been a shift away from the traditional leverage model employed by many law firms. This is the result of the many challenges facing law firms today: decreased demand for corporate legal services, fierce competition among law firms for new business, more competitive and creative pricing models, resistance from clients to pay for work performed by junior associates, proliferation of lower cost legal services providers and law firms' continued need to maintain profitability.

These industry challenges have gone hand in hand with other changes in the marketplace, including the disaggregation of legal services into (1) work that could continue to be performed by an associate who is on the traditional partner track, and (2) more routine or specialized work that could be performed by an attorney who is not on the traditional partner track. Due to advances in technology and a further increase in the number of lawyers seek-

ing legal employment, much of the routine work that had previously been performed by junior associates now can be performed more economically by lower cost providers, either inside or outside the law firm.

In the traditional law firm model, commonly there has been a singular definition of success as a lawyer. Typically, an inexperienced lawyer would join a law firm with the intent of being promoted to partner after several years of hard work coupled with mastery of increasingly sophisticated and challenging responsibilities and greater client interaction. Once promoted, the lawyer would be expected to lead and manage client engagements and source new business and clients for the law firm. While law firms have relied for many decades on this career model (and in many cases continue to do so), associate turnover was high and only a small percentage of associates were promoted to partner.

In today's climate in which firms are reexamining traditional partnership models, new career opportunities have emerged outside the traditional partner track that allow for a more customized way for a firm to serve its clients and to achieve the business goals of the firm. These new roles include attorneys who focus on document discovery and e-discovery methods and technology, as well as niche specialists with high-level expertise and strong project management skills. In the case of lawyers in these specialist roles, firms can manage clients' cost demands and provide job opportunities for valued lawyers who may not want to commit to the expectations of partner-track associates with compensation at a level that fits with the expectations of the positions. In the case of the more routine work like document review, lawyers in these roles occupy good and useful positions in a marketplace that has been flooded with talent for several years running. The Task Force recognizes that these latter roles are not necessarily the jobs that many of these lawyers aimed for when entering law school, but they afford a relevant career alternative with respectable remuneration and benefits. Both of these models give firms the opportunity to offer their clients economy of scale.

It is clear to the Task Force that these positions come in all different shapes and sizes, and there are many models within the industry that have worked well for individual law firms. In the following paragraphs, we outline two emerging models that have become prevalent and, more importantly, successful for many law firms.

III. Models

The Task Force found that job responsibilities for newly emerging, non-traditional (non-partner) track roles tend to fall into two models. Both models are characterized by an intent from the outset to provide the law firm with additional staffing options to address new and increasing market pressures.

- The most common model for non-traditional track attorneys is the performance of routine or commoditized work.

- The second model is for attorneys who perform more sophisticated work and who often have a specialized skill set, but for personal reasons or their firm's decision, are not progressing towards partnership.

It is important to note that there is a third category of attorneys who are also not on the traditional partner-track trajectory. Firms have long used the position of Counsel, Of Counsel, or Senior Counsel for individuals who have partner-level expertise but who do not have the business generation and firm management responsibilities that accompany partnership. These individuals previously may have been partners with the firm and are dialing back their commitment, or they may be attorneys who started out on the partner track but ultimately found their skills best suited to a role that does not include business generation responsibility. These roles are unique and present their own management challenges and opportunities. But they are not the focus of this Task Force's study because, unlike the other two categories of attorneys, these alternate roles have been in use by law firms for ten years or more.

Routine or Commoditized Work

Litigation Document Review

The most common type of routine or commoditized work in which non-traditional attorneys are used today is in litigation document review. Several firms have embraced the creation of large document review and e-discovery operations that can cost-effectively handle the high-volume reviews that are typical in high-stakes litigation. The cost involved in executing a large-scale review, and the existence of cost-efficient third-party providers of document review services, have forced firms to reengineer their approach to this work. It is no longer feasible to assign this work to legions of partner-track first-year associates and expect clients to pay for the work at the associates' standard billing rates.

Firms that have built internal document discovery operations have the following characteristics in common.

- They have determined that they want to provide document review services in-house as part of their client service offering. They have analyzed which review tasks are best performed in-house and which tasks third-party vendors that specialize in this area perform most effectively.
- They have defined a role for partner-track associates to allow them to obtain an understanding of review operations so they may supervise this critical component of litigation practice while still utilizing in-house specialists or external vendors to execute the majority of the review.

- They have invested in critical review infrastructure and technologies including, among others, data hosting, predictive coding software, and data disposition infrastructure.
- They have created an internal management structure to oversee the recruitment, performance review, utilization management, and work allocation for these lawyers.

Firms have employed creative ways of maximizing the profitability of these document review teams. Several firms house their document review operations in offices or operations centers in cities that are less expensive than the major markets where many Am Law 200 firms are based. In these situations, firms benefit from lower-cost real estate and a lower-cost talent pool. Other firms have created dedicated space within their offices for their document review teams. Some firms manage with very small teams. Most make it clear that they carefully manage the number of full-time attorneys hired into these roles, supplementing with flexible contract staffing through staffing agencies during periods of intense activity.

Price-Sensitive Commodity Work

The second most common type of routine or commoditized work in which non-traditional attorneys are used today is in support of practice groups or client teams. In these instances, the non-traditional attorneys are part of, and integrated into, a particular practice group or client team much like partner-track associates. But unlike partner-track associates, they perform commodity aspects of client engagements that are the most price-sensitive. These attorneys perform tasks that were previously performed by junior partner-track associates. They help manage cost to clients because they do not command the same billing rates as partner-track junior lawyers. These non-traditional attorneys are not expected to advance up a career ladder in a standard fashion and are unlikely to take on increasingly more sophisticated work each year. They are also typically not expected to contribute as many billable hours or participate in as many non-billable activities as their partner-track colleagues.

Firms that have introduced a junior-level alternative to partner-track associates have been motivated by some or all of the following factors:

- *Significant client cost pressure and the existence of fairly repetitive, commoditized work in particular practice areas.* Examples of practice areas that lend themselves to non-traditional attorney roles include real estate practices that require a high volume of fairly standard lease and rental agreements, early-stage company practices that routinely require fairly standard company formation and incorporation documents, and employment practices where clients are often operating under very tight budget constraints in managing individual plaintiff actions.
- *The adoption of a more deliberate response to practice area management.* Firms are spending more time focusing on the different components of a particular matter with the hope that by doing so they will find more efficient and cost effective ways to

complete the work. For example, e-discovery and document review work could be outsourced while witness preparation could stay in-house. In many of these cases, the best way to reach the goal of efficiency and cost-effectiveness lies in finding alternatives to traditional (partner) track junior associates.

- *A desire expressed by junior partner-track associates to contribute on a more sophisticated level earlier in their careers.* Shifting some of the commodity work to non-traditional resources gives partner-track associates the opportunity to move beyond these tasks more quickly.

Examples of responsibilities performed by junior, non-traditional attorneys include the following.

- *Litigation:* research, document collection, witness preparation, witness interviews and preliminary deposition preparation.
- *Transactional:* due diligence, drafting of incorporation documents, preparation of standard real estate leases and agreements, and regulatory compliance work.
- *Other tasks might include:* patent prosecution, industry research, drafting articles, and drafting client alerts.

Sophisticated and Specialized Work

A handful of firms have started to experiment with the introduction of more specialist roles for attorneys who are not on the traditional partner-track. The introduction of a formal career path for these lawyers allows firms to institutionalize their approach to creating custom roles that align the unique skills of individual attorneys with the needs of their practice groups and clients. A formal program ensures that all attorneys are aware that these custom options exist and are supported. Examples of ways that firms have incorporated these roles into their staffing mix include the following:

- attorneys who serve as dedicated brief writers within a litigation practice area;
- attorneys who focus on insurance policy analysis, coverage litigation, and policy archaeology;
- attorneys with an expertise in damages analysis;
- privacy attorneys with expertise in personal information and data transfer;
- attorneys who specialize in data analytics, including breach and cyber crime areas;
- more broadly, attorneys with several years of experience who do not aspire to partnership and who are seeking a more reasonable work/life balance than is expected of partner-track associates; these attorneys can provide firms with

efficient and sophisticated resources within a cost structure that maximizes profitability.

IV. Important Considerations

The introduction of non-traditional career tracks will likely take different forms in each firm based on the culture that exists in each organization. Considerations may include the following.

- How readily does your firm embrace change? A firm that is extremely change resistant may benefit from starting with a small pilot program with a particularly receptive group, to demonstrate the benefits before applying the model more broadly across the firm.
- How does your firm view candid discussion of financial metrics like profitability and realization, particularly at a business unit or practice group level? How much client fee pressure is your firm experiencing? Where a firm sits on this spectrum will have a significant impact on how you position the benefits of incorporating non-traditional track staffing options. In firms where unit/group leaders are held accountable for both revenue generation and profitability, particularly where clients are also pushing for enhanced efficiency, a focus on the impact that lower cost resources can have on the bottom line can be very powerful.
- How open is your firm to discussions of shifting generational values around work/life balance? What has been your firm's experience with attrition of highly-regarded attorneys seeking a different level of intensity than the traditional partner-track career requires? Several firms with non-traditional career tracks have found that the potential loss of a highly regarded associate to an in-house position or to a firm with a lower hours expectation acted as an impetus for designing custom roles. Further, in-sourcing commoditized work offers cost advantages for clients and the firm, while introducing new career options for some lawyers. Tapping into this experience, while highlighting the benefits of creating a structure to ensure all associates understand the non-traditional options available, can be very effective in building support for such programs.
- How openly does your firm communicate business issues and policy decisions to associates? A universal theme from those firms that have adopted non-traditional career options is the importance of openly and candidly discussing the business drivers behind this approach with partners and associates throughout the firm. Firms have also found it helpful to provide a forum for partner-track associates to address their concerns about the impact these new positions may have on their own career prospects. It is recommended that talent professionals engage in candid, up-front discussions with firm leadership about how and when they will

educate attorneys about how new non-traditional career options fit into the firm's overall client service structure.

V. Conclusion

The information above provides an overview of non-traditional attorney career models within the legal industry. During the New Career Models Task Force's research, it became apparent that this is an emerging area that likely will continue to evolve as law firms design or redesign non-traditional career models that fit with their unique cultures, practices, and client base and that are responsive to the particular competitive pressures they face.

This spring, the New Career Models Task Force will release a Resource Guide that will provide law firms with practical guidance on refining, or designing and implementing from scratch a non-partner track model. The Resource Guide will describe non-traditional career models that firms are using currently, including how firms recruit, integrate, compensate, develop, manage, and advance attorneys in non-traditional roles. The Resource Guide also will provide guidance on design and implementation strategies based on other law firms' experiences and lessons learned. Additionally, the Resource Guide will offer guidance to law school career services professionals on how to advise students and alumni with regard to the non-traditional job opportunities.

New career models in law firms appear to be here to stay and are expected to grow in numbers and variety in the future. NALP leadership and the members of the Task Force are pleased to share this important analysis with its members and the legal industry as a whole.

*Respectfully submitted on March 5, 2013
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