

May 01, 2021

THE MANAGEMENT ISSUE

# Law Firm Recruitment and Retention in the Age of COVID-19

In a shifting COVID landscape, law firms and candidates continuously assess what is most important.

Barbara Mendel Mayden

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The law firm reaction to the pandemic changed the landscape of how potential laterals evaluate firms they are looking at.



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This article would have had a different feel if it had been written a year ago. The predominant theme of the article, were it written as the first waves of the coronavirus pandemic hit, would be terror. Everyone in the business of law felt it: students, associates, partners, staff and firm management. If one could transport back in time and look into the eyes of those players, one would see that terror of the unknown combined with a certain “deer in headlights” look. No one knew exactly what was happening, what would happen next or what, if anything, could be done in response.

## Early 2020: Uncharted Territory

In the first months of 2020, law firms were in uncharted territory, without much information upon which to base business decisions. No one knew how bad the situation really was or how long it would last. While there was evolving consensus that there would eventually be an end to the pandemic—models and projections on the spread of COVID-19 seemed to be produced and revised daily, and the phrase “flattening the curve” had entered the lexicon—the real uncharted territory was the effect the pandemic would have on the worldwide economy and what that would mean for the business of law.

Law firms in the recent past have weathered downswings and recessions—the struggles of the early 1980s and early 1990s, early 2000s and the recession of 2007-09. But those events were different than the current experience. Those recessions were driven by industry-specific downturns, such as oil and gas, a dot-com bubble or subprime mortgages. The COVID-19 pandemic is different. It hit everything and everywhere. The coronavirus was not limited by industry or geography.

While the previous downswings and recessions were instructive, no one had experienced such a pervasive disruption and, accordingly, nobody had any idea when and how normalcy would return, or whether there would be a “new normal” and what that might look like. With that dearth of knowledge, how were firms to plan? What would come back? Where would the next needs be? Had there been a paradigm shift? Firms were looking into an abyss, their clients having been gut-kicked, and no one knew when they would see the end of it.





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For law firms, there was fear that this particular downturn was not cyclical as had been the case with previous downturns. Previously, as the economy has ebbed and flowed, a downturn in some practice areas would be offset by an uptick in others. A dip for transactional lawyers has typically been accompanied by an uptick in litigation, bankruptcy or employment. But in early 2020, firm leaders were concerned that this pattern would not hold true in such an unprecedented crisis, with corporate clients reluctant to retain outside firms during the corporate belt-tightening, or more troublesome, that the work would come in but clients would be unable to pay. Law firms faced a dreaded combination of less work and slow collections, which threatened a significant cash flow crisis, with no useful crystal ball to see into the future.

To compound the problem, the early 2020 timing of the onset of the crisis was particularly bad. Unlike other businesses, many law firms don't keep substantial reserves, relying on their lines of credit for unexpected bumps in the road. Money comes in and is paid out in expenses and distributions to equity partners. The coffers then remain empty until replenished. For those firms with a fiscal year ending in December, coffers were still largely empty when the crisis hit. Even those firms with fiscal years ending in April may have initially perceived this crisis as a short-term problem and paid out funds as usual.

## Reducing Overhead and Cutting Expenses

Law firms responded to their current or anticipated cash flow crisis as one would expect, by frantically searching for ways to stem the outflow—cutting expenses and reducing overhead. The ability to cut expenses by reducing space was limited by pesky long-term leases. That left personnel as the largest category of overhead that could be cut. Cutting personnel would mean cutting staff, but also associates and non-equity partners.

✘ Cutting expenses by letting go of associates and non-equity partners during downturns has not traditionally been an option exercised by law firms. Up until the subprime mortgage crises and the

2007-09 downturn, when law business was bad, law firm management didn't cut the pay of their associates or cut associates themselves. There was a general fear that, if a law firm took such actions, people would *notice* and think the firm was in trouble or not treating its people well, and that perception could have bad recruiting repercussions. Firms still wanted to show off their bright shiny pennies coming out of law school or through lateral recruitment. Then along came 2007-09, perceived at the time as "The Big One." Law firms were impelled to make deeper cuts than those in the past, and some crossed the line into the associate ranks.

Initially, the cuts were made incrementally and without much notice. Pay cuts were made, rather than outright layoffs, and then firms cut the numbers to be hired in incoming classes. Still, there were too many mouths to feed, and law firms had to make the hard choice of making layoffs. To bypass the traditional concern that people would perceive these layoffs as indication of the firms' struggles, some spun the layoffs as performance-based—a double whammy for affected associates.

Some may note that, whether it was described as such or not, any layoffs would be perceived as performance-based—that the best employees wouldn't be the first ones to be terminated. But, while true in most other industries, in law firms, who succeeds is in large part, luck of the draw. The expendability of an associate is in part dependent upon how much business their specific "group" or specialty practice enjoys at the given moment.

So, the new paradigm after 2009 was that pay cuts and layoffs were no longer off the table for the legal industry. As a result of that paradigm shift, when the pandemic struck in 2020, without much of a blink, the legal industry saw pay cuts, furloughs and layoffs. Law firms immediately went into full retrenchment mode with little or no focus on the impact on recruiting and the ability to attract lawyers. There were already too many mouths to feed.

## A Changing Landscape

But, as 2020 progressed, the threat of the pandemic became less opaque. By early fall, while the legal industry still didn't know when it would see the end of the virus and its effects on clients, law firms had a better grasp of the effect on their workflow and cash flow. Law firms were living *in* the crystal ball future that they had been straining to see since the preceding spring. There would have been much less terror if law firms in spring 2020 could have seen what the law firm world

 d look like in fall 2020.

Their worst fears, by and large, didn't pan out. Litigation, bankruptcy and employment played their customary role as the counter to less work in M&A, intellectual property, real estate and the like. The fear that general counsels wouldn't outsource work or pursue litigation if their companies were cash strapped didn't play out to the extent anticipated and was mitigated by litigation funders willing to front litigation costs. Firms were getting their arms around the effect of the crisis and, in many cases, enjoying strong financial performance.

As a result, firms began the rollback of some of their COVID measures—fine-tuning their drastic stabs at cost cutting. Firms began restoring associates to or near pre-COVID-cut pay levels—some not only restoring salary cuts to pre-pandemic levels but making associates whole by paying them the amounts they lost over those months following the cuts. Firm bonuses returned, with some firms paying their customary year-end bonuses, or some version of them, and some giving out special pandemic bonuses in appreciation of work done during the pandemic.

Many firms that reacted to the 2020 pandemic by making cuts in the workforce came to realize, as the volume of work and collections did not drop as feared, that they suddenly didn't have enough bodies to handle their workload. Hence, recruiting efforts ramped back up, often aimed at experienced lawyers who could handle areas that expanded during the pandemic, the traditional cyclical areas such litigation, employment and bankruptcy as well health care and insurance coverage. Accordingly, focus returned to making firms attractive for lawyers graduating into the workforce and those seeking to make a lateral move.

## Recruiting and Competition

As the recruiting wars ramped back up, so did the competition for the best and brightest talent available. In BigLaw, Davis Polk stepped out first, offering pandemic bonuses from \$7,500 for the class of 2019 up to \$40,000 for the class of 2013. And many other large firms, such as Sullivan & Cromwell, Weil, Gotshal & Manges, Debevoise & Plimpton, Latham & Watkins, and Milbank rapidly fell in line.

However, the law firm reaction to the pandemic changed the landscape of how potential laterals, as well as current firm legal personnel, evaluate firms they are looking at or already working in—not simply making an analysis on the basis of who was paying the biggest pandemic bonus. In addition to sizing up firms by the old metrics—comparing the likes of comp and bonuses, ned practice group, partnership prospects—there emerged a few more points of comparison.

Potential recruits and current lawyers are now concerned with whether an employer or potential employer has emerged as a “good guy” or “bad guy.” And, that barometer is not necessarily a measure of whether firms implemented cuts, even cutting salaries or instituting furloughs. The smart potential firm lawyer would hope that the firm would react in a business-smart way. The differentiator for many potential recruits and potential firm defectors is an analysis of the different ways firms instituted the cost cuts as well as the restorations. How fairly were the cuts allotted? Did the partners shoulder their share? How transparent was firm leadership? What assistance was given to lawyers working remotely? The answers to these questions may provide a window into the intrinsic nature of the firm itself and its values.

Moreover, the focus on these issues may present opportunities for smaller firms, with a healthy business climate and culture, to compete for top talent that was previously thought to be unreachable. Candidates may find the more intimate structure of smaller firms to be an attractive safeguard against future economic downturns.

The impact of the COVID-19 pandemic upon the practice of law and the recruitment of lawyers continues to play out. The landscape continues to shift as law firms and candidates assess what is most important to them. We do know that the legal industry didn't collapse, as some feared. We also understand more about the impact than we ever did, and learn more each day. Perhaps, most importantly, we see an end in sight, which will lead to a stabilization of the landscape, whatever that new landscape may be.

## Authors



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*“THANKS very much! GREAT GREAT GREAT webinar.”*

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# The “LFQ”: Lateral Firm Questionnaire, or What Lateral Partner Candidates Need to Know - Especially Now

By Valerie Fontaine and Barbara Mayden

Virtually every law firm engaged in lateral partner recruiting requires candidates to fill out an LPQ, or Lateral Partner Questionnaire, as part of its vetting process. The LPQ requires submission of information critical to the firm’s decision-making process going beyond basic resume information (such as the candidate’s educational and employment background), but delves into areas such as client base, billings and collections, and various ethics issues such as malpractice claims, involvement on corporate boards, etc.

Just as firms realize the importance of digging into what candidates’ would bring with them, it’s equally important for lateral partner candidates to dig deeper into what is beyond the readily apparent with their prospective law firm employers, and even more important in the post-COVID era. The way a law firm handled the economic shutdown and reopening, as well as its management and financial posture afterward, are vital considerations when determining which firm would be the best fit for the candidate and, for partner candidates, her clients.

Astonishingly, a few years ago, an American Lawyer survey found that most lateral partner candidates never asked even the most basic questions of their potential new firms about finances, firm management, or their partnership agreements. It is shocking that sophisticated business lawyers who never would allow a client to enter a business combination without scouring the books, wouldn’t do the same for themselves.

Perhaps partners who have been with one firm for many years assume that all law firms are alike. From 40,000 feet they may seem alike - comprised of smart, usually personable lawyers, with sophisticated clients and businesses. But, once you drop below 40,000 feet, firms can be very different. Compensation systems vary and management styles vary, all resulting in different incentives and different firm cultures.

For a lateral partner move to be successful, a potential lateral should understand that firms are different and he or she must understand the internal moving parts – and incentives – before s/he makes the jump. How to garner that information? Just as the firms do – ask. And, among the questions to ask in a COVID-19 pandemic era, are questions directed at obtaining information to assess which firm is better positioned to ride out any turbulence for long term success.

Just as most firms, at some point in the courting ritual, require that prospective lateral partners complete an LPQ, we propose that a senior lawyer contemplating a move consider something similar—an “LFQ” or “Lateral Firm Questionnaire”—a checklist of the information the lateral partner candidate needs to make a sound decision. To that end, we created a generic LFQ a few years ago. We reprint it here with some post-COVID updates.

But, first, a couple of caveats:

Caveat #1: Who should use our LFQ?

Our LFQ is for the more senior lawyer whose compensation most likely will be based upon a combination of individual performance and firm performance. Thus, the candidate will need to know a lot more, such as,

- What is the general health of the firm?
- What is the firm’s history with laterals?
- Are the firm’s structure and billing practices likely to positively affect the lateral’s ability to attract and service clients?
- What is the firm’s leadership modus operandi?

Caveat #2: When to ask? Timing is everything.

Just as the easiest way to scare off a potential suitor is to ask probing questions on the first date about future plans, earning potential and the like, clearly, the candidate and prospective law firm want to establish mutual interest before broaching the hard questions. Even in the age of Twitter, there is information that is sensitive. The best time to ask these questions is when the prospective firm presents its LPQ, hence the posture is “I’ll show you mine, if you show me yours.” With that symmetry, it’s a lot less awkward.

*“Just as most firms, at some point in the courting ritual, require that prospective lateral partners complete an LPQ, we propose that a senior lawyer contemplating a move consider something similar”*

But remember, our LFQ is a little tongue-in-cheek.

It doesn’t have to be a formal document; rather, it’s more of a checklist to make sure your candidate gets all the information

enabling a wise decision. And they should be reminded that, in addition, there may well be opportune times to pick up bits and pieces along the way.

Caveat #3: How? Don’t be too pushy – you want this job! But be pushy enough. Before you really know if you want the job, you need this information.

If the firm’s reaction is to label a candidate as pushy for asking for the information – that is, in itself, the most telling information. A firm’s reluctance to share this information to someone who would come in at a senior position says volumes. So, advise your candidate to pay attention not only to the answers to the questions posed, but also to the reaction to the fact that they were asked. The firm that should be attractive to a potential lateral is one that values lawyers who make important decisions based upon germane information, gathered at the appropriate time.

In fact, some of our law firm clients have told us that the failure of candidates to ask these questions raises a red flag. It reflects negatively on the candidate’s seriousness, sophistication, or judgment. It even can signal a sense of desperation to make a move—any move. You certainly don’t want your candidates to send these negative messages, and you want them fully informed, so they make the best career choices (and placements that “stick.”)

## The Fontaine/Mayden Generic LFQ (Lateral Firm Questionnaire)

### [INTERESTING SOUNDING LAW FIRM COURTING ME]

#### LATERAL FIRM QUESTIONNAIRE

I am honored that Interesting Sounding Law Firm Courting Me (the "Firm") shows interest in my becoming a partner. The Firm gave me a Lateral Partner Questionnaire to complete and, as we enjoyed substantive conversations that are continuing, I am pleased to complete that "LPQ." Just as it is important that relevant data about me be available to the Firm in order to assess whether the combination of my practice with the Firm is wise, it also is important that I review relevant data for a similar assessment. Accordingly, I request the following information from the Firm.

#### I. FINANCIAL DATA

1. **Liabilities.** Describe liabilities of the firm, including leases and debt. Is there a Pension Plan? Is it Fully Funded?
2. **Billing distribution.** Has any client/affiliated group represented more than 25% of the Firm's billings in any of the last 5 years? Are the firm's clients concentrated in a select number of industries? Are billings distributed throughout the partnership, or primarily via few rainmakers?

#### II. BILLING MODELS

1. **Billing Rates.** List for all levels of partners and associates as well as differentials for location and practice group.
2. **Alternative Billing Arrangement.** Describe the nature of any alternative billing arrangements used by the Firm and the frequency used.
3. **Flexibility.** What flexibility does each partner have to set fees, agree to discounts, or utilize an alternative billing arrangement?

#### III. PARTNERSHIP STRUCTURE

1. **Tiers.** Describe any tiers in the partnership structure, and mobility between tiers.
2. **Retirement.** Mandatory? Is there a required "step down?" Is any retirement required from the firm or from the partnership? Describe policy.
3. **Business Development Expectations.** Describe. Is there a "runway?"

#### IV. COMPENSATION

1. **Decision-makers.** Describe the compensation/advancement decision-making structure. Is it open or closed?
2. **Criteria.** Describe the considerations factored into compensation decisions. Business development? How is business origination credit allocated—by client or matter? Is credit given for administrative duties? Pro bono?
3. **Timing.** Describe the timing of payments to partners, i.e. when draws are made; profits distributed.
4. **Capital Contributions.** What is the required capital contribution? When is it payable? Does the Firm arrange financing? What are the conditions of repayment?

#### V. REQUIREMENTS

1. **Billable hours.** Are there minimum billable hours for Partners?
2. **Other Firm Obligations.** Detail required other Firm obligations.

#### VI. BUSINESS DATA—for the current and each of the past three to five years, list:

1. **Profits Per Partner**
2. **Revenues Per Partner**
3. **Average Billable hours, Partners**
4. **Average Billable hours, Associate**

#### VII. FIRM OPERATION AND MANAGEMENT

1. **Committees.** Describe the primary Firm Committees. Include information as to selection of members and representation of offices and practice groups.
2. **Operational structure.** Describe how the Firm operates across offices. Is the firm organized by office or practice group? Are there multiple profit centers?
3. **Management.** Describe any professional management in addition to lawyer managers.

#### VIII. FIRM PERSONNEL

1. **Leverage.** Describe in general the number of associates and the number of partners at the firm. How are they staffed on matters? Describe generally the "required" billables for associates, attrition rates, and compensation levels of the Firm's associates. Is paralegal support available?
2. **Support Personnel.** How is secretarial support apportioned? What kind of IT support is provided?

**IX. MARKETING**

1. **Professional Staff.** Describe formal/professional marketing support at the Firm; the Firm's track record of supporting lateral partners in growing their client bases.
2. **Cross-Selling.** Describe intentional cross-selling undertaken by the firm. Is it formalized; incentivized?
3. **Budget.** Is there a Business Development budget?

**X. EXPERIENCE WITH LATERALS**

1. **Onboarding.** Describe the onboarding and lateral partner integration process.
2. **History.** What has been the firm's history with laterals? Successes? Failures? And, to what factors has either success or failure been attributed?

**XI. CHANGE IN NATURE OF THE FIRM**

1. Are any transactions currently contemplated, such as a merger, acquisition, a group or a practice or spin-off, or a group or a practice addition, or other Firm expansion or contraction that could significantly change the nature of the Firm as currently constituted?

**XII. FIRM PROFESSIONALISM**

1. **Pro Bono Commitment.** Describe any formal Pro Bono programs undertaken by the Firm.
2. **Lawyer Leadership:** Are "extracurricular" activities encouraged by the Firm? Describe leadership roles in the community or in bar associations undertaken by Firm lawyers
3. **Diversity and Inclusion.** Statistics? Goals? What programs are in place? Describe plan and results.

**XIII. DOCUMENTATION**

1. With this questionnaire, or at a time deemed more appropriate, please provide:
  - (a) A copy of the Firm's Partnership Agreement
  - (b) [Financial Statements] for the previous three years

## ADDITIONAL POST-PANDEMIC DILIGENCE

**I. CLIENT BASE**

1. Has there been any change in industry or practice focus, financial health of clients or loss or addition of clients?

**II. CASH FLOW**

1. What is the current status of and has there been any change in collections, reserves or lines of credit?

**III. PRODUCTIVITY**

1. Has there been any change in hours billed, billing rates or billing arrangements?

**IV. COST CUTTING MEASURES**

1. **Personnel**
  - (a) Pre-pandemic personnel - for partners/associates and other lawyers/staff, describe furloughs/layoffs and compensation/benefits adjustments
  - (b) Impact on summer associate and first year classes
  - (c) Impact on lateral recruiting at partner and associate levels
  - (d) Communication/Messaging regarding changes
2. **Other cuts** – describe changes to travel, marketing budgets, Bar Association participation support, capital expenditure delays, benefits plans and any other

**V. SHIFT TO REMOTE WORK**

1. **Tech support**
2. **Maintaining morale**
3. **Reopening plans**

**VI. "PLANDEMIC"**

1. Describe the firm's plans for a post-pandemic future; changes in Firm structure due to lessons learned



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**June 30, 2020**

## **The LFQ-Lateral Firm Questionnaire, or What Lateral Partner Candidates Need to Know**

***Presented by:***

***Valerie Fontaine, Esq. and Barbara Mayden, Esq.***

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