Seven Questions Every Search Consultant and Partner Candidate Should Ask About Compensation

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As Featured in the NALSC Fall 2022 Newsletter

NALSC

"Why" and "how" are words that are so important they cannot be asked too often.

-Napoleon Bonaparte

"How much will you pay me?" is often assumed to be the most important question a lateral partner can ask when considering a new firm. But while it is certainly a critical question, too often firms and candidates fail to broach other compensation issues that can easily make or break a new relationship. Here are seven questions every lateral should ask and understand before they decide to join a new firm.

1. Always ask multiple people on the firm's compensation committee to explain their system. Don't be satisfied with one explanation or the description offered by someone who is leading the recruiting effort but doesn't serve on the compensation committee.

- Why ask multiple people to explain the same system over and over? Consider the well-known example of how witnesses to the same incident can vary so much in their descriptions of events and actors. The variations are not due to motives of malice or deception, they are simply due to human nature and how people perceive different priorities.
- The same phenomenon happens with compensation committees: Each member of the committee is likely to describe what is important to them, the facts and procedures that impact their interests, or those that have consumed their time.

2. Always ask, "do partners ever move down in compensation?" And if the answer is yes, ask "on average how many partners move down each year?" If the answer involves a relatively small number of partners each year, then ask "does moving down mean that they are being told to leave the firm?"

- Depending on where a candidate comes from this may seem like an irrelevant or scary question. After all, there are still some large firms that never move a partner down in compensation, so a partner coming from such a firm may think this question is odd.
- Yet moving partners down is a common characteristic of most of the healthiest firms in the profession. Knowing that in advance and what it means will help alleviate potentially unpleasant surprises later.

3. If anyone uses the term "lockstep," or "eat-what-you-kill," or "slow up/slow down," ask them to explain what those concepts mean in detail.

- These three terms are some of the most overused, misunderstood, and widely varying compensation terms in the profession.
- And while there are correct and true definitions of each such academic definitions aren't nearly as important as understanding what a specific term means to each firm that uses it.

4. Always ask, "does the firm track origination, and if so, how?" Again, don't accept just one partner's explanation, ask as many partners and compensation committee members as you can.

- ***Warning:*** There are an amazing number of firms that will say "we don't track origination, we track *(insert your favorite, innocuous sounding, team-oriented term here)."* No matter what they call it, ask them to explain it. In detail. Over and over.
- Even in the most institutionalized law firms it is common to receive widely varying answers. This isn't necessarily because they are being disingenuous. Most often partners are just trying to alleviate your worries, to sell you on their system, or to present their practices and procedures in the best possible light. The partners describing their system have likely grown accustomed to it with all its warts and benefits alike, so much so that those are assumed and familiar. But their blanket acceptance of strengths and weaknesses doesn't mean you should walk into a system with a vague understanding and a promise of "trust me."
- So, ask rainmakers and service partners, leaders and non-leaders, compensation committee members and maybe even senior associates to explain the firm's system for tracking and crediting the origination of clients.

5. "Is the system prospective or retrospective?"

- A prospective system is one in which the bulk of one's compensation or share of profits is set at the beginning of the year, although it isn't unusual for many firms to reserve 5% to 15% of profits for a bonus fund that is awarded at the end of the year.
- A retrospective system is one in which partners receive a draw or base salary all year, but the bulk of the decision-making process about compensation is only done at the end of the year. For many retrospective firms, draws are either low or potentially at risk. So partners accustomed to a prospective system can find their cashflow suddenly starved, forcing them to borrow during their first few years under a retrospective system.
- One side observation: Firms with retrospective compensation systems tend to be more internally competitive and less team oriented than firms with prospective systems. Why is that? The answer would fill a whole separate article and will have to wait for another day, but we stand solidly behind the observation.

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6. Ask if they track and/or publish profits by office or practice? And if so, do they use those statistics in setting compensation?

- While tools testing the profitability of clients and matters are now widespread throughout the profession the application of those tools to the profitability of an office or practice consistently produce more problems than profits.
- This is because individual partners residing in each unprofitable office or practice may be wildly profitable on their own, but because they are affiliated with that unprofitable office or practice their compensation is penalized.

7. The last and probably most important question: Once you have an offer of compensation, ask, "How does the firm compensate other partners with similar financial performance to me?"

- Every lateral candidate should ask to see 3-4 examples of actual (but anonymous) similarly performing partners and their compensation, and then ask, "what makes the compensation levels vary by individual?"
- Why do this? One of the most common problems impacting lateral partners is to discover after one to two years their compensation is suddenly reduced despite any meaningful change in their performance or contribution. This is because the firm was willing to pay a premium to attract the candidate in the first place, but over the long-term most firms must pay partners equitably.
- If there is no meaningful difference in performance and contribution between you and similarly performing partners, you should expect to ultimately be paid like those partners over the long run.

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