

Paring the Partnership: Firm leaders say that dealing with underperformers is their toughest task. Time-tested strategies can ease the pain.

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1. I keep hearing about firms that have “dealt” with underperforming partners. How have they done it?

More and more firms are tackling the issue of underperforming partners as part of their initiatives to improve their cultures, morale and profitability. Partners can underperform in a number of different areas—firm citizenship, mentoring, billables, business development, client management, continuing education in their practice areas. But these days, underperformance is usually in the context of productivity—bringing in too little business, producing too little revenue.

By the time most firms act, there is usually little ambiguity about whether a partner is underperforming. Attorney productivity reports often have a “cliff” where hours and business origination fall off. Partners on the downside of the cliff are considered to be underperforming.

Techniques vary, but most firms have adjusted their compensation systems to provide for a smaller number of tiers (often ranging from six to 12) with significant differences in compensation among the tiers. The most common technique for dealing with underperformers is to move them down one or more tiers. Additionally, many firms place underperformers on nonequity partnership status (sometimes called income status). Partners who are moved downward to income status typically do not share in firm profits. This situation is different from that of younger partners who become income partners as a step up the ladder to equity partnership—these upward-bound income partners sometimes share in profits.

Some firms have successfully dealt with partners who are solid lawyers but who have been unable to build sustainable practices by placing them as general counsel of clients or prospective clients. Placements often result in loyal, enduring client relationships that greatly benefit a firm. This is an art form created long ago by the Wall Street firms but well copied by a handful of others and still flourishing today.

What about those miserable partners who are too lazy or otherwise unattractive to be placed in-house or to send to another firm? Early retirement is the most gracious strategy for dealing with those lawyers, who are often given long notice periods and generous packages to ease them out.

How is all of this accomplished? The Grim Reaper is almost always the managing partner or the chairman of the firm, who works from a list approved by the management committee. Firm leaders who have undertaken this chore speak of it as their most difficult assignment.

2. Now that the economists tell us that the recession is over, is it safe to look back? Just how bad was 2001 for large law firms?

As I write this column, I don't have the 2001 Am Law 100 results in front of me (I have to wait, just like everyone else). But throughout the year, I saw enough results from quarter to quarter to know that not everyone will suffer from lackluster results. In fact, a number of firms will post banner years, in spite of the recession.

Many of the firms making the biggest gains on their competitors share some notable common denominators. First, they have created and implemented a shared vision of their future. Their vision has provided a context for positioning themselves in the market and rationally evaluating opportunities and allocating resources. Second, they have made tough decisions about underperforming partners, culling out the weak and rewarding the strong, often shifting responsibility for achieving firm goals to younger partners who benefit from the realignment of compensation. Third, they have analyzed practice group and office profitability, and although their formulas were likely rough, they were good enough to identify groups and offices that were core to the firm's success. When underperforming practices and offices were found, the successful firms set out to fix them. When the practice group or geographic mix wasn't right, or the fix didn't work, the firms culled underperforming practices and offices. Finally, many of the successful firms adjusted partner compensation substantially downward for more than 25 percent of their partners, causing some of those partners to pursue their fortunes elsewhere, and proactively outplaced another 25 percent. In the process, the firms culled their client lists, after discovering that many of their clients just weren't profitable enough to be worth serving.

Many of the partners in these firms would say that their firm is no longer the same. They are right. These firms have cured unhealthy cultures, and not without pain. They chose to clean up their acts, as opposed to simply trying to grow their way out of problems that invariably become more difficult to solve with increased size.

3. What is the significance of Clifford Chance's decision to establish a West Coast presence?

First a disclosure: I was retained by Clifford Chance to advise it in connection with this move. But the expansion of British firms into the West Coast is something I anticipated and wrote about long before this deal [*Management*, "The New World Order," January], and my take on this subject has not changed since then.

I suspect that it will take a little while before other Magic Circle firms establish offices on the West Coast. Most of them still mistakenly view the U.S. market as being like the old New Yorker cartoon: there is Manhattan, and then the rest of the country, which is collapsed into a vague space west of the Hudson River. Those firms still haven't figured out how to respond to the Clifford Chance—Rogers & Wells combination two years ago, much less to Clifford Chance's move west.

The current situation reminds me of something that happened a few summers ago to a friend of mine who lives in Aspen. The summer had been particularly dry, and the big brown bears that forage for berries in the mountains were coming into town in greater numbers, seeking food. My friend, who lives in the center of town, woke up one morning to see one of those bears in her driveway, eating out of the garbage. This was quite a surprise (not unlike the surprise that many felt three years ago when they learned of Clifford Chance's combination with Rogers & Wells, which gave the British firm a huge New York presence). A couple of weeks later, my friend was in her upstairs bedroom when she heard some rumbling in the kitchen downstairs. As she rounded the staircase on her way to the kitchen, she saw a big brown bear in her kitchen, cleaning out the refrigerator, eating everything it could get its paws on.

With the high-profile securities litigation practice that it has now lured from San Francisco's Brobeck, Phleger & Harrison, the Clifford Chance bear is now in the refrigerator and will no longer be munching on slim pickings. This deal is likely to greatly enhance Clifford Chance's access to important American boardrooms, particularly in the technology industry, while creating a powerhouse national litigation practice. In the rest of the world, where there are loser-pays rules, no punitive damages, few class actions, and only a handful of jury trials, litigation is viewed as a stepchild practice. But in the U.S.—the world's most attractive legal market—high-stakes corporate litigation is a core practice, not just because of the huge legal fees it generates but also because it provides access to and glue for major client relationships.

In a broader sense, the deal will go a long way to refute the argument that the top half-dozen Wall Street firms are the only worthwhile merger candidates for a Magic Circle firm. It will give Clifford Chance 700 lawyers in the United States—ten times more than any other Magic Circle firm has—and distinguish Clifford Chance as a formidable global competitor.

As the rest of the world comes to a better understanding of the fuel mix for the major U.S. firms, the merger appetites of acquisitive non-U.S. firms will be whetted. That will accelerate the globalization of legal services in the U.S., which until now has seen only a few big bears nibbling around the edges of the New York market.