
SO WHAT'S IN A TITLE?

By: Sandford A. Lechtick

“You gotta be kidding” the response we got when the equity partner turned down \$450K offer because the title was “Of Counsel”. While the opportunity to expand his practice there was terrific, while the offer about \$100,000 more than he was presently earning and the opportunity to build his practice excellent, he focused on those two words “Of Counsel” and all it meant. The question more and more lawyers are asking is, “What does the title really mean?”

Certainly, things were once more simple. You were either a partner or an associate – an owner or an employee. Today the distinction is blurred and the correlation between compensation, power, title and prestige increasingly out of focus. Consider a few titles: Of Counsel, special counsel, senior counsel, resident counsel, director, income partner, contract partner, non-equity partner, capital partners, shareholder and junior, mid-level and senior associate. But consider: mid-level associates at some firms earn significantly more than equity partners at others and increasingly equity partners at many firms would prefer Of Counsel status. So what gives?

Non-equity partners are sometimes called directors, income or contract partners. Law firms with one-tier partnerships call them counsel. In many instances they are lawyers who are too experienced to be called associates. Some find themselves in “no-mans land”, better than most associates but not considered partner material. While counsel and non-equity partners do not share in profits, they are not on the hook for the firm’s liability, lease obligations and are not expected to make capital contributions which could be \$100K or more.

Over the years, the title “Of Counsel” was ascribed to a lawyer who was either close to or beyond retirement age, not practicing law full time, or who had at best, a loose affiliation with a firm. Of Counsel designations were often characterized in less than flattering terms and some equated “Of Counsel” with flake. Today, Counsel are generally treated with more respect and in some instances do better financially than many partners.

Yet, even equity partners at so-so firms are often insulted should they be offered Of Counsel at a much more prosperous firm. We recently represented an equity partner generating \$1.5M earning \$400K. The offer he received from our client was \$550K, but the title was Of Counsel. The required equity partner book at that firm was \$2M-\$2.5M. He turned down the offer. In fact, he was offended and focused strictly on title. The question is, what does title really mean these days – especially since many Of Counsel are on a merit system which rewards them as if they were a partner?

At many firms, the distinction and financial differential between equity partner and income or contract partner is not great. At others there is a huge difference. At some firms, non-equity income partners are treated as employees and not any different than Of Counsel. While their clients think of them as a partner, Of Counsel and income partners do not have any voting privileges, do not share in profits, have zero say in the direction of the firm and are often not really more than hired guns. To more lawyers, the difference between equity partner or income partner status is no big deal. More are saying “I don’t care what I’m called, just show me the bucks”.

Therefore, an attorney who is considering moving up, sideways or out, should compare apples and apples, not apples and oranges. For example:

- What are the specific pluses and minuses between equity, non-equity partner and counsel status?
- How will title impact one’s practice and client development efforts? How will equity partners in the firm respond to or refer business to someone not a “member” of the firm?
- For non-equity partners, can compensation be structured in a way where business origination and overall collections is rewarded?
- Upon what specific criteria will income partner or Of Counsel be elevated to full capital equity partner status? How many have made it? How long did it take? How is this determined? What is the downside?
- How do compensation, billable hour requirements and perks differ from senior associates to Of Counsel, income to equity partner status?

In short, being part of the equity partner club at some firm’s means everything and those outside the glorious circle are outsiders. At many firms, Of Counsel and income or contract partners have greater freedom, less bureaucratic and administrative responsibilities and do as well financially as equity partners. Since the number of non-equity partners is increasing, find out exactly what’s in the title and what impact that designation will have on your practice, job stability and compensation. Whatever your goal, due diligence should include not just what your title is to be, but exactly what it all means – today and tomorrow.

Sandford A. Lechtick is president of Esquire Legal Search Consultants, a Los Angeles based legal search firm. Mr. Lechtick specializes in mergers, acquisitions and partner placement. E-mail address is: sandy@esquiresearch.com