



How to Hire a Legal Recruiter for Your Law Firm: How Law Firms Recruit Attorneys Using Legal Recruiters

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ATTORNEY SEARCH

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Summary

This article discusses many of the questions most often raised by law firms about their search firm relationships. There are very few "right" or "absolute" answers to questions about search firm relationships.

Over the past several decades, lateral hiring by major law firms has gone from being unusual to a routine event. In many of the nations' largest firms, more than half of the partners and associates are lateral hires. When mergers, group movements, and individual lateral hires of partners and associates are fully accounted for - lateral hiring may be a more significant force in law firm life than entry-level hiring. There is no reason to suspect that this trend will change. As law firms move through this era of national growth and consolidation lateral hiring will become an even more important part of the recruiting and development picture.

Nevertheless, lateral hiring is often organized in a rather haphazard and incomplete fashion. While law firms are familiar with the normal rituals of 2L on-campus-interviews, 2L summer programs, and entry-level associates - which have developed many fairly logical and consistent systems and practices to handle these - lateral hiring is more of a

smorgasbord. Within the same firm - across offices and departments - one may find many approaches to lateral hiring.

The models for administration differ. In some firms, lateral hiring is centralized, and a firm lateral hiring partner and his or her administrative support team manage the entire process, including search methodology, defining a need, resume review and due diligence, interviewing, and offer decisions. In other firms, the process operates at a department or office level. While there is room for disagreement, the latter model can result in a system where inconsistent standards are applied for lateral candidates.

Alternatively, some law firms, especially larger ones, often use search firms that specifically look for lateral candidates who have the right qualifications. These legal search firms do charge fees, but can be very helpful in finding highly qualified candidates who meet the law firm's needs.

1

What Are the Industry Standard Fees Paid to Search Firms?

Most search firms charge a base rate of 25% of the placed lawyer's guaranteed base cash compensation. The potential limitations on this include capped fees for partner placements - the law firm may wish to set a maximum fee for the placement of any lawyer. This item varies widely from market to market, but capped fees can be negotiated for the placement of groups of lawyers where only the lead lawyer has substantial portable business. While some law firms have tried to push the fee paid down to 20%, the law firm gets what it pays for at some point. If your competition is paying more, you may also have to pay more to get the level of service required.

Caps and limitations vary widely, but they often are imposed on a maximum number of lawyers in a group for whom a fee is payable or the maximum amount of fee per attorney.

Executive search firms, which place senior executives with corporate clients, tend to charge substantially more than legal recruiters - typically 30-33% of base compensation. And they work only on a retained search basis. The best in this field are truly spectacular, but I am not certain whether they provide sufficiently better service to warrant the substantially higher fee. *Recommendation: interview several search firms for an assignment and negotiate a competitive fee.*

2

Are Search Firm Agreements Oral or Written?

The wisest course of action is to have a written search agreement that spells out the obligations of the search firm and the law firm—including everything from fees to guarantees to solicitation/poaching issues. Until and unless the economy goes into another manic boom, law firms will have the upper hand in negotiating search firm agreements. The best search firms will work for the long term and value the client relationship. They will not micro-manage negotiation of the search firm agreement.

There is something to be said for old-fashioned ways of doing business. My first client — a leading Los Angeles firm — does not have a search agreement and simply pays off the invoice of the search firm at a standard industry rate. They keep it simple, pay promptly, and in general create a terrific law firm/search firm relationship. To protect against problems down the road, I recommend that law firms have written agreements with their search firms.

3

Do Law Firms Involve Search Firms in the Law Firms Events and Activities?

The answer here is usually no. But one area where law firms could improve the working relationship with search firms is to let the search firms meet with the partners responsible

for the search. An hour in a conference room talking about practice areas, growth, plans for the future, important issues, preferences for candidates, and other matters lets the search firm work far more efficiently on your behalf. The search firm has far more credibility with the candidate when it can speak knowledgeably about all of the questions that surface early in the candidate/search firm dance. If a recruiter understands the partner running the search, the recruiter will be better able to deliver candidates who meet the firm's needs.

Sometimes law firms and recruiting coordinators are a bit overly protective of the partners in the firm and do not want to provide headhunters access to the lawyers responsible for the search. This overprotectiveness is counterproductive. As a side note, if you work with search firms on an exclusive or time-limited exclusive basis, you solve the problem of having several different search firms visiting with the partners in the XYZ group. The bottom line: the more information the search firm has about questions that will come up early in the process - the better it will be able to meet your needs.

Over the long run—as you develop relationships with great search firms — they will become more familiar with issues of fit and assimilation and be better able to submit resumes of lawyers who are likely to succeed. It is hard to "sell" a law firm and one of its groups without knowing the people, the intangibles, temperament, style, etc.

“It is also important to discuss 'bad news' or 'baggage.' Law firms may struggle with issues of attrition which lead to the need for lateral hiring.”

It is also important to discuss "bad news" or "baggage." Law firms may struggle with issues of attrition that lead to the need for lateral hiring. The firm may have taken the proverbial bath in the media or have been tagged by the professional community for criticism that is unfair. Whatever the case, it is a good idea to talk about serious issues with the search firm. Otherwise, its recruiting efforts on your behalf are DOA. The toughest part of the search process is getting the superior high performing candidate to agree to put his or her toe in the water. Often a search firm that can handle tough questions capably at the initial stage can be far more efficient than a search firm that has to be unresponsive to the candidate's concerns.

4

How Can Law Firms Stop Legal Recruiters from Poaching Their Lawyers?

Poaching of lawyers by search firms is, unfortunately, widespread. Less scrupulous search firms will have little hesitation about trying to recruit lawyers from firms where they have placed other lawyers, notwithstanding fee agreements prohibiting this conduct. It is hard to detect poaching, but loyal partners and

associates involved in lateral or entry-level recruiting often hear of poaching efforts—either directly because they receive the calls or indirectly

from their colleagues. The best ways to avoid poaching are to hire only reputable search firms, include anti-poaching paragraphs in your agreements, stress the importance of

this when meeting with search firms, and make it clear in the professional community that you are serious about protecting your interests. Poaching is, regrettably, one of the most widespread problems in the area of legal search. Many search firms try to place lawyers in the front door while at the same time recruiting other lawyers out the back door. This unethical practice is as offensive as it is inappropriate. An agreement should include the following provisions:

Search Firm will not accept any search engagements for [name of practice group] partners for the Los Angeles office of any other law firm until the Search is completed. Search Firm is not presently working on any engagements involving the placement of employee benefits and executive compensation partners for the Chicago office of any other law firm.

Search Firm will not recruit, contact, solicit or work with any Law Firm attorney with respect to other employment opportunities so long as this Agreement is in effect and for a period of two years after the conclusion of the Search.

Law Firm understands that Search Firm cannot, because of existing client and retained search relationships, solicit, contact, or recruit lawyers from { list of law firms }.

These provisions prohibit poaching of your lawyers and provide exclusivity. In other words, the search firm will only work on your behalf in this practice area for the duration of the search — thus providing the focus you require. It will also help outline the law firms where the search firm cannot solicit/recruit lawyers because of fee agreements with other law firm clients.

Poaching arises in many contexts—from the subtle to the blatant. Some of my favorite anecdotes from the recent past include the following:

- a search firm on the East Coast where the lead recruiter uses a phony name when recruiting lawyers but another name when working with law firm clients;
- a search firm that faxed back to its law firm client the resumes of three of its lawyers that it was trying to poach ("no thank you, we don't pay for recycling");
- a search firm that openly and notoriously solicits lawyers from three law firms whose chairs or recruiting directors endorse the search firm on its website (candidates are told falsely "the law firm doesn't have a problem with us doing this, but let's keep it between you and me");
- a search firm that hired a runner to ferret his way past main reception in a client law firm to leave business cards on the desks of a targeted lawyer; and,
- a search firm that called a placed partner one day after the six-month guarantee expired to see if she would move to another firm (while technically permissible it sounds like a cousin of churning under the securities laws).

Enforcement of the non-poaching agreement is relatively straightforward. At a minimum, if this has occurred, stop working with the search firm immediately. If you have fees currently in process, hold the fees. Send a letter to the search firm— preferably signed by your hiring partner. If you want to be more aggressive, you could include a recapture clause. In other words, the law firm could require the search firm to refund fees paid in the last X months if solicitation has taken place.

Caution - It is highly unlikely that you will want to litigate or arbitrate with a search firm or involve one of your current valued lawyers in a swearing contest about solicitation and poaching. But a substantial agreement gives you leverage and the option to be more aggressive if the search firm violates the agreement. And, if you have fees pending to the search firm, you have substantial leverage over its current and future conduct. Poaching and soliciting are not issues that should arise when working with the best search firms— which understand that the interest of the law firm client always comes first.

5

How Do Legal Search Firms Find Candidates?

Search firms use a variety of tools to find candidates. There are merits and limitations of each model. But it is worthwhile asking a search firm how it is going to find candidates for any search.

- a. Online advertising and resume databases**
 - A significant number of recruiters advertise in sites like LawCrossing.com and post jobs

and review resumes from this site. Job posting distribution services like Gig.com will often post a legal employer's jobs on 500+ sites, virtually blanketing the market.

- b. Databases** - Search firms use Martindale-Hubbell, Law.net, LinkedIn and Corporate Counsel Directory (Aspen Law and Business). These permit an almost limitless variety of searches including college, law school, zip code, specialty area, professional associations, etc.
- c. Law firm websites** - Good headhunters will know where the intense competition resides. They can easily review target bios and background information at a website to refine their first electronic cuts on Martindale.
- d. Existing contacts** - A good search firm will have an array of contacts inside and outside private practice. These include personal and professional friends, previous targets in searches, and others. Often the most fruitful way of identifying targets who are approachable and interested in moving is to speak with friends and contacts in the industry.
- e. General Counsel contacts** - In-house lawyers are often excellent resources for identifying partner and associate level targets for any search. As clients of law firms, they have a terrific real-time top-down view of a lawyer's effectiveness. They understand the significant, discrete, reciprocal relationship they have with select headhunters.
- f. Referrals from out of town search firms**
 - Most major search firms have referral arrangements with peer search firms in other major markets. These are useful for

passing along candidates who want to move and for providing market intelligence that can be helpful in local searches. Ask your search firms where they have referral relationships.

g. Candidates "Already in the House" - A

good search firm will have many strong candidates already in its database. An excellent search firm cultivates candidate contacts for many years. Patience is a virtue that is rewarding to the search firm, the candidate, and the law firm client.

h. Today's law students are tomorrow's customers -

The best search firms are often invited to present programs at leading law schools on many subjects (and produce information on various law schools). BCG Attorney Search produces an annual report about the top 50 law schools. See, for example: https://s3.amazonaws.com/bcgsearch/pdf/BCG_Law_School_Guide_2016.pdf

i. Referrals from placed lawyers - Excellent search firms find their placed lawyers to be great sources of referral business. Placed lawyers can know who in their former firm is strong and approachable.

j. Media/directories and other advertising

- These tools are useful regarding publicity and exposure, but they do not yield immediate returns on an existing search. Most search firms will tell you that candidates responding to directories are not the strongest.

k. Search firm websites - This can be a useful tool. Search firms often have rosters of listings/assignments at their website so candidates can learn what is available.

l. Referrals from local search firms - Often search firms within the same city may have a different focus concerning candidates and law firm clients. They can be valuable sources of referral business. These referrals are more likely to be among boutique search firms rather than large multi-office firms. But a search firm with a good network can be as or more effective than a large multi-office recruiting firm.

m. Cold calling - Yes, I put cold calling second to last. It is akin to telemarketing or mass mailing. Often it takes 50-100 calls to yield one decent candidate. In a healthy economy—or an economy in a recovery mode—the typical 2-5 year lawyer in a warm or hot practice area may receive 50-100 cold calls from headhunters each year. Usually, the best candidates materialize through the other tools. However, cold calling can provide candidate flow. When the calls are carefully targeted and made by someone who is effective, the yield can be acceptable.

n. Using an approved list to control

unsolicited submissions - Rather than drown in submissions that you do not want or need, a law firm can develop a list of approved search firms. At a minimum, you can insist that a search firm signs your search agreement before presenting candidates. Yes, it is possible that a search firm you have never worked with (or heard of) may submit a fantastic candidate. When that happens, put them on your approved list. Consider putting a notice on your website that search firms must have an agreement on file with your law firm before submitting candidates. You pay the fee, you should be holding the leash.

6

Can the Law Firm Website Be an Effective Complementary Recruiting Tool?

Yes. The website can be a powerful tool for educating potential candidates about the firm and available opportunities. Whether it is used to encourage direct submissions or as a background information tool for candidates presented by search firms or other methods, it can educate and inform candidates. However, listing available positions can mean your firm becomes the spillway of Hoover Dam—catching the flood surge of resumes that will result. Ninety percent or more of the resumes posted will be from candidates with inferior or unacceptable credentials. All of these will have to be added to the firm database for tracking purposes. Ask yourself whether this is the best use of your time and whether you will receive top notch candidates through open posting.

7

How Can Law Firms Interview/Evaluate a Legal Search Firm?

This terribly important exercise is often overlooked. In a hot economy, some search firms will resist your efforts to learn about their work. Others are long on adjectives but short on nouns. For the law firm that is going to be writing checks for \$50-\$250,000 a placement or more, you need to know more about your vendor. Yep, some will call themselves "executive search consultants." Others prefer the moniker "headhunter." But

no matter what name is chosen, a headhunter is another vendor, like the folks who sell you computers, provide office supplies, or act as claims administrators for fringe benefit plans. The following are questions that you should ask any search firm:

- Who will work on my matter? What is their experience? How much of their time will be devoted to my search?
- Does your search firm have any conflicting obligations—i.e., are you also looking for litigators for 5 of my major competitors? If so, how do I know if we are getting fair and full treatment from the search firm?
- What is your search firm's block list —i.e., what firms are "hands off" because of pre-existing search agreements? (This is not proprietary information. It is something you must have.)
- Name 5 law firm clients we can call about your work.
- What is the average longevity of your partner and associate placements? How long do people stick around? (If the search firm does not know, encourage it to get a calculator and a pencil. Again this is not proprietary information.)
- What is your track record on the placement of women and minority lawyers? (In this diversity-conscious era this is critical data.)
- Identify your experience in the relevant field. (If the search firm has not worked in your market in that practice area, there is a lot of ramp up time required.)
- How conversant are you with leading players and firms in this field?

- What is your search strategy? How much of your effort is cold calling? What other tools will you use in finding candidates for us?
- Ask a search firm how it would execute a particular search. It's worth going through a dry run of how it identifies and contacts prospects. Compare the search firm's skills and experience with that of the other firms competing for the same assignment.

A good search firm will volunteer its strengths and its limitations. Not every search firm can complete all assignments. For example, a search firm may have deep specialized experience in one area— such as intellectual property— but not have comparable experience in labor & employment. A search firm may be preoccupied with overlapping or conflicting searches that make excellent execution of your search impossible.

- Always ask a search firm where there are conflicting assignments that make the execution of your search either a low priority or impossible.
- Similarly, ask a search firm for its "block list." If your preferred search firms cannot handle an assignment, ask them for a recommendation of other firms that could handle the assignment. Their information on strengths of competing firms may be very useful. Market intelligence from your colleagues in other firms can be just as useful. Keep the lines of communication open. We have a template for candidates and law firms listing other recommended search firms for situations where we cannot work with the firm or the candidate. It's something we're pleased to do as a matter of client service. As for those not listed on that

template, I defer to my good friend Forrest Gump, "that's all I have to say about that."

Any reputable search firm has client firms where it cannot recruit or solicit lawyers. If those are the firms where the likely targets of your search will be, the search firm will have to take a pass. A search firm that claims it has no block list is automatic first runner-up for the Fibber McGee contest. You can be confident that a search firm that tramples over other clients will someday trample over your lawyers.

8

How Can Legal Recruiters Work with New Offices/New Practice Group Leaders?

Working with new offices and new practice group leaders is one of the most significant challenges. Most national law firms are opening new offices, merging with other law firms, and acquiring new practice groups. Law firms strive to communicate an image of "a single seamless national firm that gives autonomy and independence to its practice group and office leaders." This is a laudable admirable objective. In practice, it is a bit more complicated. For those involved in recruiting, the following challenges, among others, are presented:

- Integrating new offices and lawyers into your practices and policies.
- Maintaining standards on grades, schools, and practice experience that are as consistent as possible, but taking into account market variations that most firms face in particular cities. (For example, you may not be able to apply the same standards

in New York, where you are one of 150 national firms, which you use in your original office, where you dominate the regional market for new and experienced lawyers).

- Dealing with the people issues of managing new colleagues in other offices without them feeling as if they are on a 1,500-mile leash.

For those in recruiting, please understand that you are not alone. These issues are faced daily with questions about client marketing, conflicts, compensation, practice management, and every internal administrative issue imaginable.

9

What Makes Search Firms More Responsive (but Does Not Cost a Dime)?

Sensing that we have permission from the court to be candid and direct, we'll be blunter than a 500-year-old chisel:

- **Make sure that your search firm bills are processed in a timely fashion.** In some law firms, they tend to sit on the bottom of that pile—whether in recruiting or more likely in the accounting department. Most search firms are small businesses, and an agreed upon payment within the 30 days helps. A lot. Keep a note on your desk to confirm that invoices get processed. If there is a delay, let the search firm know and bug that person who likes you in accounting.
- **Let a search firm know if a search is "old," listed in multiple places, or somehow a troubled or difficult search.** If there is an issue in your Real Estate department—rapid turnover, loss of partners, whatever— tell the

search firm at the outset. Almost all problems can be handled, but if they pop up without warning the search firm can't do its work.

- **Consider time restricted exclusive searches—you will get far better results.** When a law firm says "we have six search firms working on this" they are kidding themselves. They are offering a confused and diluted message to candidates and leaving the search firms without motivation. The better the economy gets, the more important this becomes.
- **A lawyer is not a sandwich. Let the search firm spend an hour speaking with the partner in the relevant group.** The search firm will be far more credible when approaching candidates and will be able to sell and match candidates more effectively than if it is only working off a listing or a website description.
- **Let the search firm know the eccentricities or wrinkles to the assignment.** The group may have preferred firms, preferred schools, ranges of skill sets, or types of personalities that they prefer. It helps to know that and reduces the presentation of unacceptable candidates.

10

What Type of Legal Search Is Best? (Contingent/Retained/Exclusive/Multiple Listed)?

There is no one right answer. It is, however, important to select the type of search that best meets the need of the firm. You need to avoid the impulse to do what you always do (whatever that is). Think about what works, and why. Consider the following:

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- **For broad-based "evergreen" searches—e.g., a large law firm that has continuing needs in large practice areas—a variety of tools may be necessary to generate the quantity and quality of desired candidates.** It may make sense to list openings at the website and to engage several search firms.
 - **For more narrow searches—e.g., a smaller department with a limited need—it may make sense to use a contingent fee search firm on a time-restricted exclusive.** Make sure that the search firm is looking only for you in this practice area and give it a reasonable time to produce candidates.
 - **60-90 days should be enough in most practice areas.** Of course, as discussed elsewhere, you will want to know where the search firm is getting blocked and what experience it has in this area. If the block list precludes most of the places you'd like to go hunting, find another search firm.
 - **For the occasional red-hot specialized search—i.e., an E.E. in the I.P. area (senior associate or partner with portable business)—it may be wise to work on an exclusive basis with a search firm with a longer period of exclusivity.** If it is not mutually exclusive, you run the risk that the search firm can and will present candidates wherever the candidate is interested. There's nothing illegal, immoral or fattening about that. It just means that the time of the search firm is not focused on the law firm – the search firm is being driven by the candidate – something which is antithetical to a client focused search. Again, you will want to know the search firm's experience in the area, whether it can have a peer-to-peer conversation with candidates, and its block list.
 - **For partner searches of almost any kind – law firms should select a search firm with experience placing partners (preferably in this area) and make the relationship exclusive.** Pay attention to the block list and conflicting engagements. Notice the continuing thread. Are you getting the undivided attention of the search firm in this area?
 - **Law firms frequently assert "we have six of the best search firms working on this."** No, you don't.
 - **You are listing a search with multiple search firms that are working the field for other law firm clients at the same time.** If you wonder why after six months candidate traffic is paltry and poorly credentialed, this is probably the reason why. A mutually exclusive relationship offers sufficient incentive to the search firm.
 - **When you consider the use of media placements, website listings, bounties, and referrals from clients and contacts, do a careful evaluation of whether you think this will yield the candidate traffic that you require.** It may well do so. I know that a law degree empowers all hiring partners and group heads to do everything from neurosurgery to tuck pointing, but the highest and best use of the time of a firm's partners is probably practicing law. You probably would not put "for sale by owner" on the front of a \$10 million house, for sound reasons. You probably should not rely too heavily on this tool.

11

What Information Does a Legal Search Firm Need for a Lateral Partner Search?

Firms are often tempted to assume that they simply need to put a lamp on and laterals will come running. In an era where scores of national and local firms compete for lateral talent in most major markets, the answer is often not so simple. You will earn faster and greater rewards from a search if you equip your search firms with the following information.

About the firm in general

- Basic demographics about the firm and office including recent growth at the partner level and recent promotions to partner.
- The number of laterals hired in the last few years, office-wide and in the relevant group.
- Firm revenue and income, since most of this information is now widely available.

Partnership, Structural and Financial Information

- **How are laterals treated on arrival - income partner, stipend partner, equity partner, contract partner, etc.?** Every firm has variations, and the candidate will want to be comfortable with your system. The time when one is eligible to be an equity partner and "go on the points schedule" is a significant issue and one where policies vary widely.
- **Systems for draws, distributions, capital requirements, etc. There are wide disparities among firms as to each of these.**

For example, some of the nation's 100 largest firms still have no capital requirements, and a few have no partnership agreements. Others have systems more complex than a Russian novel. Your search firm should be able to answer these questions up front.

- **Compensation—again wide variations exist.** Some firms adjust compensation annually, others do it only every 2-3 years. Some firms disclose all compensation to all partners. Others disclose it to only a tiny group of partners. At other firms, the information is "available" but cannot be copied. A final variation is a disclosure of "bands" of compensation without naming compensation of individual lawyers. Your culture may differ from that of the new partner. It's worth communicating about this.
- **Firms' practices on due diligence in partner lateral hiring vary widely.** The search firm should be familiar with the information that will be getting requested and be able to guide the partner so that the extent or nature of the information sought does not upset the appletart.
- **When conversations are at an advanced stage for more senior partners or groups of lawyers who are joining the firm, more detailed information may be requested.** This information may include "information on loans to the partnership (and whether they are recourse or non-recourse)," "the liability of individual partners for real estate or equipment leases," and other issues.
- **Two other areas where firm practices differ widely are "funding of marketing expenses" and retirement accounts.** At some firms, partners are given a budget for their

marketing efforts that is set on a partner-by-partner basis or is a percentage of their targeted compensation. At others, it is borne by the firm and expenses are booked and approved by department or office heads. When considering partners with established or growing practices, it is important that everyone is on the same page as to how these expenses get managed.

- **Retirement is a complex and important area.** There are still some firms with old fashioned vested retirement accounts that may have substantial unfunded obligations. At most firms, partner's retirement funds are established and managed by the individual partners.
- **Retirement ages – this is tough and is changing rapidly.** Firms have different policies on mandatory retirement ages, exceptions to the policy, and the right of the firm to force out partners at a certain age based on a decision by management. Do not assume that the incoming partner's system and expectations are the same as yours.
- **Business credit is one of the most important and complex issues in any law firm. Some firm's systems are as detailed as a trust indenture—others are decidedly informal yet no less complex.** In the era of the rapidly expanding multi-office national firm, the potential partner will want to resolve this issue early in the discussions to determine if split billing credit issues will arise or whether any portion of his or her client base will not be able to move to the new firm for any number of reasons. The headhunter does not have to get well-versed in decades of history and lore, but the discussion should be transparent and reciprocal.

- **The catchall concern - every firm has some unusual trait (charming, yet eccentric) that may become a stumbling block in discussions.** Whatever it is, you are better to confront the issue early in talks with candidates so that it gets handled in a way that is least disruptive to the lateral hiring process.

12

What Information Does a Legal Search Firm Need to Know for Lateral Associate Searches?

The law firm should share the following information with the search firm so that it can motivate candidates to submit their resumes, interview, and accept offers—the more transparent the process, the more effective the recruiting:

- Expectations and averages for chargeable client hours in this practice area and office.
- Any rules or guidelines on hours that impact base or bonus compensation.
- The calendar for compensation and whether they will be given a pro-rated bonus for a partial year.
- Specific base and bonus range information (the assertion that "we are competitive" does not address the issue).
- Any unusual issues such as compensation hold-backs, delays in bonus payments, or other wrinkles that are not visible to outsiders or are somehow unique to your firm.
- Why the firm is in the market—growth, attrition, partners with business who have joined or departed.
- Specific skill sets that are critical to the

positions/specific academic requirements.

- For out of town candidates, the firm's policy on moving expenses, house-hunting visits, when the bar examination is taken (and if time is given to take the bar).
- Vacation—be clear about the expectations, not an open-ended firm policy, but whether the firm encourages associates to take vacation that they have accrued.
- Billing credit/origination policies when a senior associate or non-equity partner generates client business.
- As much as possible about the depth and range of the firm's practice—beyond what is on the website—does the firm have a clear concentration for its client business (e.g., a real estate practice that represents REIT's and does affordable housing but does not represent developers or lenders).
- A recent history of the promotion of laterals in the practice group. Number of laterals in the partnership in this office as a whole.
- Complete information on diversity overall and at the lateral level as to the hiring and retention of women and minorities.
- Any difficult or bad news—trust me, the market knows about this—and a firm must face it head on, whether it is significant attrition of associates, the departure of partners with business, or any other material issue that would affect the morale of a new hire or lawyers currently on board.

13

How Do I Ensure That the Legal Search Firm Devotes Time to This Lateral Attorney Search?

First, the search firm and the law firm must

understand whether the search firm has conflicting engagements—either in this practice area or in a general sense that will delay or impede the execution of the search, and whether the law firm has asked multiple search firms to work on a given project. Any conflicts should get talked about at the outset.

Second, the law firm should ask the search firm who will be working on the search and what portion of their time will be devoted to the search. At some larger search firms, associate searches are handed off to junior recruiters or "callers" you have not met. The law firm should be comfortable with who is handling its matters, just as the law firm's clients want to know how their cases and deals get staffed.

Imagine if you learned that the search firm is also looking for junior litigators for eight other law firm clients and that this is being handled by two junior "callers" you have never met. You would rightly have a low level of confidence that the search would get executed in a timely fashion.

Third, the law firm and search firm should agree on a rough series of time windows during which candidates will get researched, contacted, and convinced to interview with the law firm. If this is an urgent priority for the law firm, make that plain to the search firm at the outset.

14

A Legal Search Firm Is Tormenting Me with Unsolicited (& Lousy) Resumes - What Can a Law Firm Do?

Figuring out what to do about receiving unsolicited resumes is a tough question. It

is possible—not likely—that even the worst search firm in America will someday present an excellent candidate. In the interim, you may be buried by literally hundreds of resumes that you do not want or need—either because there is no need for the type of lawyer whose resume you receive or because the lawyer's credentials are sub-standard. Consider having a form letter or e-mail that you send to a search firm rejecting unsolicited resumes.

15

How Can a Law Firm Terminate a Legal Search Firm?

A polite letter should be sufficient. The search agreement should give the law firm the ability to end the search agreement at any time for any reason. If you decide to part ways with a search firm for any reason, a letter would be appropriate. It needn't be extensive or over the top, but it might say:

"We have determined that we will no longer be using the services of ABC Search Firm for our lateral placements at this Firm. Please understand that, as a result, we will no longer accept resumes of lateral candidates presented by your firm and will not pay a fee for the placement of any lawyer whose resume is presented to the Firm by the ABC Search Firm."

You should consult with your Managing Partner or Hiring Partner to see if a more extensive discussion of the reasons for termination is appropriate or necessary. But if the search agreement gives you the latitude to terminate at will, no further explanation is required. Of course, if a principal of the search firm calls to discuss (or complain about this), explain with care why you have taken this step.

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Is a Limited Duration Exclusive Attorney Search for a Lateral Attorney Sensible? How Should the Law Firm's Interests Be Protected during and before the Attorney Search?

A law firm could give a search firm an exclusive for 2-6 weeks on a given search if it has a high level of confidence that the search firm can deliver superior placeable candidates in that time window. Giving a search firm an exclusive search may be suitable in narrow band searches in some areas. If you find your experiment to be successful, there is no reason you cannot continue it in other searches in other regions. For broad based searches in popular practice areas such as corporate or litigation, you run the risk that you will miss other superior candidates available through other search firms. There is no real downside here if you receive good resume flow from the search firm. A search firm that receives an exclusive should be willing to discount its fee from the industry standard.

17

In What Situations Should a Law Firm Search Assignment to Legal Recruiters Be Listed with Multiple Search Firms?

Listing a search with more than one search firm may be useful in certain situations—e.g., when a firm has significant ongoing needs in a large practice area such as litigation and corporate. Recognizing that any one search firm can cover only one slice of the market, listing the search with more than one firm may give you market coverage. However, understand that when a search firm understands that the listing is with a broad range of its competitors, the search firm may lack the incentive to execute on your behalf simply because the likelihood of being successful is lower.

18

What Role Should the Legal Headhunter/Legal Recruiter Play in Lateral Attorney Candidate Due Diligence?

A search firm can assist in collecting the paper relevant to a candidate submission—resumes, deal sheets, transcripts, writing samples, and the lateral or conflict questionnaire. However, the search firm is probably not best suited to do reference checks or to make other tough evaluative judgments concerning the candidate. For more senior candidates, a partner in the firm and a member of the recruiting office will have to work in close collaboration to compile and review the information required.

A good search firm will be pleased to team

up with you on collecting information and doing whatever is possible to bring the placement home. The search firm views it as part of client service. Again, in a world where a 5th-year associate placement generates a fee of \$50,000 - \$70,000—depending on the market—assistance by the search firm seems entirely reasonable.

19

What Type of Guarantees Should Be Provided by Legal Recruiting Firms for Placed Lawyers Hired Through the Legal Recruiter by the Law Firm?

L.L. Bean has guaranteed all of its merchandise "forever," since the day it sold its first boot. What works for them should work—in a narrower context—in legal search. It is perfectly reasonable to expect a search firm to guarantee its placements for at least year, and perhaps longer when the placed lawyer is a partner or the senior member of a group. A guarantee should require that a search firm refunds a portion (or all) of the placement fee if the placed lawyer resigns or is terminated for cause within 12-24 months after arrival. Instead of a refund, the search firm could be required to find and present replacement candidates.

The two types of guarantee can be combined or used in the alternative. It's a matter of your comfort level—a good headhunter does not lose sleep over the likelihood of refunds or failed placements. You send the best people, look for a long-term fit, and send only those lawyers who are great long-term bets. A question worth asking any search firm is its longevity experience with candidates—i.e.,

how long does a placed associate or partner stay with the firm where he or she is placed? For leading firms, the numbers should be quite comforting. If a search firm does not have a handle on that figure, run for the hills (or your office). Fast. Search firms may fight on this issue, but when fees of \$50-\$100,000 or more are being paid to place lawyers, a guarantee seems entirely reasonable.

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Should a Firm Use an Open-Ended Approach to Lateral Attorney Hiring with Multiple Legal Recruiters/ Legal Headhunters - Website Listings - Associate Bounties - Print Advertising?

There is no easy answer, or one size fits all approach to this question. The tools available for legal search are evolving and overlap to some extent. For areas where a law firm has ongoing needs in a large practice area, an open-ended approach to lateral hiring may be most productive. For example, a prominent litigation firm which regularly adds 5-10 laterals a year may find it useful to consider many sources of lateral talent including local or national search firms, referrals from associates, submissions from the website, and other sources.

For an area that is a small niche practice area, an exclusive (with a time limit) to a particular search firm may be the most useful tool. For a niche or hot practice area that is generating a lot of lateral activity from your competitors, you may be wise to consider exclusive/retained arrangements to obtain the level of focus and attention required. The best search firms are flexible on the arrangements under

which they work with law firms because they believe that a multi-faceted long-term relationship is far better than a drive-by-shooting which generates one fee.

21

How Can a Legal Attorney Search Firm Improve the Quality of My Day to Day Life at the Firm?

The relationship should be rewarding and reciprocal. A search firm should be pleased to speak with its law firm clients about any lateral or entry-level hiring issue under the sun. Excellent search firms understand that this dialogue is mutually beneficial and professionally rewarding for all those concerned and are eager to share perceptions, advice, and observations about the market. For telephone contact and brief meetings from time to time, this information should be f-r-e-e. Period. For longer project-based consulting, search firms are pleased to propose reasonable fees that provide value to the client. On the front-lines of lateral hiring, the search firm should do everything possible to make the flow of paper, people, and decisions fast and pain-free. The possibilities include the following (depending on your style, staffing, and preferences):

- Managing contact, appointments, and other issues with the candidate—you already have enough to juggle.
- Providing information in the format that is easiest to move around your firm. To this day, I have law firm clients that prefer old fashioned hand-delivered packets of candidate information. They want one to file, one to share, and one for emergencies. Some other things requested include: e-mailed

PDF files containing all of the information about candidates in one file, background documents, bar admission cards, transcripts, writing samples, or completed questionnaires.

- Providing guidance on what is necessary to conclude the search successfully. Some candidates crave attention and inundate firms with questions—others prefer to be left alone. A good search firm will know how to handle candidates.
- Providing candidate feedback after preliminary or detailed interviews so that the law firm knows whether it is likely to succeed with this lateral.
- Tendering only candidates who are highly likely to get an offer, any effort by the search firm that reduces the time the law firm has to spend on unsuccessful candidates provides real value to the law firm.

22

What about Law Firms Offering Associate Bounties to Get More Lateral Attorney Candidates?

At the peak of the last boom, many leading national firms began to pay bounties to their associates for referring lateral lawyers. The amount paid is typically a fraction of the fee paid to a headhunter: \$5 - 10,000. In practice, results are mixed. Some associates will have excellent judgment about the strength of their friends' credentials and the likelihood of a good fit with your firm. However, some remarkably

talented lawyers have astonishingly poor judgment in the lateral hiring arena. When a feeding frenzy of lateral hiring is in going on, you can run the risk of irritating your lawyers if you don't act on their friends' resumes. You also must decide how to control the danger of a failed placement. One leading firm waits to pay out the bounty until the lateral hire has been on board for nine months. Another firm divides the payment into two parts—the first half payable on arrival, the second half in six months. Surveys of associates report that they view this benefit as terrific. And, to be fair, most firms pay out relatively few bounties. If firms can manage the risk, it may be worth keeping such a program.

Beware the associate who enters into sub-rosa arrangements with his or her friends to divide or kick back a portion of the associate bounty. Taking part in kickbacks creates some interesting tax issues for the associate, and may well violate the associate's fiduciary duty to the law firm. I'll leave that to the ethics gurus. But at some point, a bounty program with kickbacks can cause some strange motivations among those who participate. Firms could ask a related question about other referral issues—ranging from referred client matters to bounties for summer associates. The possibilities are endless.

Should an associate be a lawyer or a grifter? A scholar or a Jerry Maguire? Review Glengarry Glen Ross, speak with Kevin Spacey, Al Pacino, Jack Lemmon, and Alec Baldwin and get back to me in the morning.

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