

PERSPECTIVES

Strategies to Manage Your Law Firm's Professional Liability Exposures

MSP L 09/04 "Practice Management Strategies: Part 7—Lateral Hires"

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Practice Management Strategies Part 7 Lateral Hires

Be aware that bringing on lateral hires or lateral partners almost always significantly increases your professional liability exposure – Depending on the circumstances, lateral hires may increase your professional liability exposure in the following ways:

- **Acrimonious departures** – If a lawyer leaves a firm and is trying to bring clients with her, more often than not there will be some level of “bad blood” and strife between the lawyer and the former firm. Often the former firm will refuse to turn over clients or otherwise do all it can to impede the departing lawyer’s efforts.
- **Clients left in the lurch** – Client legal needs often go unmet while the lawyers wrangle about which firm is going to serve the client.
- **Ethical issues** – Issues such as a lawyer’s duty to advise clients after he has left the firm, the right to contact clients after the lawyer has left the firm, and the right to bring clients to the new firm are all replete with thorny and troublesome ethical issues.
- **Conflict of interest potentialities** – If you hire a lateral lawyer whose client base consists of one or more clients whose interests are adverse to your current clients, a plethora of conflict situations may be present.
- **Professional liability insurance issues** – Your professional liability policy could possibly end up

paying claims based on the lateral hire’s activities at her previous law firm.

Perform a complete and rigorous background check before extending any offer of employment to a prospective lateral hire – It is critical to hire only strong, problem-free lawyers as lateral hires. A thorough background check should include thoroughly checking and verifying all past employment shown on the resume, credit or financial checks, discussions with multiple references and past clients, a check for any Bar disciplinary actions, and multiple independent interviews conducted by several senior people at your firm.

Perform an exhaustive conflicts check prior to extending any offer of employment to a lateral hire – The goal here is to determine whether the prospective lawyer represents clients, or was privy to cli-

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ent confidences at his previous firm, that will be adverse to the interests of any of the clients you currently represent. It is most advisable to attempt to identify and flush all of those out in advance, even though it may be difficult to do so based on any ethical inability to discuss ongoing representations and other such considerations.

If permissible in your jurisdiction, you can ask the prospective hire for a list of her former and current clients. You might also produce a list of the names of the adverse parties in your current cases, and ask the prospective hire to review that list. Since the act of hiring could create an “irreversible” conflict if the background circumstances are in place to create the actual conflict, it is critical to try and identify any potential conflicts in advance of making any hiring decision or any offer of employment.

Additionally, you should determine whether the prospective hire has any non-compete agreements with his former firm, or agreements to split fees with his former firm if he leaves and takes clients with him. While such mechanisms may not be legally proper, at a minimum they usually create a lot of headaches.

Understand that professional liability insurance considerations should be paramount in any lateral hiring decision – In the current professional liability marketplace, law firms may have an option to purchase a coverage extension, commonly referred to as “lateral hire” coverage, which will expand coverage under your policy to apply to claims which emanate from one or more designated lateral hires’ activities while they were associated with their previous law firms. This means that your policy’s coverage and available limit of liability can be exhausted by claims emanating from some essentially unknown, unrelated law firm.

Furthermore, if the previous firm has dissolved, there may be no coverage in effect and the prospective lateral hire may have a very strong desire for you to purchase “lateral hire” coverage on her behalf to cover her past activities. Many firms will not even consider doing this as it is very treacherous, since you are allowing your insurance to apply to unknown exposures. As such, “lateral hire” insurance coverage represents the “twilight zone” of professional liability insurance underwriting and insurance coverage.

If you are considering purchasing “lateral hire” coverage, secure a written and signed statement from the prospective hire which states whether the lawyer has had any past professional liability claims, and most importantly, whether he is aware of any foreseeable or possible future claims based on any of his past activities.

In advance of making any offer to hire, or as a specific term of the offer to hire, address in writing what, if any, lateral hire coverage will be provided to the newly hired lawyer. Necessarily, you should check with your professional liability insurance agent in advance to see if lateral hire coverage is available to you, and if so, at what premium charge.

If you end up purchasing lateral hire coverage for a new hire, try and have the new hire bring along her previous firm’s professional liability coverage information. This should include the name of the carrier, limit of liability, and deductible amount.

If a claim arises out of acts that your new hire committed while she was working at her previous firm, having this information on hand can facilitate reporting of the claim to the professional liability carrier for her previous firm. Assuming that her previous firm is still in existence and carries professional liability coverage, she would be covered under that policy as a former employee and coverage for the claim should be available under that policy.

Avoid becoming a “revolving door” for lateral hires – It is always inadvisable to become a revolving door for lawyers, support staff, and clients. However, it is particularly hazardous to have lateral hires joining and leaving your firm on an ongoing basis. Such a situation eventually will result in conflicts problems, ethical concerns, problems relative to clients, and a poor image for the law firm.

If you are going to bring on lateral hires, the key strategies are to make “good hires” and to then do what it takes to keep the lawyers on staff. Effective communication and clear expectations are necessary to help the lawyer assimilate into your firm. The common denominator when laterals do not fit successfully is a culture clash in the sense that the particular lawyer is unable to successfully fit into your firm’s existing culture. Prior to hiring, it is important to try and assess whether the prospective lawyer will be able to integrate easily and successfully into your firm’s existing culture. ✨

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