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## **Lateral Law Firm Partner Movement in This Winter of Our Discontent**

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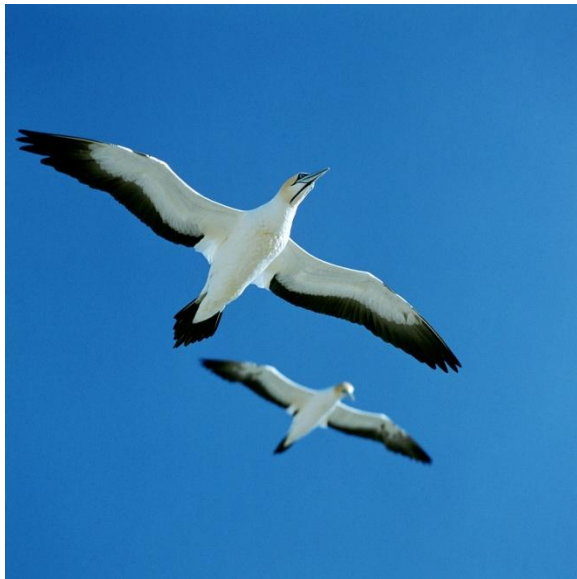
*With the lateral market heating up at year end, a quick reference guide for essential due diligence for law firms looking for successful lateral partner candidates and for the candidates themselves*

Not quite like the precisely predictable annual [migrations of the swallows of Capistrano](#), this winter will mark a greater movement than usual of law firm partners as partners are likely to seek lateral moves in numbers not seen in many years. [As recently reported by Citibank](#), many law firms are looking for lateral partners to meet recently declining revenues.

Many partners are looking for lateral opportunities because of the opposite side of the same coin: Declining profits per partner are taking large chunks of change out of their own pockets and, accordingly, they are looking for greener grass in other pastures.

Added to this are serious disruptions at many firms caused by law firm partners who have engaged in various departures

from acceptable behavior, such as one law firm partner who is alleged to have engaged in improprieties resulting in a [\\$32mm loss to his law firm](#); another law firm which appears to be exposed to [clients' claims arising out of improper tax shelters](#) promoted by a former partner; and [the recent tragic tale](#) of a BigLaw partner who allowed a client to launder some \$19,000,000 in apparently improperly obtained funds through his firm's escrow accounts. Some of these claims may be covered in whole or in part by insurance. But these events are, in the very least, major disruptors, since nobody enjoys his or her income reduced by another's improprieties and management diversions in dealing with the attendant issues keeps management's hands off the till, which must be held steady in these stormy waters.



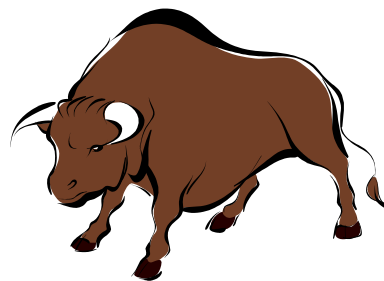
An increasingly significant additional disruptor is the disproportionate number of AmLaw 200 firms with rock solid middle market practices who are aspiring to elbow their way to be among the rarified few at the very top of the food chain whose practices involve the “bet the company” cases where \$1,000+ hourly fees and waves of assault troops are deployed,

without particular reference to the cost of the particular project. These middle market law firms often have a fair number of productive partners with commendable and substantial practices of many years standing, but their middle market practices, while yielding many millions of annual fees to the law firm, simply do not fit the firm's aspiration to serve only the titans.

The final disruptor is the fee pressure imposed on law firms in general, as [the legal spend for outside counsel continues to diminish](#) and, at the same time, [competing vendors](#), not always traditional law firms, compete for pieces of the diminishing pie. More significant practice areas have become commoditized, putting more pressure on firm profitability.

***The short fact is that there are more partner resumes floating around than in many, many years. And all of these folks are looking for places to land the day after their final distribution for 2011 clears.***

Hiring lateral partners falls someplace between a high end [art auction](#) and a [cattle auction](#).



While I have previously discussed the [due diligence essential for a law firm](#) to identify a lateral partner as well as [the due diligence in which a lateral candidate should conduct](#), given the likelihood of more lateral movement than in many years, there are some essential basic points that require repetition and emphasis.

1. **Client conflicts.** After the initial meet and greets, the lateral should be asked to disclose his or her fifteen or twenty largest clients. The law firm should disclose its 100 largest clients. The law firm should obviously conduct a thorough client conflict review. All too often, the client conflict check is left as one of the final steps in the vetting process. Huge mistake. The exchange of client information must be one of the very first steps in the process. And a thorough client and adverse party check should be among the second steps in the process. If a client conflict makes the deal a non-starter, so be it – but this is something easily enough determined early on. There are times when a client conflict is less than obvious, such as when identifying adverse and related parties. I was involved last winter in an unfortunate situation in which a firm spent months recruiting a nine lawyer group, during which all of the disclosures were exchanged and deals were ultimately made. Literally, as the laterals were packing their boxes and preparing to move in the next day or so, the law firm's conflicts department began to input all of the laterals' detailed client matters, only to find that there was a serious conflict between one of the firm's major clients and one of the lateral's large clients. The conflict could not have been discerned by any cursory review of a client list. Yet, the conflict was irreconcilable. The firm was

compelled to withdraw its offer and the lateral had to go back to his management and essentially say “never mind, I think I’ll stay for a while.”

2. **Historical Financial Performance.** As I discussed [elsewhere](#), a thorough review of prior years' performance is essential – both for the candidate and the law firm. Trend lines are of the essence. Has a major client or business segment been lost? Is the graph showing a steady downward, upward or straight line? A guide for a lateral candidate's review of a law firm's financial reports is available [here](#).



3. **Business Plan.** Both the lateral candidate and the law firm should have a business plan and each should familiarize himself or herself with the other and make sure they mesh. Is, for example, the law firm about to embark on a major hiring campaign or is it looking to be acquired or merge with a firm of equal size? If that's in the cards, the firm you will ultimately be working for won't be the same one you are negotiating with.
4. **Responsible vs. Originating**

**Partner.** In reviewing the list of matters a potential lateral partner is bringing, carefully review whether the lateral partner candidate is in fact the responsible partner for the bulk of the work he or she is bringing with him or her. In these continuing [finder, minder and grinder](#) allocations of profits, partners are sometimes wont to overstate their roles. Thus, a corporate lawyer with a close relationship with a client that has a rewarding penchant to engage in litigation, may be receiving a great deal of current credit for the litigation fees generated by the client. But, when the rubber meets the road, the client may well leave a great deal of its litigation work behind under the care and feeding of litigators who have been doing work on particular matters for years. By the same token, an outstanding service partner, who may have been performing the same type of work for particular clients for which another partner may be taking the originating credit for historical imperatives, is often likely to walk away with that client's business, since clients are largely indifferent to "origination" or "responsible" partner nuances. Clients simply prefer to call the lawyer they have known for years and who the client knows will get the job done.



5. **“Why have you decided to leave your law firm?”** Every interviewer asks this question and every lateral candidate has a rote response. The [recent instance](#) of a lawyer joining a new law firm the day before he was apprehended for allegedly absconding with some \$2,500,000 in client funds held in the trust accounts of his former firm, suggests that the response to the question requires more than unblinking acceptance of any rote response.
6. **Prior litigation.** Most, but not all, law firms include in their questionnaire for lateral partners questions concerning prior litigations in which they have been named as a party. In the case of one [disgraced former BigLaw partner](#), who not only had an impressive number of law firms at which he served, he also left a long trail of litigation, most sounding in malpractice, in his wake. I don't know if his last stop, before pleading guilty, asked the question, but if the firm did, it does not appear to have either been fully answered or whether somebody thoroughly

read the answers. Similarly, every lateral candidate should be informed of pending or threatened litigation in which the firm is involved.

7. **Fiduciary Relationships.** Every lateral law firm questionnaire typically asks if the candidate serves as an officer or director of any corporation or LLC. Few ask if the lawyer serves as a fiduciary, such as an executor, guardian or other legal representative of another party. Serving in such capacities, which is not an automatic disqualifier, frequently involves managing the financial affairs of another party, which is not covered by any standard malpractice policy. The firm should obtain a solid understanding of the lawyer's role and impose standard checks and balances to assure that all funds are properly monitored and disbursements subject to a triple set of signatures. In addition, the firm should also be sure it has adequate fidelity and E&O coverage.



8. **Unfinished Business.** I recently discussed the long arm of [Jewel v Boxer clawbacks](#). Under this doctrine, if a firm dissolves, the revenue derived by a partner of the defunct firm as well as the revenue derived from his new firm based on matters begun at his current law firm are assets of the defunct firm. Some mistakenly believe that *Jewel v Boxer* is an aberration of California jurisprudence. It is, for better or worse, good law in [New York](#) and elsewhere. The point is that if you, as a hiring or managing partner have a large pile of resumes of partners from a given law firm and you are hearing troubling news about the financial affairs of that law firm, stand up and take note. Be aware that a lateral coming from that firm, should it fail, will be the payee on your firm's accounts payable schedule for the duration of those matters.



9. **Google.** Conduct a Google search for every lateral candidate and ask about any entry that is of any concern to you. Similarly, every lateral partner candidate should conduct a Google search concerning the law firm and ask the hard questions where appropriate,

10. **References.** Every firm asks for at least three references. I have yet to meet (as I doubt you have) any lawyer who would provide anybody other than one who would provide a reference that might make a mother blush. Dig a little deeper. Seek out former partners and adversaries. And ask the tougher questions. The candidate should ask about the last four or five partners who left the firm and should not hesitate to reach out to them. Sure, there may be some sour grapes, but there will also be some newly acquired wisdom.



11. **Know the Market.** Cattle prices are fixed by the market and are easily [accessible](#). Similarly, there is literally a [bluebook](#) for checking on market prices for fine art. Partner compensation is similarly market driven. A lateral candidate with a known amount of portable business has a fairly good sense of what his or her compensation should be in any given market. If he or she doesn't know, he or she can figure it out fairly quickly (and if you don't know, just call me). Lateral partner compensation bears virtually [no relationship to PPEP](#). If a law firm offers a partner compensation dramatically disproportionate to the market, politely decline and move on. Similarly, a lateral candidate demanding compensation materially above the market is probably not going to be a colleague whose company you enjoy.





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## 12. Practice Integration Plans. I

have too often heard managing partners complain that lateral hiring is a hit or miss proposition. When I inquire about the firm's disappointments, I always ask what the firm did to integrate the lateral partner in to the firm's practice, the response is that the lateral partner was given an orientation to the firm's IT system and was taken to a number of lunches by various partners. I am afraid that this just doesn't do the trick. A practice integration plan is a carefully crafted written plan jointly prepared by the candidate and the firm laying out in detail how the lateral partner will be fully integrated into the fabric of the firm, maximizing synergies, making the lateral and his or her client base a vital organ of the firm, while simultaneously marketing his or her services to both other partners and clients of the firm. Failure to prepare and execute a practice integration plan assures that you will have more misses than hits.

**F**ollow these important steps and you will end up with either an exquisite masterpiece or a prize steer.