

# THE RECORDER

## New Year Brings New Perspective on Lateral Recruiting

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The legal industry is entering a new period, in which the hiring binges and rich pay guarantees of recent years are much more rare. Entering 2016, lateral recruiting will involve more enterprise in the wooing of candidates, and candidates will spend more time investigating firms before making moves. The hiring process will require creativity in pitching to candidates and also in pitching to the firm's executive committee when exceptions are warranted.

When the legal industry largely relinquished a more institutional view of partnership in which clients are owned by the firm entity in favor of a free-agent system, wooing big producers with offers of lush pay guarantees became more frequent. Underlying this shift was the assumption that compensating talent with a significant book of business would be fairly straightforward; producers would simply bring their books and the revenue that went with it.

But attitudes have changed in the wake of Dewey & LeBoeuf's downfall. As the financial crisis was winding down in 2011, the 1,400-lawyer firm based in New York was poaching dozens of top performers away from competitors by offering multiyear, multimillion-dollar pay guarantees. Dewey ultimately couldn't cover them, and that left law firms wary of such guarantees, sparking a shift in direction.

While there still exists a willingness to take chances on talented people, firms are now more careful about bestowing star treatment on big producers without significant vetting and integration, and are investing increased time scrutinizing potential lateral hires. Specifically, they're looking at a potential rainmaker's ability to deliver on promises. They're also looking more carefully at his or her ability to work effectively with a team over the long term.

When firms consider candidates with large books of business, how much of their work can actually be uprooted from their current firm? A certain percentage of it will typically have been integrated into a firm's fabric in the ordinary course of business. For example, a corporate partner may have introduced intellectual property partners to a particular client. Some of that business won't immediately transfer and some must be rebuilt at the new platform. During the rebuilding process, is it appropriate to compensate that producer for what will be, or for what is?

With the exception of certain Wall Street law firms and a few others, most firms are looking to bring in groups rather than individual candidates. The fear is that candidates who are in senior positions will come over believing certain work will follow, only to find that what they thought was theirs is going to stay at their old firm with a particular deputy. Or, if it's a junior lateral candidate, then the work may stay with the senior person at the prior firm. However, if both come together with other team members, there is much more likelihood that the client relationships will, too.

At the same time, bringing in a group presents challenges. How do you get all of the people in the group aligned and manage the process without risking confidentiality? It requires a much larger role for the recruiter to coordinate the different people and represent their various objectives.

When a firm identifies a star partner or group, while navigating all the dynamics involved with moving a large practice, the firm also needs to be more creative in this era. How can even the most elite Am Law firms distinguish themselves from other aggressive competitors competing for the same FCPA, life sciences, private equity or digital media candidates, who are getting multiple suitor invitations on a given week or even day?

A firm can research what's publicly known about a partner ahead of time and think of ways the firm's platform could help the client grow his or her practice. Perhaps there are clients with unexploited needs in the market the candidate is in. Perhaps the firm has a particular practice that the partner's clients could tap into, that his or her firm lacks. Maybe the firm has an opportunity to bring the partner in to an attractive leadership position, with an ambitious charter that could be an exciting new direction for someone who's already conquered the challenge of building a strong practice. The more these avenues can be researched before a firm asks a recruiter to reach out, the more effective the outreach is likely to be.

From the candidates' perspective post-Dewey, they're upping due diligence. They want to see detailed prospectuses of firms' financials, and want more insight into how decisions are being made. For example, how many people are involved in bringing in a lateral candidate? Are decisions consensus-based? What are the firm's impending lease obligations? What level of accounting scrutiny does the firm have? If a group leader is approaching retirement, what is the firm's strategy going forward? With respect to firms facing malpractice claims, is the insurance coverage enough to cover them?

Other issues arise for candidates considering a move from a large firm to a boutique practice. It would be a risky endeavor for a group to join a boutique a few months before it collapses into a larger firm. Thus, they're paying close attention to the circumstances to discern whether boutiques are targets for acquisition, and how likely the firm is to embrace it. They're also examining a firm's succession planning and leadership/business development bench strength. What plans have the founding partners/rainmakers made for the firm's continuity after they exit?

As the new year begins, the recruiting industry is monitoring the legal economy and the cultural shift away from past hiring indulgences. Firms and lateral hires would do well to stay cognizant of the changes as well. Generous pay guarantees are workable for a sliver of the most prestigious

firms, but staking a claim in such contracts could result in manifold difficulties. That much history has made clear.

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