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# HOW TO WIN THE LATERAL HIRING GAME

By Ed Poll



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Even as firms were laying off and otherwise letting go of associates and partners during the Great Recession, they were also hiring laterals from other firms. It seems logical to conclude that firms add lawyers only to meet specific client demands and because the firm has a strategic goal for the practice of each lawyer added. Hiring fresh out of law school has been de-emphasized, perhaps for good, as firms emphasize lateral hiring of experienced associates and partners who have specifically desired skills and a strong book of business.

## The Firm's Advantage

The tide running against new law school graduates is fundamental, particularly when lateral hiring of associates is an option. Take into account the considerable time spent by partners in the recruiting and interviewing processes, as well as the education and mentoring (again often provided by highly paid partners) needed to assimilate new law school graduates into the firm culture and procedures, and the additional cost of reduced productivity in the beginning as the new graduate is getting up to speed. The total cost can be several hundred thousand dollars, exclusive of associate salary. Large-firm managing partners agree that it takes generally three to five years to break even on the investment in a new lawyer straight out of law school; a significant investment.

A better solution is for firms to only hire an associate when needed, and to make the most of another firm's investment by hiring laterally. If firms want to strengthen their performance, hiring the right lateral for the right job will create bigger profits. Lawyers cannot and should not remain with their firm unless it is profitable for the firm to keep them on an ongoing basis. At some point, associates

must earn more than they cost the firm. For lateral hires the answer can be expressed as a simple equation showing an individual's net profit value to the firm:  $\text{Billings} - [\text{Associate's Total Compensation} + \text{Direct and Indirect Expenses}] = \text{Net Profit}$ . Hiring laterals with an existing book of business leverages billings, decreases investment, and improves profit.

If the lateral who is added comes with a strong book of client billings (as many do), the financial gain for the firm is greater. Adding laterals also resonates with corporate clients who increasingly feel that they should be able to direct how their matter is staffed, going back to the initial budget for the matter. A lawyer with greater experience, who can rip through the analysis and work, will likely be seen as preferable to a recent graduate who may have a lower rate but who will take longer to get up to speed. The client gets a skill package and experience that more than make up for the lateral's higher billing rate.

## The Lawyer's Perspective

There are plenty of positives as well for lawyers who have decided to leave one firm for another, provided that the decision is made with eyes wide open. The starting point for a lawyer's successful lateral move is a careful evaluation of the prospective new firm to ensure that the move will be worthwhile. Will the lawyers at the new firm be colleagues who are supportive and easy to work with? Will the financial rewards at the new firm make a move worthwhile? Does the new firm take a shared approach to compensation and clients, or is it every lawyer for themselves? Will the lateral's existing clients gain additional resources because of the move? Affirmative answers to these questions define the high

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likelihood of a positive move.

Nonetheless, in the effort to excel, made more intense by the pressure of economics, lateral moves can cause problems for lawyers. Generally, lawyers are successful because they are competitive. But, if they don't know when to stop, and keep moving from firm to firm in order to come out on top and in control, striving for success can be counterproductive. Leaving an existing practice is an emotional process and a successful transition to another firm will require all the traits that define success: motivation, acceptance of risk, resiliency and commitment.

A lawyer's eyes should be wide open in another sense. Not all lateral moves are marriages made in heaven. Press reports indicate that a Texas law firm recently lost its defense against a lawyer it had hired. The plaintiff worked for another law firm and was lured away based on alleged representations of the second firm's future and the collegiality of its founding partners; he found neither to his liking. Does this mean there will be an increase in litigation from dissatisfied lawyers claiming negligent misrepresentation when their lateral moves do not turn out as desired? The best answer is that there is no reason why a lateral move should be negative for either lawyer or firm. The decision to leave is ultimately a business one. A lateral move is part of the business dynamic that all clients understand; it should be so for lawyers and their law firms as well. But, one question I would ask before making such a move would be: "Why didn't the lawyer work out well in the first law firm environment?"

### **The Business Dynamic**

The understanding between the lateral and his or her new firm should also include mutual agreement on the nature of the ready-made book of business that firms expect will come with the lawyer to the new firm. Anecdotal evidence suggests that firms that used to expect a \$1 million book now virtually double that expectation for new partner hires. In today's market, how realistic are such expectations? Certainly there may be some posturing. The firm making a lateral hiring decision may not believe it will actually get all of such an amount, but reason that if the bar is set high enough it might get somewhere close to such an expectation. Also, lateral hires inevitably are lawyers who work with larger clients; someone whose client

list features Joe's Gas Station will not be as attractive as the lateral who is advising ExxonMobil.

**IT TAKES GENERALLY THREE TO FIVE YEARS TO BREAK EVEN ON THE INVESTMENT IN A NEW LAWYER STRAIGHT OUT OF LAW SCHOOL**

What pitfalls can keep new business from materializing? Although clients can request copies of their own files, the departing lawyer cannot do so with the explicit intent to use them for taking clients from the firm. In some instances, even if the lawyer personally created work product, the copyright protection on client files may attach to the documents and reside with the law firm. Client permission is needed to move a file, and it is only ethical to suggest that a client make that request if the client intends to continue working with the departing lawyer.

Another concern is how well the lateral hire has communicated with existing clients, particularly with regard to their opportunities to go with the departing lawyer or stay with the existing firm. Clients should not be left ignorant of who their lawyer will be following a lateral move. Without clear communication, clients may well engage a second law firm, just to make sure they are not left hanging in the wind with the same uncertainty in the future. This gives them the ability to move quickly if they need to be sure they have legal representation while their lawyer moves to a new home.

An even more difficult scenario is when the departing lateral hire and the former law firm compete for the business of the client. Firms often may not be willing to compromise on the issue of whether clients belong to the firm or to the lawyer. Years ago, when I was a General Counsel, our company engaged a major law

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firm. That firm always handled our matters with three lawyers: a senior partner, a junior partner and an associate. The thinking behind this policy was to assure that our company remained with the law firm even if any one of the three firm lawyers left the firm.

Any firm that follows a similar policy may well

more money for the lawyer or the firm; it also benefits the client. Evaluation criteria on both sides should be flexible. Have continuing dialogue and evaluation that allows expectations to evolve along with the lateral hire's performance. The goal is to move from new hire to valued firm member.

The real losers in this dynamic are the country's 200 accredited law schools, which continue to try to "game" their standings in the law school ranking in order to add more new students to the 150,000 already enrolled. Job openings for new law school graduates have plummeted, but law schools are not dialing back enrollment. About 43,000 J.D.'s were awarded in 2009, 11 percent more than a decade earlier, and the number of law schools keeps rising — nine new ones in the last 10 years, five more seeking approval to open in the future. The growing acceptance of lateral hiring means this process must change. Firms that have shed lawyers during the past several years have found that opting out of the law school game and hiring experienced lawyers is the most practical way to add new talent when it is needed.

**HIRING THE RIGHT LATERAL FOR  
THE RIGHT JOB WILL CREATE  
BIGGER PROFITS**

press its advantage and keep the business, despite the departing lateral's assurances to the new firm that the business is coming. Of course, if the dispute is ugly enough, the disgusted client may get a different lawyer or law firm for all legal matters. That's when a lateral addition becomes a zero sum game.

**The Win-Win-Lose Dynamic**

There is no reason why this should be the case. Lateral hiring, when done properly, should be a win-win situation. Approaching a lateral move in a businesslike way is ultimately a matter of professionalism in the practice of law. The purpose is not simply to get

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