



RISK MANAGEMENT INSIGHTS

by W. Brian Ahern, RPLU

Before You Hire a Lateral

Your firm is expanding and you are considering hiring a lateral attorney or perhaps even a whole practice group from another law firm. When hiring lawyers laterally, your firm risks conflict of interest issues and claims for prior malpractice. Before inking a contract with a new lateral hire(s), you should take the time for careful and thorough vetting.

San Diego attorney Jim McFall of Neil, Dymott, Frank, McFall & Trexler suggests that firms do extensive reviews to ensure there are no conflicts. He suggests sitting down with lateral candidates for an extensive review of both your firm's client list and the clients of the lateral's current firm, plus any clients the attorney has previously worked with and any potential clients with whom they may have discussed cases. Joint defense agreements with other law firms should also be carefully vetted for conflicts.

This due diligence should extend to secretaries and paralegals that may be joining your firm. States McFall, "Many people don't realize that secretaries and paralegals can also create client conflicts. Firms can be sued for malpractice over non-attorney conflicts as it is presumed that what is known by one is known by all at a law firm."

Others areas in which your firm should research before extending an offer include:

- Law school graduation, bar admission and previous disciplinary actions to ensure the information you have received is, in fact, correct.
- Previous ethics complaints and malpractice claims of the former firm as well as the individual(s). Some insurers may base premiums for your firm on the actions of the new hire's previous firm.
- Membership in organizations such as officer, director or other interests in business and fiduciary services such as trustee, conservator, administrator or executor.
- Powers of attorney held involving financial matters.

Once you have completed your due diligence and are ready to move forward with a lateral hire, contact your professional liability insurance provider before you actually commit to the new hire. Some carriers may charge to add an attorney mid-term while others will not. Changes to your areas of practice, new clients you may represent and claims against new attorneys could affect your premiums. Your insurer may elect not to cover new areas of practice and/or specific individuals.

If the lateral is coming from a law firm that is closing or is now defunct, it is important to know if the former firm had extended reporting period (ERP) or tail insurance (coverage for events that took place prior to the expiration/cancellation of a policy but for which no claim has yet been filed). You should also check with your current insurer as to whether your policy has blanket lateral hire past acts coverage or you may need to expand your current coverage. If you elect to pick up the exposure of an attorney's past work, it should be noted that most policies do not automatically pick up prior acts coverage for a lateral hire. This type of coverage should be discussed and negotiated before the actual hire takes place.



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