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Risk analysis in order: a lateral hire can bring big malpractice issues

Always do a risk management analysis on a lateral hire.

In the current economy, it's tempting to accept any attorney who can bring in a good book of business. But look past the revenue to the risk the firm is accepting, says **URI GUTFREUND**, law firm practice leader at Singer Nelson Charlmers, a Teaneck, NJ, professional insurance provider. Hiring that attorney is no different than entering into a merger. It warrants due diligence.

Without it, firm and new hire could end up parting ways after the announcements have gone out to clients and the media.

"That's embarrassing." It's also expensive, because the firm has an investment in the hiring. Moreover, "getting out of those deals is challenging."

ANOTHER GREAT IMPOSTER?

The greatest risk is one that usually gets over-looked: the new hire might not be an attorney at all!

Think it doesn't happen? Think again, Gutfreund says. He cites one imposter who worked at not one but two prestigious New York firms and not only wasn't admitted to practice in New York "but had never even passed the bar." Neither firm had done a credentials check.

Another firm found out too late that one of its attorneys was actually a paralegal. Besides the legal issues it faced, the firm had to refund "a huge sum of money" to its clients, because it had been over-billing them at attorney rates.

His advice is simple, albeit often ignored: verify law school graduation and admission to practice. All it takes is a call to the state bar association.

BEEN SUED LATELY?

Another pre-hire check is whether there have been malpractice claims against the attorney.

That information is not always possible to scout out, Gutfreund says, and when that's the case, a good protection is to get a warranty statement from the attorney listing all malpractice claims or asserting that none have been filed.

WHAT'S YOUR NIGHTMARE POTENTIAL?

What's the likelihood the new attorney will generate malpractice claims?

Ask some leading questions during the interview. Gutfreund recommends these:

- *How do you handle dissatisfied clients?*

Beware somebody who claims there's never been an issue with satisfaction. "Any attorney who has been in Practice for a number of years is going to run into an unhappy client at some point."

The answer should indicate tact, good judgment, and the willingness and ability to smooth out rough situations. Any indication that the attorney was arrogant towards a client or tried to ignore a complaint is an indication of trouble to come.

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- *What's your philosophy on collections? How many clients have you sued for fees?*

Many malpractice claims "start with a poor discussion about fees."

A low-risk attorney will have specific procedures for preventing collection issues and more procedures for collecting overdue accounts and handling disputes. And no firm should allow an attorney to sue for fees without getting approval.

Ask to how many clients have contested fees, and if there have been several, take it as a sign that the upfront communication is lacking to the point that the clients "get a shock when the bill comes in."

- *How do you determine whether a prospective client will be a good client?*

If there's no philosophy here, reconsider the hire. An attorney who has no selection screens is likely to accept all comers willy nilly. There needs to be a system for checking every client's financial wherewithal, history with other attorneys, and so on.

Also, Gutfreund says, make sure the attorney deals with the type of clients who reflect the firm's image. If the firm's class-act clients find out that the office is now serving clients of questionable quality, they may start to move out.

- *What is your billing realization rate?*

While the amount of money being collected may be appealing, look past it, he says. The rate is an indication of the risk the firm will be assuming.

"If the attorney bills \$1 million a year but only collects 50%, that could be a sign of unhappy clients," and unhappy clients sue.

- *How old are your receivables? What percentage are over 90 days?*

Here, two factors come into play.

One is cash flow. If the attorney operates with aging receivables, the firm can expect to see its revenues held up.

The other is risk. Delayed payments can indicate collection disputes and clients who have a problem with the service.

BEWARE THE JACK OF ALL TRADES

There's further risk in an attorney who is willing to branch out into untried territories.

Many attorneys take the risk of "doing things they are not experienced doing," Gutfreund says. "It's an extremely common problem." And it brings "the biggest malpractice payout claims that exist."

There's nothing wrong with an attorney's handling matters in several areas, but be cautious of somebody who has no hesitation taking on work without any experience in it.

He gives the example of a slip-and-fall litigation attorney who accepts a securities litigation matter. With no experience in securities and with the area so complicated, it's an invitation to client dissatisfaction and a malpractice claim.

To protect itself, a firm "needs to know how to say 'no, we don't do that type of work.'"

THEY WANT WHAT??

Yet one more risk question: is the attorney's former firm going to cause problems?

That's a significant risk with the current down economy where many firms have closed or filed for bankruptcy, he says. If the former firm didn't carry tail insurance, the creditors could come after the fees brought in at the new firm.

And beyond the fees' being at risk, there's the new attorney's mindset to consider. There's no advantage to taking on a new partner "who is drawn into litigation and whose head is not in the game."