

Law Firms Stress Dialogue As Key to Success Working With Headhunters

When a West Coast attorney recently resigned from her law firm in order to join a legal search firm, the law firm's recruiting department was elated, figuring she'd be able to sell it effectively because she had worked inside. Indeed, both skeptics and supporters of the legal placement industry agree that for the headhunting process to work successfully, recruiters must understand not only a firm's specific needs, but its culture as well. That's a given from both the headhunter and law firm perspective.

However, the industry is not without its problems. For one, disagreements arise as to who bears the responsibility of educating headhunters. Many hiring partners complain that headhunters put forth insufficient effort to learn more about them. Headhunters respond that firms often don't want to discuss such things and are, in fact, too protective about what information they do reveal. Of the dozen sources who spoke to *Of Counsel*, most report a degree of success commensurate with the degree of firm/headhunter communication.

Case in point. During a trip last year to Washington, D.C., Jay Zimmerman, managing partner of Bingham, Dana & Gould, blocked out a few hours of time to meet with local headhunters. The Boston-based firm had been looking for a partner in the project finance area, and Zimmerman thought it would be a good idea to "update them as to where we were and some of the exciting things going on at the firm." He says the headhunters left "energized," and one in particular recently approached the firm with a perfect candidate.

Roger D. Feldman, then head of McDermott, Will & Emery's international project finance group, was

the prize catch for Bingham, Dana's D.C. office. (This Roger D. Feldman bears no relation to another Bingham, Dana partner of the same name who was once managing partner of Boston's now defunct Gaston & Snow.) Zimmerman, who describes Feldman as one of the top practitioners in the field, says, "I'm convinced that if I hadn't taken the time to sit down with the headhunters and talk about our vision for the firm . . . odds are we wouldn't have been able to make that acquisition."

An active recruiting and hiring program, often utilizing headhunters, has played an important part in Zimmerman's agenda to grow Bingham, Dana. In order to get partners like Feldman, Zimmerman stays in "constant touch" with headhunters all around the country. He focuses particularly on Boston, Hartford, Conn., and Washington, D.C.—where the firm has offices—and keeps an eye on New York, calling that a naturally great "feeder city" for firms throughout the country.

"We try to give [headhunters] a sense of what the firm is all about," he says. "When they get a sense that somebody's interested, they can talk to that person in an educated way, an informed way." If headhunters know his firm's culture, business practices, and strategic goals, then "they can determine early on if there's a potential fit or not."

Zimmerman says the successful use of headhunters requires "maintaining the dialogue." If a headhunter consistently presents lackluster candidates, "obviously they're not regarded by us as somebody who is bothering to take the time to find us the right kind of people." If the headhunter has done the "early-round vetting" well, then the firm is like-

Continued on page 5



Aspen Law & Business
A Division of Aspen Publishers, Inc.
A Wolters Kluwer Company
1185 Avenue of the Americas
37th Floor
New York, NY 10036

FIRST CLASS
U.S. POSTAGE
PAID
BALTIMORE, MD
PERMIT NO. 1

Working with Headhunters

Continued from back page

lier to invite the candidate back for additional in-house analysis.

20/20 Hindsight

Of the few firms that will speak publicly about their use of headhunters, no one's mentioning any names. In the case of one Midwestern firm, that's probably a good idea, considering its recent experience using a New York headhunter to recruit a purportedly high-powered attorney from a well-known IP boutique in New York.

"We did whatever we could to check out the due diligence, because we were bringing him in at a pretty high level with the idea that he'd head up our IP practice," the source recalls. In fact, the firm ran the candidate through at least two full-day interviews, checked all of his listed references, and even made calls "on the sly" to people who had left his current firm. For all that, "he turned out to be a nightmare."

At first, odd personality traits emerged. In conversations, for instance, he'd often stop speaking in the middle of sentences. Things progressively worsened as the new partner "totally blew off client meetings" and "berated staff members." Many at the firm suspected substance abuse or mental illness. "Within six months," the partner says, "we could not go on—although he ultimately walked first."

The hiring partner admits "bearing some of the responsibility," but still believes that the headhunter "must have had some inkling." For instance, as negotiations began, the candidate failed to show up for two initial interviews. Each time, the headhunter passed along excuses. "Looking back," says the hiring partner, "you see the little clues—blowing off the interview because he developed 'a case of pneumonia,' and then claiming he didn't get a letter advising him of the next interview date. Very Mr. Smooth, charming, and gracious—kind of a Dr. Jekyll and Mr. Hyde."

The epilogue is that, even though an agreement stated that the search firm would find a new candidate within six months, none was ever presented. "But we were also reluctant to work with them again," the source adds, noting that the fee was also never returned. "From then on, I negotiated a better arrangement with all of our headhunters."

Fee Arrangements

Headhunters working with firms that have been once-burned will likely have a few additional clauses to heed, such as a strictly worded guarantee of a replacement if things go sour. However, the most common alterations to standard firm/headhunter agreements pertain to fee structures

Large firms like O'Melveny & Myers and Kirkpatrick & Lockhart have, at least in some of their offices, set their own fee structures.

Large firms like Los Angeles' O'Melveny & Myers and Pittsburgh's Kirkpatrick & Lockhart have, at least in some of their offices, set their own fee structures. David Watts, firmwide employment committee chair at O'Melveny, thinks "most firms use headhunters grudgingly, because you'd rather not have to pay somebody." When the need arises, Watts says the firm has specified percentages they'll pay. "We don't necessarily just take what the headhunter says."

Ditto for Kirkpatrick & Lockhart's main office, where legal personnel director Amy Molinaro uses a "basic agreement" that she says is on par with standard industry commission rates. "Some headhunters want a larger percentage," she says, noting, though, that upon further negotiation, most headhunters "don't have a problem with" Kirkpatrick's pre-set commission rates.

Recruiter Martha Fay Africa of San Francisco's Major, Hagen & Africa, argues that law firms that set up predetermined fees may be hurting them-

Continued on page 7.

The NALSC Code of Ethics

Following is the Code of Ethics for legal recruiters, as established by the National Association of Legal Search Consultants.

Preamble

The National Association of Legal Search Consultants is committed to the provision of professional and ethical employment services to the legal community. To that end, its members have established this Code of Ethics, subscribed and endorsed by each as a condition of his or her continuing membership.

Article 1: Relations with Employers

1. Information provided to employers shall be the most accurate information known to the search firm.
2. No search firm shall withhold candidate information which the employer would reasonably consider essential to its hiring decision.
3. Candidates shall be referred only (i) with the prior authorization of the employer, or (ii) where the search firm, based on previous direct communication with the employer, reasonably believes the employer would accept the referral.
4. Confidential information relating to the employer shall be treated accordingly.
5. Fee obligations and replacement and refund provisions, if any, shall be provided to the employer prior to the referral of candidates.
6. No search firm shall recruit any attorney from the office of an employer in which it has made a placement for a six-month period following that placement, unless the search firm reasonably believes such a restriction is not required by the employer.
7. No search firm shall recruit a candidate it has placed while the candidate remains with the employer that paid the recruiting fee.

Article 2: Relations with Candidates

1. Information provided to candidates shall be the most accurate information known to the search firm.
2. No search firm shall withhold employer information which a candidate would reasonably consider essential to his or her hiring decision.
3. Candidates shall be referred to employers only with the candidates' express prior consent.
4. Confidential information relating to the candidate shall be treated accordingly.
5. Search firms shall make all referrals which have been authorized by the candidate and shall inform the candidate of the results of those referrals in a timely manner.
6. No search firm shall attempt to exert undue influence on the candidate.

Article 3: Relations Among Members

1. Members of this Association shall relate to each other in a professional and ethical manner consistent with the goals of this Association.
2. While competition among search firms is encouraged, no member shall seek an unfair advantage against its competitors.
3. Except for fee-sharing agreements between such firms, no member shall make payments of any kind to gain business referrals or to induce others into a relationship as a client or candidate.
4. Members shall recognize and not interfere with referrals made by other search firms.
5. Members are strongly encouraged to bring to the attention of the Association any violations of this Code.

Continued on the following page

Working with Headhunters

Continued from page 5

selves in the long run, a point she made recently to a lateral hiring session at a National Association for Law Placement (NALP) meeting.

She reminded a 150-person congregation of law firm recruiting personnel that, for example, there are only so many corporate associates with two to five years corporate and M&A experience to go around. "What headhunter in their right mind is going to negotiate fees on someone that they can peddle at a full fee?" Africa said.

In this market, she adds, where demand far outweighs supply, alternate fee arrangements just won't work. "The market is so superheated," she told the NALP attendees, "that for you to try and negotiate fees means you're not going to get the candidate flow that you really need in order to do the hiring that your partners are demanding you do for them."

"Law firms have [also] had it good" in terms of commissions, says Africa, which she says are 10 to 15 percent lower than their 30 to 40 percent counterparts in the corporate world.

Ethical Enigmas

Law firms often affect, or have genuine concern with, the ethics of the headhunters they use. They certainly have a problem with what Molinaro describes as "churning." Several local headhunters, she says, have been recruiting associates away from her firm while, at the same time, presenting others for consideration. "It's really a despicable practice," she says, although, unfortunately, not an uncommon one. "They create a need and fill the need and create another need by hiring people away."

Interestingly, the search firms Molinaro speaks of claim to be members of the National Association of Legal Search Consultants (NALSC), an association founded nearly 15 years ago partly for the purpose of addressing ethics issues such as "churning." NALSC has established a four-part Code of Ethics (see sidebar, page 6) to which members must adhere or, reads the Code, face "censure, suspension, or expulsion from the Association." Apparently, though, if Molinaro's complaints are accurate, there are a few errant member search firms NALSC can't catch.

Recruiter Michael Waldorf, of Waldorf Associates, Inc., in Los Angeles, who was involved in establishing the NALSC Code of Ethics, says there are many ethical constraints imposed by NALSC,

The NALSC Code of Ethics (Cont.)

Article 4: General

1. No member of this Association shall engage in any action which might bring the Association, its members or the legal search profession into disrepute.

2. No search firm shall make false or deceptive claims in any advertising, promotion or public relations materials.

3. No member shall discriminate in the provision of its services on the basis of race, creed, color, national origin, religion, sex, marital status, handicap, age or any other legally proscribed criteria.

4. Complaints under this Code shall be in writing, signed by the initiating party and filed with the President of the Association.

5. Members shall cooperate with the Association's investigation of alleged violations of this Code and shall abide by its decisions.

6. Sanctions for violation of this Code, which include censure, suspension and expulsion from the Association, as well as procedures for hearings and appeals, are provided for in the Association's by-laws.

7. This Code neither supersedes nor replaces the requirements of local, state, or federal laws.

as well as additional constraints recruiters place upon themselves. But, often, ethical problems must be handled on a case-by-case basis.

For instance, one universally impermissible practice has been a search firm's recruiting of an attorney that it's already placed. However, says Waldorf, the practice may once again be viewed as ethical "if the person, after they've been [in the firm], decides they're not happy, or things have changed or are not what they were supposed to have been."

Previously placed lawyers occasionally approach Waldorf, claiming they're unhappy and intent on moving again; at that point, Waldorf says, "it becomes a business decision." Headhunters in this situation have to ask themselves to what extent they could be viewed as "raiding" a firm, thereby jeopardizing their reputations.

A related ethical issue is the indirect recruiting of formerly placed candidates. In this scenario, a headhunter places someone at a firm and then, after a year or so, calls that lawyer just to chat. "They don't say, 'Are you interested in . . .'" but they recruit in a roundabout way," Waldorf says.

Many headhunters, including Waldorf, blame the candidates for some of these troubles. If candidates don't keep copious records, they may actually forget to which firms they've been presented—which means that, if they're using multiple headhunters, there's a good chance they'll be presented more than once to the same firm by different sources.

Hiding the Ball

While firms like Bingham, Dana seem to go out of their way to open up to headhunters, Africa says, many law firms like to "hide the ball." She says they'll quickly tell a headhunter that they have an urgent need for a top practitioner to do corporate M&A work. They want two to five years experience, a top-10 law school background, top grades, etc.

They fail, she adds, to educate the headhunter on the finer points, like who they are and what their client base is like. "If I'm in a market where there are 20 people looking for the exact same person, and that person has the opportunity to interview infrequently . . . how am I supposed to help that

person make differential judgments [as to] where their interviewing time is best spent, given their own tastes?"

Most firm's aren't naturally reticent, but rather fear that headhunters will use sensitive information to recruit attorneys away. "Trust is a commodity that's precious and gets built over time," Africa says. Once a firm knows that the business relationship will be respected, "then information can be exchanged in a way that's meaningful for the law firm and ultimately for the headhunter and candidate [as well]."

One increasingly popular alternative for firms that simply won't open up to headhunters, or aren't comfortable paying commissions, is to offer finders fees to their own attorneys who bring talent into the firm.

One increasingly popular alternative for firms that simply won't open up to headhunters, or aren't comfortable paying commissions, is to offer finders fees to their own attorneys who bring talent into the firm. A number of top firms, including San Francisco's Morrison & Foerster and Palo Alto's Wilson, Sonsini, Goodrich & Rosati, now have such programs. There are, of course, pros and cons to this practice, which is more common in the corporate world.

Reed Smith Shaw & McClay in Pittsburgh is currently considering implementing such a program. Managing partner Daniel Booker says one of the downsides is that, with an in-house referral program, a good deal of the background checking comes in-house as well—a task traditionally, and often better, handled by headhunters.

Also, "there's a degree to which bringing opportunities to the attention of the firm [ought to be] part of [a lawyer's] job," observes Booker. Referrals are already "expected of partners," he says, adding that even associates should feel they're "doing a favor for their friends" by referring candidates. At the same time, there's the danger of cronyism.

Yet the idea is still on the table at Reed Smith. "We're looking for more people [now] than any time previously in the 90s, and so when you have a substantial demand, you think about things like offering an incentive to help find people," says Booker.

For other firms, high demand isn't enough of a reason to approve in-house finders fees. At Denver's Holme Roberts & Owen, for instance, the executive committee reviewed the issue last year. Echoing Booker, hiring partner Anne Walker says the committee "decided we should all want to bring in good people here because we all have a vested interest in the firm." Instead of a bonus or finders fee, referrals are "noted at review time."

Walker describes the firm's lateral hiring over the past five years as having "increased exponentially. . . . I've had some very difficult positions to

fill because of the rules of supply and demand. We've been looking in the same areas that everybody else in the country has been looking—securities, corporate, tax, etc."

Even so, Walker says the commissions make her think twice about finding candidates through headhunters. "I'm not interested in a candidate from a headhunter unless they're a star," she says.

According to Walker, there aren't a lot of headhunters in Denver; she notes that only two local headhunters ever call, and that the majority of resumes arrive from the coasts. Like other hiring partners, Walker identifies communication as the key to successful relationships with headhunters. "The ones who take the time to get to know our firm and talk to me at length before sending me candidates are the ones who send me the best candidates."

—Jim Dee

Coming Soon: The *Of Counsel* 700

Our annual June directory lists the nation's 700 largest firms, analyzes their growth or shrinkage, and includes individual law firm profiles with a wealth of data on firm sizes . . . offices . . . partner and associate numbers . . . paralegals . . . billing rates . . . salaries . . . leading clients and cases . . . practice areas . . . and the names of their leading lawyer and nonlawyer managers.

This year's edition highlights revenue and profit numbers from around the country, along with special analyses of significant regional markets.

It was a rosy year for America's law firms. The *Of Counsel* 700 tells you how and why.