The Do's and Don'ts in Connection with a Lateral Move

Ethical & Other Issues In Lateral Attorney Movements

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Tina Solis

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Meet the Faculty

Panelists

Dan Binstock - Garrison

Alex Edelman - Klein Landau & Edelman, LLC

Brock Naeve - Affirm Partners

Tina Solis - Nixon Peabody LLP

Moderator

Jonathan Friedland - Much Shelist, P.C.

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About This Webinar

The Do's and Don'ts in Connection with a Lateral Move

- The market for lateral partner moves softened in 2023. Lateral partner hiring was down by approximately 10%. But the changes in lateral partner hiring depended on the size of the firm. Partner hires were up in most sizes of firms except for those with 501-700 lawyers (-19.1%) and 1,001 or more lawyers (-19.9%)
- When making a lateral move, multiple issues must be considered including legal, ethical, and business issues. When considering a move, timing, and sequencing are also critical factors that must be taken into consideration. Join the webinar to learn how to successfully navigate these thorny issues.
- This webinar will focus on lateral partner moves and feature a lively discussion on the dos and don'ts from the panelists' perspective. The panel will also discuss the applicable laws and ethical rules that must be followed in connection with a lateral partner move including what information can be disclosed in a lateral partner questionnaire, what information can be disclosed in connection with a conflicts search, what to look for in your current partnership agreement and when can you speak to the clients and colleagues about the move. This is a must-see for any partner who is considering a lateral move.

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About This Series

Ethical & Other Issues In Lateral Attorney Movements

- This three-episode series discusses all the issues a lateral partner candidate needs to consider when thinking about making a lateral move from one firm to another including legal, ethical and business issues. The first episode focuses on preparing the lateral partner questionnaire, preparing for and participating in the interview process and obtaining the offer.
- It also discusses when and how to inform the firm, clients and colleagues about an upcoming move. The second episode focuses on negotiating the offer(s) and issues a lateral partner must confront after she has given notice to her current firm but before she departs. It also includes a discussion of post-departure issues that a lateral partner oftentimes faces.
- For any partner considering a move this ss a must-see series! Episode #3 of this three-part series focuses on negotiating the offer, including which provisions are the most important and why. The panel also discusses recent trends in the market, how those trends can impact the negotiation process and more.

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Episodes In This Series

1. The Do's and Don’ts in Connection with a Lateral Move

    Premiere date: 07/15/25

2. Trends in the Lateral Market

    Premiere date: 08/19/25

3. Critical Issues in Negotiating a Lateral Move

    Premiere date: 9/16/25

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Episode #1

The Do's And Don'ts In Connection With A Lateral Move

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Trends in Lateral Partner Movement

Lateral partner hiring softened overall in 2023. But partner hiring increased in most sized firms except for some of the largest firms.

Lateral partner moves present multiple issues for any attorney considering a move

Steps in the Lateral Move Process

The process

- Step 1: Pre-departure Issues
- Step 2: Completing the LPQ and the Interview Process
- Step 3: Receipt and Negotiation of the Offer
- Step 4: The “Interim Period”- after notice has been provided but before departure from the current firm
- Step 5: Post-departure issues

Issues To Be Considered By An Attorney Thinking About A Move

- Pre-departure issues
- The "Interim" Period - After notice is provided but before the attorney departs
- Post-departure issues
- All these issues must be considered in connection with adhering to an attorney's ethical and fiduciary obligations

Adhering to Multiple Fiduciary Duties

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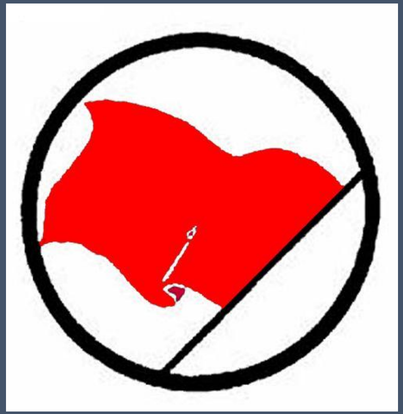
Whose interest prevails?

- Attorneys have fiduciary duties to their partners, their firm, and to their clients
- Clients' best interests is first priority, but fiduciary duty to a firm is a close second
- A departing attorney's personal interests come last
- Both the departing attorney and the firm have ethical responsibilities to the clients to ensure that their representation is not adversely affected by the attorney's departure

Red Flags



When to involve counsel?

- Big book of business/key client
- Large receivables pending
- Exigent circumstances; trial or deal imminent
- Firm in extremis
- Return of capital
- Guarantor issue: line of credit or lease
- Bad blood

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Why involve counsel?

- Low-cost insurance policy
- Recruiters are not attorneys
- Big dollars are at stake
- Recruiter and departing attorney can use counsel as “bad cop” if necessary

When to involve counsel?

- Earlier the better
- Ideally, as soon as the attorney contemplates moving
- No later than when the interview process begins
- It’s not as expensive as you think
- Waiting has pitfalls

Timing Issues:

- How long does a typical search take?
- Pitfalls to avoid

Familiarity with the Operative Document

Review Current Partnership Agreement (and/or any other agreements):

- Firm Notice Periods
- Non-Solicitation Provisions
- Clawback Provisions
- AR Setoff Provisions
- Confidential Information Provisions
- Return of Capital Payout Provisions
- Guarantee Issues
- Financial Disincentive Provisions

Typical Provisions in an Agreement

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Firm Notice Periods

- Law firms have a duty to ensure that client matters transition smoothly when a lawyer departs
- Notice provisions in law firm partnership/shareholder/member agreements are commonplace in the profession today
- Firms must make certain that client-related issues prior to an attorney's departure are completed (i.e., organizing and updating files, adjusting staffing needs, and continuing to meet upcoming deadlines)
- Tension with **ABA Model Rule 5.6**:

> "A lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement..."

Typical Provisions in an Agreement *(cont'd)*

Firm Notice Periods (cont.)

- Per ABA Formal Op. 489, notice provisions that do not take into account client considerations/ improperly impede the departure process may be unenforceable:
  - ➢ Notice periods should be the "minimum necessary, under the circumstances, for clients to make decisions about who will represent them, assemble files, adjust staffing... and secure firm property in the departing lawyer's possession."
  - ➢ They cannot be "so rigid that they restrict or interfere with a client's choice of counsel or the client's choice of when to transition a matter."

The Lateral Partner Questionnaire

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Completing Lateral Partner Questionnaire (“ LPQ ”)

- What information can be used, if any, to complete the LPQ?
- What information can be disclosed for conflicts purposes?
- Valuing the book of business
- Hourly rates
- Disclosing Compensation
- References; who and when

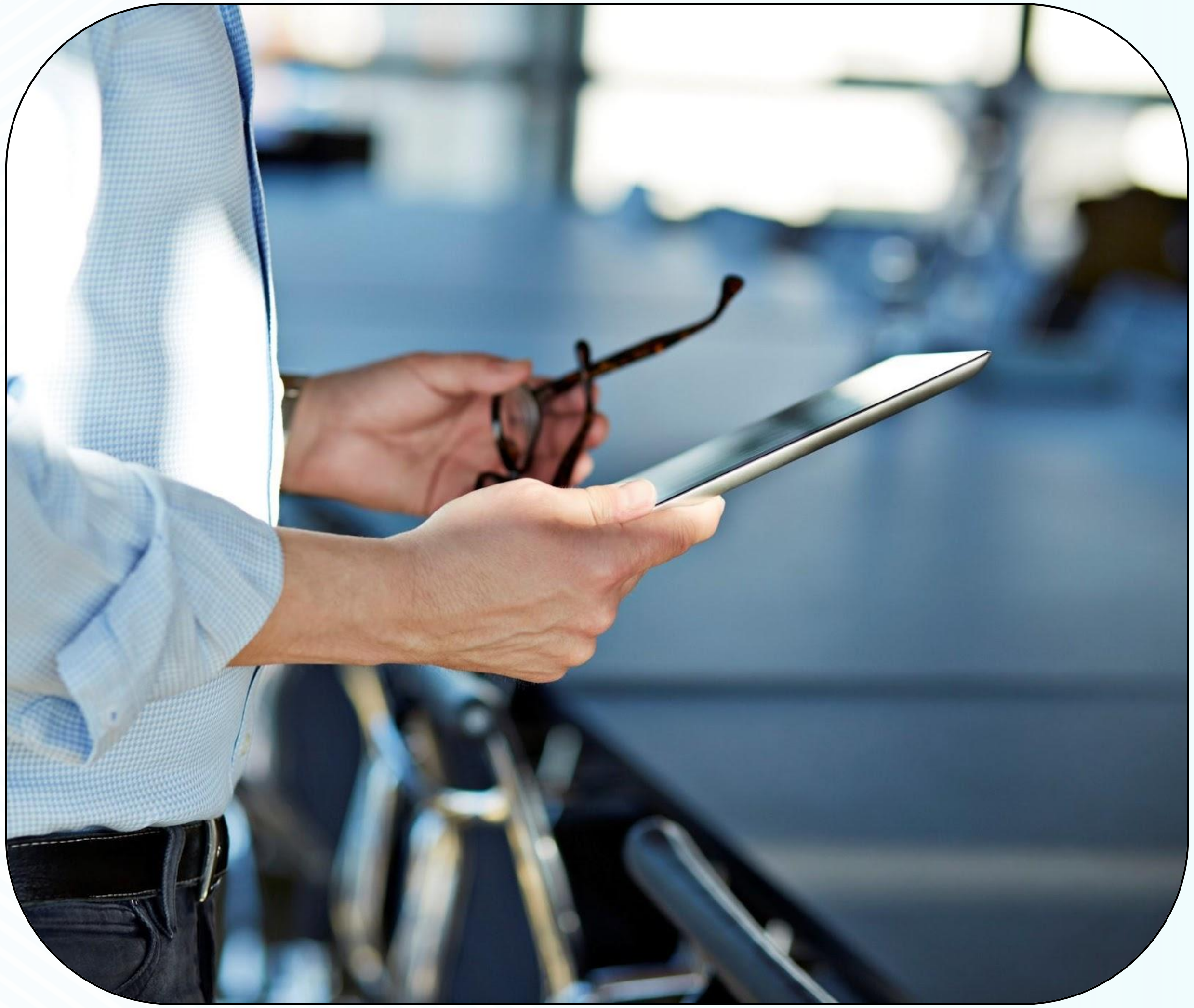
The Lateral Partner Questionnaire *(cont'd)*

Conflict Checks: Can Client Information be Disclosed?

- ABA Formal Op. 09-455 (2009)
- Rule 1.6(a) generally protects conflicts information ("the persons and issues involved")
- Disclosure of conflicts information during transition is ordinarily permissible, subject to certain limitations
- Disclosure should not take place until lawyer and new firm have engaged in substantive discussions – each jurisdiction differs; consult counsel

Many different areas of the law must be analyzed before providing information to another firm during the interviewing process including, but not limited to, ethical rules, common law obligations, contractual obligations and trade secret law.

Don't use your firm's confidential information.



Portable Business

- The critical issue in a lateral move:
  - What can be disclosed?
  - How best to handle during interviews?

- Practical reality:
  - ➢ New firm wants to know who is coming with you? What skill level? How many?
- What are you permitted to say?

Recent legislation:

- California, Illinois, and New York have adopted laws prohibiting employers from asking candidates about their salary history information.
- Certain states, such as Michigan, allow employers to ask about salary history, but only after a conditional job offer is made to the candidate.
- Balance the legislation against the reality of the lateral hiring process.

Compensation:

How should it be handled?

The Written Offer

- Timing of Receipt of the Offer
- Should it be negotiated?
- How to handle multiple offers?

Discussions With Others About The Lateral Partner Move

Who Should Receive Notice Of The Departure First?

- The Firm vs. The Client

Notice By The Departing Attorney To The Firm

The preference in many jurisdictions is that the attorney provide notice to the firm first

- Improper for departing attorney to announce departure to clients of the firm before the law firm is told. Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Advisory, Op. 98-5.

- The general rule in New York is when an attorney departs from an existing practice, he should give notice to the clients after notice is given to the former firm. *Graubard Mollen Dannett & Horowitz*, 86 N.Y.2d 112, 120 (N.Y. 1995).

Notice To The Clients:

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- The departing attorney and firm should send a joint letter to the clients informing the client of the upcoming departure and setting forth the client's options.

- Some states have a specific Rule of Professional Conduct regarding such situations.

  - ➢ For example, Florida Rule of Professional Conduct 4-5.8(c)(1) provides: Lawyers Leaving Law Firms. Absent a specific agreement otherwise, a lawyer who is leaving a law firm may not unilaterally contact those clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer has approached an authorized representative of the law firm and attempted to negotiate a joint communication to the clients concerning the lawyer leaving the law firm and bona fide negotiations have been unsuccessful.

What Happens If The Firm Refuses To Send A Joint Letter?

In the event a joint letter cannot be agreed upon, a firm cannot prevent a lawyer from soliciting firm clients.

See e.g., Ill. State Bar Ass'n, Advisory Op. 91-12 (1991); Iowa Bd. of Prof'l Ethics Op. 89-48 (1990); State Bar of Mich., Inf. Op. RI-86 (1991); Tex. Comm. on Prof'l Ethics Op. 422 (1985); Va. State Bar, Legal Ethics Op. 1403 (1991); Wash. State Bar Ass'n, Advisory Op. 2118 (2006); RESTATEMENT OF THE LAW THIRD, THE LAW GOVERNING LAWYERS § 9(3)(a) (2000).

Notice To Colleagues Regarding A Lateral Move

The lateral partner's obligations depends on whom she is having a conversation with:

- Other partners
- Counsel
- Associates
- Staff

The answer also depends on the applicable jurisdiction.

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Questions or Comments?

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Meet The Faculty

Dan Binstock - dbinstock@g-s.com

Dan Binstock is a partner at Garrison & Sisson. With an extensive network and track record placing partners, high-level government attorneys, and practice groups, he connects candidates and law firms in a highly efficient and discreet manner.

-Dan has brokered some of the most significant lateral partner and/or practice group placements.

-Dan is the founder and editor of lateralpartners.com, a detailed guide on lateral partner recruiting.

-LawDragon has named Dan one of the Top 100 Legal Consultants and Strategists for the past six consecutive years (see interview).

-Dan authored "The Attorney's Guide to Using (or Not Using) Legal Recruiters: Answers to Important Questions Most Attorneys Don't Know to Ask … But Should" (2015).

Alex Edelman - alex@kleinlandau.com

Alex works with all types of lawyers, he specializes in representing regulatory attorneys and practice groups and is one of the leading recruiters in the global trade and national security practice area. Over the last few years Alex has placed a number of regulatory practice groups, partners, and associates at a variety of firms, including a Magic Circle firm, an AmLaw 50 Global firm, and an elite AmLaw 200 firm.

Alex graduated from The University of Vermont with a degree in Political Science and English. He is a native of the Washington, D.C. area. Additionally, Alex is an accomplished photojournalist who works for major wire services.

Alex's notable representations include:

Represented a multi-partner, Chambers ranked, International Trade and National Security practice group in their move to an Am Law 20 firm in Washington, D.C.

Represented a Chambers ranked International Trade and National Security partner with her move to an Am Law 100 firm in Washington, D.C. Read More

Jonathan Friedland – jfriedland@muchlaw.com

Summary

- Corporate structuring and restructuring attorney with nearly 30 years of experience advising companies, boards of directors, owners, and other stakeholders in various contexts, including distressed, bankrupt, and special situations.
- Represented and advised clients in 150+ transactions and litigation across various industries.
- Serial entrepreneur who understands business from the business person's perspective.
- Consistently ranks as a top business law attorney in various surveys, holding the highest possible ratings from Martindale-Hubbell (AV® Preeminent™), AVVO (10/10), and Justia (10/10). Has repeatedly been recognized as a "Super Lawyer" in multiple practice areas, including Business/Corporate Law and Bankruptcy/Creditor/Debtor Rights, named a "Leading Lawyer" by Leading Lawyers Magazine several times, and selected for inclusion in The Best Lawyers in America® for exceptional work in Corporate Law.
- Admitted to the bars (each by exam) in New York, Illinois, Arizona, and New Jersey.

Thought Leadership Examples

- Principal Author and Editor-In-Chief, Commercial Bankruptcy Litigation & Strategic Alternatives for and Against Distressed Businesses (each published annually by Thomson Reuters)
- Author of 100+ articles and speaker at 100+ events. Examples here.

Academics

- Clayton Center for Entrepreneurial Law Visiting Professor at the University of Tennessee College of Law.
- Adjunct Professor of Strategic Management, University of Chicago Graduate School of Business (co-taught with Jamie Sprayregen).
- JD from the University of Pennsylvania, followed by a one-year federal court clerkship; B.S. in Business Administration (magna cum laude in three years) from Albany State University. Read More

Brock Naeve - brock.naeve@affirmpartners.com

Brock Naeve is the founder and CEO of Affirm Partners, where he specializes in high-impact human capital moves for the world's leading law firms and private funds, including partner/group and GC placements, office openings and key practice expansions across geographies.

Brock began his career as an M&A attorney at Latham & Watkins LLP, advising on complex transactions across the energy, industrials, and broader corporate sectors. He later held both legal and investment roles at a real estate-focused private equity firm and separately co-founded and successfully exited an oil and gas operator.

He earned his JD, BBA (Finance) and BA (Economics) at The University of Texas. While at UT, Brock served as Editor-in-Chief of The Texas Journal of Oil, Gas, and Energy Law and President of the BBA Energy Finance Group and was elected to the Texas Friar Society. Read More

Tina Solis - tbsolis@nixonpeabody.com

Tina Solis advises businesses on issues involving trade secrets, unfair competition and complex commercial litigation in state and federal courts. She also counsels lawyers and law firms on professional responsibility issues. Tina regularly represents regulators in federal court litigation related to the failure of banks.

Tina is also leader of the firm’s Financial Institutions & Banking Disputes team, which represents institutions and individuals in a full range of civil litigation, enforcement matters, Financial Industry Regulatory Authority (FINRA) arbitrations, and compliance investigations on issues such as consumer protection, fair lending, anti-money laundering, and violations of fiduciary duties.

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