

7 Questions To Add To Your Lateral Partner Questionnaire

By **Howard Rosenberg** (January 9, 2019, 11:18 AM EST)

A centuries-old Chinese idiom warns us against “inviting the wolf into the house,” lest they slay the sheep they swore to protect. This happens more often than anyone would care to admit in the modern law firm. The media caught onto that as it has been reporting a number of serious #MeToo claims and other illegal activities by law firm partners and associates. One example comes from a former Fox Rothschild LLP partner who was forced to resign after the firm investigated him about allegations of inappropriate behavior with colleagues.[1] He was then hired by another law firm that did not know those details. And a former Dorsey & Whitney LLP partner was hired by another firm that did not know she was fired for collecting fees from clients outside of her job.[2]



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With reputation and culture on the line, law firms are more likely to gain positive traction with both their internal and external stakeholders by taking demonstrative steps to prevent these individuals from joining the firm in the first place. Before you “invite the wolf” into your firm this year, you can prevent these situations by taking a closer look at the background of your potential laterals.

For most law firms, the lateral partner questionnaire is the beginning of the vetting process with target lateral partner candidates. This detailed questionnaire, often including more than 50 questions, is given to a candidate to complete and ends with the candidate’s signature — attesting to the truth of the disclosures. Each and every LPQ is unique, as each law firm designs their own, to reflect their own development and culture. There is no industry standard.

Here is how it’s laid out: The first section of an LPQ usually contains basic information such as (1) biographical data (2) business/financial data and (3) client data. The next sections contain more detailed information on (4) potential conflicts and (5) professional and personal references.

However, it is the final section, often titled “other information,” where questions regarding malpractice claims, lawsuits, outside interests and other claims may appear. It is this section that represents the greatest risk to a law firm as most of these questions pertain not only to legal risk but potential reputational and operational risk for the firm.

One way to minimize this risk to ensure that the following seven questions are asked of candidates to ensure sexual harassment/assault issues are brought to the fore at the beginning of the process, so that they can be investigated, and incorporated in to the decision-making process on a prospective lateral.

1. Are you now, or have you ever been, a party (plaintiff or defendant) in any pending administrative or employment proceedings, arbitrations, or criminal or civil court actions (exclusive of routine, nonalcohol-related or nondrug-related motor vehicle offences)? Have you ever been charged or convicted of a felony or misdemeanor, the penalty for which could be incarceration? (If yes, please describe and state the status and outcome of each.)
2. Have you ever been involved in a matter that resulted in a malpractice claim or allegation against you (whether or not an action was actually filed and whether or not you were individually named as a defendant)? (If yes, please describe and state the status and outcome of each.)
3. Have you ever been the subject of a claim of sexual harassment or assault or unlawful discrimination, or other claim or allegation made in the context of the workplace (whether or not any formal action was taken)? (If yes, please describe and state the status and outcome of each.)
4. Have you ever been disciplined by any bar or equivalent licensing body or, to your knowledge, have there ever been any complaints lodged against you with any such body? (If yes, please describe and state the status and outcome of each.)
5. Are you aware of any facts or circumstances that would result in damage or embarrassment to the firm or to you if you join the firm as a partner? (If yes, please elaborate.)
6. Are you aware of any other matters that may create a conflict with the firm? (If yes, please describe the matter(s).)
7. Have you ever been asked (explicitly or implicitly) to leave a legal or nonlegal employer or partnership? (If yes, please elaborate.)

Many LPQs either do not ask the above questions in a direct, “black and white” way, but rather are written in such a way that provides wiggle room for the candidate to interpret them in such a way as to assert that the questions do not apply to them.

Law firms need to review and redesign their LPQ process, which may result in tightening up the language used within the questionnaire to ensure not only internal compliance but best practice to prevent a bad hire.

Increasingly, to combat and eliminate the risk, many leading law firms are adding an additional section that asks for permission to conduct not only criminal and financial background checks (subject to federal and state-by-state restrictions on what can be disclosed) but also an Investigative Consumer Report). The ICR empowers the firm to conduct deep dive market intelligence on a candidate to determine not only their true market reputation but how other people who are connected with the target candidate view them in terms of their legal ability and the way they treat and work with others.

Strikingly, many of the stories we read in 2018 involved lateral hires at the highest levels of their organizations and law firms. Firms have an opportunity to demonstrate their commitment to properly screening lateral candidates by asking these tough but fair questions that can ultimately prevent the tragedy, embarrassment, reputational damage, career impact, and poor morale that often accompany these situations. When the “wolf is at the door” a few well-crafted questions may make all the difference for a productive and profitable 2019.

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[1] <https://www.wsj.com/articles/at-law-firms-rainmakers-accused-of-harassment-can-switch-jobs-with-ease-1532965126>

[2] http://www.abajournal.com/news/article/former_dorsey_whitney_partner_is_disbarred_for_collecting_fees_from_outside/