



Playing with Fire: Three Warning Signs for Law Firm Lateral Hiring in 2022

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With more than 20 years of experience in the legal industry, first as a trial lawyer and then as an international legal recruiter, Michael is well-positioned to counsel clients on mitigating risks associated with the hiring process. He leads a team of experienced analysts and professionals who collect credible, actionable intelligence about prospective laterals to help organizational leaders make more insightful and successful talent decisions.

Michael earned his B.A. from the University of Washington, his J.D. from Washington University in St. Louis, School of Law, and studied business at the Cass Business School, City University of London.

“ *...Talent War
'Boiling Point'
Nears* ”

The American Lawyer,
November 8, 2021

“ *...With Millions on the Line and
a Talent Shortage, California
Firms Turn Desperate* ”

The American Lawyer,
October 29, 2021

“ *Winning the War
on Talent Will Take
More Than Money* ”

The American Lawyer,
October 19, 2021

These headlines – and many more like them – illustrate the race for talent that has come to define the post-pandemic era. Behind these headlines, evidence points to potential danger for the stability of law firms in 2022 and beyond.

Decipher surveyed law firm leaders in the third quarter of 2021 and compiled aggregate trends from lateral hire screening before, during and after the pandemic. This information, coupled with ALM Intelligence data on lateral partner movement within the Am Law 200 and NLJ 350, point to three warning signs:

- 1. Lateral recruiting has spiked to unprecedented levels – in terms of numbers and speed.**
- 2. The available candidates bring significantly more risk.**
- 3. Law firms have become less curious about who they are bringing on board.**

Before examining these trends, it is helpful to uncover the current motivations behind lateral recruitment – and the risk landscape.



Law Firms Bet on Portable Business – and Lose Too Often

The main rationale behind lateral hiring: revenue and bench strength. According to Decipher’s 2021 survey, 56 percent of respondents said their primary motivation was to strengthen primary practice areas; another 20 percent wanted to seize new revenue.

Given this focus, it is no surprise that respondents ranked “ability to generate business, port clients and build a practice” at the top of the qualities they seek in lateral partners, by a high margin: 79 percent of law firms listed business generation as either the most or second-most important attribute.

It’s disappointing, then, that 47 percent – nearly half of respondents – said the majority of their firm’s laterals underperform when it comes to bringing their stated book of business. For a particularly unfortunate 11 percent, the average lateral hire brings just 50 to 75 percent of the promised book.

This leads to lateral departures: Over the past five years, nearly 70 percent of law firms reported having had a lateral partner leave for failing to bring over business. Related to business generation, 56 percent of law firms have had a partner leave due to the inability to develop new client relationships.

Business generation is not the only factor in lateral partner departures, to be sure:

- Cultural fit issues with other partners – reported by 29 percent of respondents;
- Client conflicts – 21 percent;
- Lack of required expertise – 19 percent;
- Behavior issues with junior attorneys or professional staff – 10 percent; and
- Actions that the firm believed were unethical or potentially illegal – 8 percent.

How significant are these lateral failure issues? Together, Decipher’s 2021 survey shows they contribute to significant turnover:

- 10 percent of laterals leave within one year;
- 22 percent leave after three years;
- 36 percent leave after five years.



These exits come at a high cost. Each required replacement lateral forces the firm to spend more money for recruitment, onboarding and compensation. Taking into account compensation estimates from the Am Law 200 data and attrition costs from the Society for Human Resource Management, for an Am Law 151-200 firm, each failed lateral represents a cost of \$715,500; for an Am Law 51-150 firm, \$1,509,300; for an Am Law 50 firm, \$4,039,200.

That's assuming there's only one lost year of comp. And that's not taking into account significant non-monetary costs, such as the potential fallout from

bad behavior (harassment suits, staff turnover, morale issues); client service disruption; and, depending on the egregiousness of the exit, negative press and malpractice claims.

To reiterate: One in 10 laterals will fail in their first year; four in 10 will fail within five years. Each can easily bring a seven-figure cost.

And those are the statistics as of Q3 2021 – things are about to get more hazardous.



Three Troubling Trends

A convergence of three industry-wide concerns is likely to make the odds of a successful lateral hiring program significantly less favorable.

Post-Pandemic Hiring Boom

ALM Intelligence tracked lateral partner moves in and out of Am Law 200 and NLJ 350 firms. Any number of analyses show a market-changing level of movement.

As lateral recruiting slowed considerably during the height of the pandemic, 2020 is an outlier; thus, it is most helpful to look at 2021 activity in the context of the past four years. Starting in March 2021 – as the vaccine became widely available – lateral partner recruiting in 2021 significantly exceeded the four-year average:

| Month | Four-Year Average | 2021 Lateral Partner Hires | Variance |
|--------|-------------------|----------------------------|----------|
| Jan-21 | 352 | 301 | -51 |
| Feb-21 | 245 | 284 | -39 |
| Mar-21 | 292 | 284 | +8 |
| Apr-21 | 372 | 261 | +111 |
| May-21 | 283 | 207 | +76 |
| Jun-21 | 196 | 389 | +193 |

In June 2021 alone, lateral partner movement was up 98 percent over the four-year average.

Meanwhile, an examination of lateral partner movement by quarter shows Q2 2021 dwarfing years prior:

| Quarter | 2018 | 2019 | 2020 | 2021 |
|---------|------|------|------|-------|
| Q1 | 907 | 952 | 980 | 838 |
| Q2 | 570 | 689 | 353 | 1,044 |

Finally, consider the average number of lateral partner moves in a given month. Again, with six months of data for 2021, the year vastly exceeds those previous:

| Year | Average Monthly Partner Moves |
|--------------------|-------------------------------|
| 2018 | 197 |
| 2019 | 228 |
| 2020 | 149 |
| 2021 (Jan to June) | 275 |
| Four-Year Average | 212 |

Indeed, the average monthly partner move rate for 2021 is 29.7 percent higher than the four-year average.

At the time of this writing, full data is not yet available for the second half of 2021; however, by all measures, it should go down as a record-breaking year for lateral moves. As law firms have been swept up in a literal race for

talent, they are moving at concerning speed: According to Decipher analysis, candidates that have been taking four to six months to court and vet are now being hired in four to six weeks.

A Riskier Candidate Pool

In Decipher's work screening lateral partner candidates, aggregate trends point to a higher level of risk starting at the Covid-19 outbreak but continuing far past it. There are two major concerns for law firms: the rising red flag rate and potential inflation of portable business.

Due diligence can surface "red flags" – potential issues that cover a spectrum ranging from questionable legal skills; personality concerns, from sexual harassment to bullying; questionable online or social media content; and background irregularities, such as tax liens, undisclosed business interests, bankruptcies, civil and criminal legal issues and more.

Before the pandemic, about one-fourth – 24.3 percent – of candidates had red flags surface during background investigations at Decipher.

During the peak pandemic months, March 2020 to December 2020, the red flag rate jumped to 34.8 percent. Keep in mind this occurred as the lateral market was at its slowest; the few candidates on the market were among the riskiest.

In 2021, more candidates have clearly entered the market, but the risk has not abated: The red flag rate remains at 32.7 percent. Specifically, candidates with

| "Red Flag" Rate | |
|---|--|
| 1 in 4 lateral candidates before the pandemic | 1 in 3 lateral candidates after the pandemic |

tax liens are up almost 40 percent over 2021, and social media issues are up almost 25 percent.

As for portable business, before the pandemic, the average candidate's claimed book of business was \$1,209,000. Since the pandemic, that has grown to \$2,357,000 – a 95 percent increase.

Meanwhile, The American Lawyer reported that law firms saw an average revenue increase of 14 percent in the first six months of 2021 – a far cry from the 95 percent increase in claimed book of business. So while it's possible that these lateral candidates are incredibly fortuitous, it's far more probable they are vastly inflating their potential portable business.

Less Interest in Transparency

Collectively, law firms' desire to learn about their lateral candidates has dropped, as illustrated by a comparison of the 2021 Decipher survey with a similar study conducted by ALM Intelligence and Decipher in 2018.

Likely due to increased demand for legal services and the resulting “bodies-in-seats” approach, law firms value transparency less in 2021 than before, specifically with regard to:

- **A candidate's personal background:** In 2018, 56 percent wanted more transparency; in 2021, only 20 percent do.
- **A candidate's practice:** In 2018, 92 percent sought additional transparency; in 2021, that fell to 69 percent.

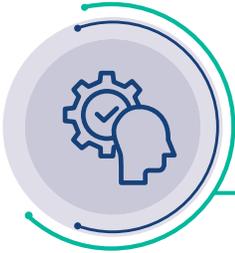
- **A candidate's professional relationships:** In 2018, 86 percent wanted to know more; in 2021, that dropped to 57 percent.

The latter two are especially alarming. First, with regard to practice, there was a 33 percent drop in the desire to validate a candidate's practice – even while nearly 80 percent of firms rank the ability to bring over business the No. 1 quality in a lateral partner. (And while nearly 70 percent have had a lateral partner leave for failure to do so.)

Second, law firms express less interest in learning about their candidates' professional conduct – even while record numbers are espousing wellness and anti-harassment initiatives. Establishing a safe and prudent screening methodology would bolster these programs by identifying bullies and aggressors – before they are hired.

Consider the collision of these three trends: Law firms are hiring more partners than ever, faster than ever. The candidates on the market are 35 percent riskier and could be inflating their portable business by double. Meanwhile, law firms appear less motivated to learn who they are hiring.

It's a perfect storm, and one likely to drive lateral failure rates significantly higher in 2022 and beyond.



Due Diligence: What Law Firms Are Doing – And What They Are Missing

What are law firms doing now to vet their lateral partner candidates?

In 2021, the Decipher survey shows it's the basics:

- Client conflict check: “always” performed by 100 percent;
- Bar license confirmation: 90 percent;
- Criminal records check: 88 percent; and
- Education verification: 75 percent.

These actions may surface the most obvious issues, but simple background checks do not help law firms advance their primary mission – to recruit robust books of business – or protect them against the most likely reason for lateral departure – the failure to bring the expected business. In Decipher's 2021 survey, only 13 percent of law firms said they verify candidates' client relationships on a regular basis.

Meanwhile, while 39 percent of law firms have lost laterals for cultural fit or behavior issues, very few look to catch potential problems before hiring:

- Reference checks: “always” performed by just 35 percent;
- Interviews of former colleagues: 23 percent;
- Psychometric screening: 3 percent.

Interestingly, 30 percent of firms “rarely or never” check a candidate's social media profile – despite the aforementioned uptick in social media red flags.

Although law firms' current due diligence efforts may be far from comprehensive, they still work as a rudimentary gatekeeper for a vast majority of firms: 90 percent of survey respondents said they had turned away a lateral candidate due to information uncovered during pre-hire screening.



Bucking the Trends: Safeguard Your Firm in 2022

For the near future, the legal market will remain strained by a glut of legal work and a volatile talent pool. (Remember that one of every three lateral partners right now carries a “red flag” warning.)

What should law firm leaders do now?

Get back to basics. The pandemic forced most firms to embrace Zoom operations, but videoconferencing is a major hindrance to effective lateral

screening; there is no substitute for the all-important “gut feel.” It is imperative that you get to know your candidates as people. Gather in the office if you can; if you must Zoom, build in time to establish rapport, and build in time to collect meaningful feedback from the interviewers.

Be intentional in your hiring. Anxiety is contagious; do not get caught up in headlines or rumors. Firms that stick to a defined growth strategy – to purposefully bolster current practices, to build new ones, to expand geographically – will be less likely to be sidetracked by exaggerated books of business or serial laterals looking for their next landing spots.

Be consistent with your hiring standards. Every lateral candidate must complete a thorough questionnaire (LPQ). Insist on full completion; about 30 percent of the lateral partner questionnaires submitted to Decipher are incomplete. Meanwhile, nearly 20 percent of lateral partner candidates neglect to provide a comprehensive list of their clients to prospective firms. If they are willing to be evasive or misleading about the clients they have represented, what else might they be less than forthright about?

Above all, do not skip appropriate due diligence. Thorough and steady hiring will help lower your risk, but there is no substitute for a comprehensive due diligence program. With the cost of one failed lateral partner hitting seven figures, this is no place for blind trust.

Without proper due diligence, you are left with only the word of your candidates and the references they have specifically selected. Without thorough due diligence in 2022, you are likely to pay a premium for candidates with red flags or inflated books – or both. Without consistent due diligence, you risk your firm’s ROI, revenue and reputation.

About the Decipher Survey

From August to October 2021, Decipher surveyed more than 50 law firm leaders with experience in lateral hiring; participants represented more than 25 Am Law 200 firms as well as regional and international firms. Interviewees typically held leadership positions within the firm, holding titles such as managing partner, head of talent or lateral hiring manager.

