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COMMENTARY

Noncompetes and Legal Recruiting: How Has It Been Going and How Will the New Ban Change Things?

Law firms and legal recruiters are stuck together—like it or not—but they each have a different set of rules, one is regulated and the other is not. Unlike regulated industries, some legal recruiting firms have made their own set of rules that can change on a dime and disrupt the entire market, especially when it comes to their noncompetes and traveling confidential information.

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Recruiting

By Kimberly Stockinger | May 09, 2024 at 01:29 PM



Growing law firms and outside legal recruiters are deeply intertwined and for the most part, have a mutually beneficial relationship. Law firms and legal recruiters are stuck together—like it or not—but they each have a different set of rules, one is regulated and the other is not. Unlike regulated industries, some legal recruiting firms have made their own set of rules that can change on a dime and disrupt the entire market, especially when it comes to their noncompetes and traveling confidential information.

Rotating talent and assets is not fun or easy. When you humanize it, there are going-away parties, promises to stay in touch and sometimes tears. In finance and law, if someone has a book of business or direct contact with clients, there is usually a swift and immediate departure that takes an office by shock for days. Many times, they have a security escort out of the building. They walk by their co-workers they have known for years who have become like family. They can't say anything to anyone so most everyone is in shock and shaken. These producers have to be stealth about their departures because a whiff of it can be costly. You also do not tell anyone even your best friend because the remaining producers become sharks who try to retain the top clients.

These dramatic departures are not for fun or retaliation, it is quite a disruption and spectacle but it is necessary because these companies have an obligation to protect confidential information and client identities.

At all times, financial advisers are required to reveal all of their transactions and income. They must house or reveal all of their assets and kept at the institution they work for. Transactions are heavily monitored for themselves and their family members.

Financial advisers are not allowed to run or own any businesses separate from the financial institution they work with; it is strictly prohibited. The transparency they subscribe to in a regulated market basically equals no privacy in order to avoid foul play. When advisers transfer firms, they must also transfer all of their assets and their families accounts and assets. Many times this can be very messy especially if there are proprietary investments.

What Does a Separation Look Like in Legal Recruiting and Who Is Affected?

Legal recruiting firms that take on employees and partners run the risk of the relationship not working out, however for the most part the relationship is mutually beneficial. If someone is new to recruiting or a professional sales environment, the firm usually has valuable trade secrets to share with their employees. The recruiter in return builds on leads that will eventually benefit someone. The seasoned professional brings in their contacts and builds that firm's database forever. The firm never has to give these contacts back and can work them at any point.

When I decided to leave the finance world and thousands of upcoming commissions on the table to change careers, I did it with the idea there would be an immediate reward. That can happen if a recruiter joins a team that is providing leads but, in my situation, I was starting the legal recruiting practice for that branch of MRI. I came loaded with national contacts and a very valuable and impressive professional background that insured success. I was very well connected in the legal space in both major corporations and law firms and anything I built; this massive recruiting firm could use forever.

It did not take too long to recognize this legal recruiting practice was not a match for this branch who was already heavily specialized and very successful in other recruiting practices and top in the country in those areas. One of the most valuable things I was taught was to safeguard my confidential information from other recruiters with specific contract language and then watch for any signs of foul play.

This made for a very competitive environment that I witnessed daily but did not think I had to worry about it until I did. There was another recruiter with the same first name as mine who was in a very different practice area. I would get candidate/prospect messages for her weekly. Months in it occurred to me, if I was getting so many for her, she must be getting some from me. When I asked her if she gets messages for me, she said, in a high-pitched answer, no ... not very many. She had never given me one message and those callbacks are worth tens of thousands to hundreds of thousands of dollars. This is one small example of how competitive these places are.

I could either build this practice empire for this branch and get a smaller fraction of my efforts or go out on my own and not compete with anyone, the answer was obvious. I had a noncompete that held me back financially for a year of my life.

What Will a World Look Like With No Arbitration and No Noncompetes?

Some larger firms discriminate which noncompetes they enforce and those they don't. It usually comes down to who has power and in times when employees are forced into arbitration funded by the corporation, it is easy to see the little guy does not have the power.

Not All Departures Look the Same

Sharon Mahn was already a top recruiter in the world when Major, Lindsey & Africa (MLA) courted her to join their firm. As a former practicing lawyer, Mahn specifically asked if MLA had plans to be acquired or merge, they promised this was not going to happen. Attorney Mahn did the standard vetting questions, how will this work with my contacts coming in and if there is ever a going out? Promises that were made and then broken.

Shortly after acquiring Mahn, MLA recruited U.S. Supreme Court Justice John Roberts' wife, Jane Roberts, pointing to Mahn as a former attorney now top producer at MLA. Mahn welcomes Roberts in and helps her get connected to deals. MLA's stock just went way up and was now much better positioned to be acquired. This hushed acquisition happened when former competitor, The Allegis Group, acquires MLA. Top producers were not told it was going to happen and they did not provide new contracts for the current employees to consider. They were all expected to just fall in line ... even though it wasn't what they signed up for or have fun fighting your noncompetes.

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Years later, Mahn is a whistleblower on several serious issues at MLA shedding light on their theft culture, including stealing and monetization of data that belonged to competitors Miles Placements. Mahn asks questions about the scandal at the newly affiliated company Maxim Health in what turns out to be the biggest health care scandal in the country.

In just one of many examples of recruiters who go through that revolving door, eventually it was Mahn's turn. After years of being in the top five in the firm, Mahn makes the hard decision to leave her top post as things started to get even more toxic. In another form of theft, MLA then kept Mahn's profile up on their website for years after she left.

Where this thing went and is still going, is a journey I don't have the word count to share here. It is a story yet to be told. In short, 15 years later, MLA is still trying to keep their promises to shut Mahn down. This global recruiting professional is a philanthropic New York City darling and an esteemed six-star marathon medalist. Mahn is one of the only recruiters to coordinate a large law firm merger in the AM100 and has never had serious issues with the law, which is not something MLA and their affiliates can claim.

Years later other notable departees are treated differently. Jane Roberts departs with a big splash about her new venture. Shortly after, Lauren Drake leaves to join her. MLA comes after Drake in court demanding their information is proprietary and that she took it. Drake cites the toxic work environment; Drake's case is mysteriously settled in private. Jeff Lowe worked at MLA for over 20 years with his most recent position at the firm as managing partner. Lowe had at least one other outside business going before he departed and he had his very own big media splash about his new ventures.

Why won't they set Mahn free? It is after all the noncompete portion of her contract that they have been chasing. Why is it good for the goose but not the gander?

Larger recruiting firms will always have more challenges when safeguarding confidential information especially when many of them have cold callers, staff and hundreds, some thousands of employees with access to very valuable, confidential and private information with its very own revolving door. Whose problem is that?

There are approximately 425,000 law firms in the United States and over 1.3 million attorneys. With around 2,000 legal recruiters there is enough to go around. Recruiting firms should be smaller, it is that simple. It is the only way to avoid conflicts and confidential data breaches. The larger the recruiting firm, the more problems and a non-compete issue for larger recruiting firms should not be an everyone issue.

Kimberly Stockinger is the CEO of the Sweetbridge Group, a legal recruiting company, and has been a legal recruiter since 2010. Before this, she was a financial adviser and spent 15 years in the highly regulated financial industry in roles including leadership. Stockinger now works directly with law firm leaders on firm merger introductions and filling executive positions.

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