



By Dan Nardello

## The Case for Lateral Partner Due Diligence

A law firm's reputation is built on the conduct of its partners. Firms have traditionally promoted from within, a thoughtful and incremental process. Today, however, it has become much more common to recruit partner-level candidates from competitors. Lateral recruiting can drive growth and enhance a firm's reputation, but it can backfire if not done carefully and with thorough vetting. Given the amount of money spent annually by law firms that hire investigators, it is a curious fact that a negligible percentage is spent conducting due diligence on prospective partners.

The reality is many firms hire senior lawyers on little more than a handshake and a personal recommendation. A 2014-15 study by ALM Intelligence found that few law firms maintain formal policies for vetting partner candidates: more than half do not conduct criminal background checks or credit checks, while nearly two-thirds do not check personal references in a comprehensive manner. Such a lax approach to hiring can be costly, as illustrated by a recent episode involving a former partner at Bradley Arant Boult Cummings.

Bradley Arant recently found itself with a big problem when a lateral hire, Walter "Chet" Little, was indicted on insider trading charges. Little, a real estate and finance specialist, moved to Bradley Arant from Foley & Lardner in July 2016. Unbeknownst to his new employer, Little had been fired from his old firm after an internal investigation found he had violated ethics rules by misusing confidential client materials to trade securities. According to the criminal complaint, Little accessed Foley's internal database to obtain material nonpublic information on at least seven publicly listed clients—none of which he represented—information that he and a friend used to make more than \$1 million in profits on stock trades.

A 10-month FBI investigation culminated in Little's indictment in May 2017, and the public announcement was the first time Little's new employer had heard of the matter.

In announcing the hiring, Bradley Arant touted Little's "leadership and reputable real estate and finance practice," noting he would "be a tremendous asset to our clients." Unfortunately, Little's association with the firm became a significant liability. Firms can help avoid these scenarios by commissioning a trained investigator to conduct the most basic due diligence exercise.

For instance, a simple corporate record check shows Little was a director or shareholder of several Florida companies registered at his home address, suggesting these were independent of his legal practice. At least one was a business set up with his alleged co-conspirator in the securities fraud. Little co-owned another company with a loan officer at a local bank who dealt in real estate transactions. Given Little's real estate finance practice, his participation in that company should have spurred questions about potential conflicts of interest. By discreetly speaking with lawyers at the partner's former firm, a law firm could learn the circumstances of why a

lawyer left. And a criminal record check on Little would have uncovered several charges, including a conviction for driving under the influence.

While Bradley Arant swiftly fired Little upon learning of the matter, the consequences could have been much graver had Little continued to violate ethics rules and clients' trust at his new employer.

Examples of why pre-employment screening is imperative extend well beyond the legal industry. In May 2012, four months after having been hired, the CEO of Yahoo Inc. was forced to step down when it emerged he had falsely claimed to hold a computer science degree—a misrepresentation that easily could have been uncovered.

By making pre-employment screening a standard part of the recruitment process, an organization ensures that all senior hires are subject to the same scrutiny. This can avoid any misconceptions that the decision to conduct a background check reflects concerns about a particular individual.

Hiring an objective third party to vet lateral hires can help identify red flags that may otherwise remain hidden. It is money well spent to retain a specialist who has experience investigating complex financial crimes and assessing potential conflicts of interest, particularly for senior or high-profile hires. The vetting process should include at least three elements:

- A questionnaire that asks prospective hires to disclose their corporate interests, any current or historical investigations, and any criminal charges or civil legal disputes.
- A review of public sources, including research into litigation filings and corporate records, a review of media archives and online references to the potential hire, verification of professional qualifications and a criminal record check.
- Discreet conversations with former colleagues, clients and individuals who know the prospective hire and can provide insights beyond what can be gleaned from reference checks.

Lateral hiring is an appealing way to expand a business and bolster a firm's credentials in certain practice areas. Thoroughly vetting lateral hires is a straightforward and relatively low-cost way to safeguard an organization's hard-earned reputation and the trust of its clients. The choice is clear: Do you want to vet your prospective hires—or bet your firm's reputation?

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## About the author

Daniel Nardello is an experienced litigator, prosecutor and investigator. Dan founded Nardello & Co. on the principle that smart, experienced people produce intelligent, useful and targeted results. Dan oversees the practice's global commitments, lending his critical thinking and expertise to complex litigation, fraud and due diligence matters. He has lived and worked in England and Italy, where he directed investigative teams in both countries for US and foreign-based clients. Fluent in Italian and English, Dan has extensive investigative experience in cross border due diligence and investigative matters, including FCPA and OECD issues.

After working in private practice, Dan worked as an Assistant US Attorney in the Criminal Division, Southern District of New York, beginning his tenure under then-US Attorney Rudolph Giuliani. As a federal prosecutor, he handled cases that involved securities and commodities fraud, corruption, civil rights, traditional and non-traditional organized crime and labor racketeering issues.

## About our firm

Nardello & Co. is a global investigations firm with experienced professionals handling a broad range of issues including the FCPA/UK Bribery Act and other corruption-related investigations, civil and white collar criminal litigation and arbitration support, asset tracing, strategic intelligence and political risk assessment, computer forensics and reputational due diligence. Our clients include the world's leading law firms and financial institutions, Fortune 500 and FTSE 100 companies, high-net-worth individuals and family offices, governments, NGOs, sports organizations and academic institutions. With offices in New York, London, Washington DC, Atlanta, Hong Kong, Tokyo, Milan and Dubai, Nardello & Co.'s professional staff includes former US federal prosecutors, US and international lawyers, former general counsels of multinational corporations, former law enforcement personnel and intelligence operatives, licensed investigators, research analysts, former journalists, financial crime specialists, forensic accountants and computer forensic experts.

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