

AHERN Update



Daniel W. Hager is Corporate Counsel to AHERN Insurance Brokerage and has spent his career practicing in the fields of lawyers' professional liability, risk management, and legal ethics.

AHERN Insurance Brokerage is one of the largest full-service insurance brokerage firms specializing in the insurance needs of law firms, with over 5,000 law firm clients.

AHERN is the Preferred Professional Liability Insurance Brokerage of the Los Angeles County Bar Association.

For more information on how AHERN can assist your firm, please call (800) 282-9786 to speak with a professional.

Effectively Screening Lateral Attorneys

By Daniel W. Hager, Corporate Counsel, AHERN Insurance Brokerage

Screening proposed lateral attorneys for conflicts, claims, and other issues is critical for avoiding disqualifying conflicts of interest, potential insurance coverage issues, and for general due diligence in hiring.

The following is a checklist of recommended actions to take, as well as forms that can be used, in that process.

Checklist

- Have the candidate identify (without disclosing client confidences) all matters in which he/she had substantial involvement or gained confidential information during his or her career, or for at least the past five calendar years, including, the party represented, all affiliated and related parties, all adverse parties, and any other persons interested in the matter.
- If any actual or potential conflicts of interest are identified, determine what actions are necessary to minimize or resolve such conflicts, including obtaining written waivers from current or past clients of the firm, taking precautions to ethically screen the lateral attorney – the moment employment commences - from any contact with any matters in which a conflict has been identified, or revoking the candidate's offer of employment if conflicts cannot be resolved.
- Ask the candidate's current and previous law firm employers to send letters to their clients for whom the candidate has rendered significant services, and whose former representation by the candidate may create conflicts with the firm's clients, requesting waivers of any actual or potential conflicts and providing their informed written consent to continuing representation by the firm.
- Give the candidate a current list of the firm's clients (excluding any client whose identity itself must remain confidential) to identify any client in which the candidate has an economic or business interest, including any investment or other ownership, possessory, security, or other financial interest.

- Have the candidate complete a Lateral Attorney Questionnaire (attached), and resolve all issues raised by the questionnaire before the employment commences.
- Have the candidate provide a list of all errors and omission insurance he/she has been covered by throughout his/her legal career (if more than 10 years, the last 10 years only), including insurer, policy number, policy period, limits, and whether it was a claims made or occurrence policy.
- Have the candidate provide a list of all claims and occurrences which might reasonably be believed to pose a risk of a claim, including occurrences reported to an insurer in which the attorney has been involved in any way, or for which the attorney may be liable. The status of each such claim or occurrence and the name, address, and telephone number of who to contact to keep informed on the status of the case should also be provided.
- Before resignation from current firm becomes effective, have the candidate report to his/her prior firm's insurer all claims he/she knows of and all circumstances which are reasonably believed might give rise to a future claim, and provide a copy of that report to your firm (appropriately redacted to preserve confidences).
- Request that the candidate purchase "tail coverage" or an extended reporting endorsement and to provide proof to your firm he/she has done so.
- Inform the candidate in writing that your firm's malpractice insurance will not provide him/her with any insurance protection, and that your firm will not defend or indemnify for any claim asserted after employment with the firm but arising from acts or omissions before employment commenced.
- Investigate the candidate's resume by verifying selected employment positions, bar memberships, and educational degrees.

No portion of this article is intended to constitute legal advice. Be sure to perform independent research and analysis.

**COVER MEMO, CONFLICTS OF INTEREST REPORT, AND
LATERAL ATTORNEY QUESTIONNAIRE**

MEMORANDUM

TO: [CANDIDATE]
FROM: [FIRM REPRESENTATIVE]
DATE:

This memorandum and accompanying forms are part of the firm's procedures for identifying and resolving potential conflicts of interest at the earliest possible time, and for conducting due diligence in hiring.

The applicable ethical rules require that attorneys shall not accept employment adverse to a client or former client without that client's informed written consent.

To identify potential conflicts, our firm has an extensive conflicts database which lists clients, former clients, their affiliates, and in some cases, officers and directors, as well as adverse parties. Given the serious possible sanctions for violating conflict of interest rules, it is important that the firm obtain a complete list of your clients or former firm clients for whom you have worked, as well as adverse parties, to check for potential conflicts.

Therefore, please complete the enclosed forms and promptly return them to [FIRM REPRESENTATIVE] as soon as possible.

Your cooperation is greatly appreciated.

Attachments.

CONFLICTS OF INTEREST REPORT

TO: [CANDIDATE]

FROM: [FIRM REPRESENTATIVE]

DATE:

The following are all client matters in which I have had substantial involvement or gained confidential information during my career (**without disclosing any confidential information**), and at least the past five (5) years, including the party represented, affiliated and related parties, and all adverse parties.

Dated: _____
Name _____

[ATTACH ADDITIONAL PAGES IF NECESSARY]

LATERAL ATTORNEY QUESTIONNAIRE

TO: [CANDIDATE]

FROM: [FIRM REPRESENTATIVE]

DATE:

For the firm to evaluate prospective lateral attorneys with respect to their previous involvement in malpractice and related claims or professional disciplinary proceedings, we require that each prospective lateral attorney answer the following questions in writing, sign where provided, and return this questionnaire to [FIRM REPRESENTATIVE].

Before resigning from your current position, you should report to your current insurer, in accordance with your firm’s risk management policies, all claims you know of and all circumstances you reasonably believe might give rise to a claim at some time in the future. Please deliver a redacted copy of any such report to us.

You should arrange for the purchase of “tail coverage” or an extended reporting endorsement (which we do not generally provide reimbursement for) to the extent necessary or desirable under the terms of your prior firm’s insurance policy. Please provide us with evidence you have done so.

Our firm’s professional liability insurance will not provide you with any insurance protection, nor will the firm defend and/or indemnify you, for any claim asserted after employment here but arising from acts or omissions before the date of such employment with our firm.

QUESTIONNAIRE

1. Have you been involved in any malpractice claim? “Involved” means you performed professional services on a matter and that matter was the subject of a malpractice claim or was reported to a malpractice insurer as a claim or an incident or potential claim. If you had such involvement, even if you were not personally named in a suit or complaint, please describe the claim and the status or resolution of the matter.

Yes _____

No _____

DESCRIPTION:

2. Has any judgment ever been entered against you for fraud, misrepresentation, breach of fiduciary duty, or has an award of judicial sanctions been made against you in any matter for more than \$1,000.00 (excluding discovery sanctions)? If so, please identify the matter and describe the circumstances.

Yes _____

No _____

DESCRIPTION:

3. Are there any circumstances in which you have previously been involved which you reasonably foresee giving rise to a claim against you for malpractice or professional negligence, fraud, misrepresentation, breach of fiduciary duty, or to an award against you of judicial sanctions for more than \$1,000.00 (excluding discovery sanctions)? If so, please identify the matter involved and the circumstances.

Yes _____

No _____

DESCRIPTION:

4. Have you been the subject of any professional disciplinary investigation or proceeding? If so, please identify the matter and describe the circumstances.

Yes _____

No _____

DESCRIPTION:

5. Please list on an attached sheet all errors and omissions (professional malpractice) insurance you have been covered by throughout the past 10 years, including insurer, policy number, policy period, limits, and whether the policy was a claims made or occurrence policy.

6. Are you a director or officer of any corporation, either for-profit or non-profit?

Yes _____ No _____

DESCRIPTION:

7. Are you a general partner of a partnership?

Yes _____ No _____

DESCRIPTION:

8. Are you a fiduciary, such as an executor, trustee, conservator, or guardian?

Yes _____ No _____

DESCRIPTION:

9. Have any claims been made in matters which might give rise to a claim against you in any of the capacities referenced in questions 6-8 above?

Yes _____ No _____

DESCRIPTION:

10. Will you personally hold the title of “general counsel” in any corporation or other organization (for-profit or non-profit) which you anticipate bringing to the firm as a client?

Yes _____

No _____

DESCRIPTION:

11. Do you hold any investments in any of your current clients?

Yes _____

No _____

DESCRIPTION:

12. List each jurisdiction in which you are or have been licensed to practice law, and the year admitted to the Bar in that jurisdiction.

Please date, sign and return this Questionnaire to [FIRM REPRESENTATIVE].

The above responses are true to the best of my knowledge.

Dated: _____

Signed: _____

Print Name: _____