

Negotiate Up Front When Using Search Firms

By William G. Hetzel

Organizations using the services of executive search firms can no longer assume they are protected against unprofessional search practices under the Code of Ethics and Practice Guidelines of the Association of Executive Search Consultants (AESC). In early 1996, the AESC modified its ethical standards and practice guidelines, acknowledging that the association does not have the resources to police its members. That change leads to a need for caution by organizations using executive search firms. Organizations now need to understand how the guidelines have changed and what they can do protect their interests.

Setting An Off-Limits Policy

Before the AESC Code of Ethics was modified, it stated unequivocally that the search firm "... will not recruit ... any person from the defined client organization for a period of two years after the completion of [an] assignment" to place someone there. Large search firms have long considered this two-year limit an onerous restriction. In practice, search firms have continually narrowed the definition of *client organization* to suit the situation, and AESC imposed no sanctions for many violations of the two-year limit.

For example, several years ago, one major search firm was recruiting executives for two departments of a large Chicago bank. The search firm informed the bank management that it considered only those two departments off limits for future recruiting under the two-year guideline. The bank found this statement unacceptable and quickly dropped the search firm. The best-known violators of the two-year, off-limits rule were the two large New York-based search firms involved in Lou Gerstner's move to IBM from RJR Nabisco. By engaging both firms to conduct the search for a new CEO, IBM board members thought they could avoid off-limits problems, but they didn't know that RJR Nabisco was an active client of *both* search firms. The search was completed and Gerstner made the move despite considerable grumbling and finger pointing by the companies involved. The search firms received no sanction from the AESC.

The association's revised ethics code removes the two-year limit and suggests that search firms set their own time-limit policy or negotiate one with each organization they serve. One major search firm readily admits, "We have no off-limits period that applies to all clients in all industries worldwide; the off-limits policy varies according to each client." At least two other major search firms already have cut their off-limits period to one year.

Time-limit rules are hardly the only troublesome ethical issue. Any other type of off-limits policy, such as a conflict of interest guideline, may prohibit the search firm from presenting candidates a client organization wants to consider. For instance, one firm cannot realistically recruit for both Coca Cola and PepsiCo. The original AESC Code of Ethics required search firms to disclose conflicts of interest to their clients. The revised code changes the "must" to "should".

Are Previous Placements Fair Game?

Many search firms, including mine, believe that they should never recruit their own placements. We refer to them as "evergreens." But the AESC code never took its off-limits rule this far, and client organizations need to be aware that some search firms recruit their own placements again and again.

The intense merger and acquisition activity of the past several years has further confused the ethics issue. In many merger or acquisition negotiations, the human assets – particularly senior executives – are an important consideration in shaping the final terms of a deal. If a company is sold or merged, are the newly recruited executives of that company still "evergreens" after the sale or merger? Or are they suddenly fair game? There

is a significant difference of opinion on that question among executive search firms. So again, for client organizations, the message is caveat emptor.

When To Check Candidate References

The revised AESC Practice Guidelines state that search firms “should thoroughly evaluate potential candidates, including careful assessment of the candidate's strengths and weaknesses, before presenting candidates for client interviews.” Note that this prescription is a “should,” not a “must.”

And the guidelines do not specify *when* reference checks should be conducted. In practice, most search firms check references only after the client organization has selected the candidate to whom they intend to make an offer. These late-inning reference checks are unlikely to turn up anything short of a felony, because the search consultant is already booking the search as complete.

What Client Organizations Can Do

The ethical concerns outlined here need not be insurmountable obstacles for client organizations. Just as good fences make good neighbors, written agreements can protect organizations from unprofessional search practices. Organizations can insist that search firms submit their policies in writing and reject those policies if they are unacceptable. Better yet, organizations can develop their own search policies and guidelines and insist that the search firm agree to them. Let's not forget who is paying the bill.

Whether drafted by the search firm or the client organization, the agreement should include the following items:

- How long the client organization is off-limits to the search firm. Two years or just one year?
- The parts of the client organization that are off-limits.
- Specification of the search firm's conflicts of interest as well as which organizations are off-limits for each search.
- The search firm's policy on recruiting candidates it has placed. Is a placement an “evergreen” for five years two years, or never?
- Specification of when the reference checks will be completed.

I also advise organizations to stay alert to another possibility. There may come a time when search firms with multiple offices establish each office as a separate subsidiary. Each subsidiary would have its own separate list of off-limits client organizations. In this scenario, the New York office would feel free to recruit executives – even “evergreens” - from an organization served by the Chicago office, unless that organization said, “Oh, no you don't.”

There seems to be significant uncertainty about how the word *professional* applies in the executive search field. The larger the search firm, the greater the concern. But given the AESC's reluctance, or inability, to demand a high level of professional conduct, the message to organizations clearly is – caveat emptor.

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