

# The Fordyce Letter

STRAIGHT TALK FOR THE RECRUITING PROFESSION FOR OVER 30 YEARS

## Pinnacle Perspectives

During the late 2000's, Super-recruiter Dave Staats of [The Pinnacle Society](#) put together a recruiter Q&A series for the leading recruiting journal, The Fordyce Letter. Recruiters would write in about their most difficult and tricky recruiting situations and various Pinnacle Society members would respond with advice. Toyjobs', Tom Keoughan, being large of mouth, was a regular contributor.

We have edited everything down to the original questions asked but only Tom's responses. As the economy started to improve and everyone got busy again, Pinnacle Perspectives sort of petered out. But, it was fun while it lasted.

March 2007

### **The Problem:**

**"My \$19 billion client from who I get 20% of my annual revenue just hired two candidates of mine with fees totaling \$110k after a discount on one of them...The second candidate which I will be discounting to \$50k was a candidate that I sent to another division of the same company three years ago for a retained/engaged search...They made him an offer for that job and he turned them down after a five-month process which would kill any candidate and deal...I think he used the term "felt like a chopped liver" at the end of the process...I fulfilled my agreement for that search although they found a candidate internally...Now the current hiring manager, a Zone President whom I knew from a prior client company, tells me that the prior HR person (who did not hire him the first time) thinks because I surfaced this candidate from a prior search that I should deduct the engagement fee from this current search...I don't owe it and the prior search was closed, but that HR person doesn't have a great taste in her mouth from the turndown three years ago (that was only my 2<sup>nd</sup> TD in 10 year)...What would you do???** –*Flabbergasted*

### **Tom Keoughan responds:**

The candidate was first surfaced in a search three years ago. That's ancient history! Do you suppose that if HR hired the person today without your help that they would be desperately looking up your number so that they could write you a check? No? I don't think so either.

That said, this is obviously a very important client for you and, if not appeased in some way, the HR person may try to make trouble for you in the future. I recommend telling the client that it is "company policy" (I love using their own nonsense on them – it feels good) not to negotiate fees on work that has already been done but that you would be willing to discount that engagement fee off the back end of the next search. I say the back end because if you take it off the front end, then there is nothing tying them to using only you for the next search and the whole point of an engagement fee is lost. By handling it this way the HR person gets to save face and hopefully stays out of your way and you almost definitely get the next search (it's discounted) which means more money in the future rather than less money today.

May 2007

**The Problem:**

We are working on about 15 searches for a client. They call and say they have four additional positions they need help on. The next call is from the head of HR (controls all the fee decisions and the contract terms at this multibillion-dollar company), who says we want you to work them, but if you don't reduce your fee down from approximately \$30K to approximately \$20K, then we will be forced to use another search firm. This is obviously a valuable client, and we are just now also negotiating with another division. What would you do?

**Signed, Screwed**

***Tom Keoughan responds:***

One-third off, that's a mighty big haircut. It it's worth it to you, I'll bet you could split the difference at \$25K, try negotiating. However, once senior HR types start issuing edicts, things seldom get better. Failing that, try going to the senior-most person with whom you have a good relationship in that organization and asking for help. If that doesn't work, finish up the current searches and after waiting a decent interval (one year?), look at them as a source company. A company that large should have plenty of tasty candidates for you to place with their competitors.

Don't devalue your work. Compete on service, not on price. There's always another potential client company out there.

November 2007

**The Problem:**

This was a first for me. A client that I have worked with for more than 200 placements over a 30-year period needed a senior engineer. I met with the VP of HR, Otto Nobedder, and the hiring manager/team lead and discussed specifics and got started on the search working directly with the team lead, as the VP/HR has asked me to.

Meanwhile, Otto hired a new staffing director, Fayla d'Ethics. She asked to be the point person on all staffing issues. I found a local candidate, Guy Standup, and gave the team lead a headsup: "I am talking to the Lead Widget Engineer at Acme, and he is putting a resume together for us. I should have it to you tomorrow."

Fayla d'Ethics did an Internet search later that same afternoon and identified Guy Standup on LinkedIn, called him, and asked him to send his resume to her once it was updated. Guy made it clear to Fayla that he was working with me on this position/opportunity and sent the resume to her the next morning and copied me on the email submittal.

Fayla called to tell me that I was not entitled to a fee and that she would offer me a half fee as an "olive branch!" She also claimed that it was simple "coincidence" that she found Guy after I had sent the email specifying his title and employer and that the fact I was already talking to him about this position was not relevant.

VP Otto Nobedder felt that he needed to back his new staffing director and agreed with Fayla that, technically, I wasn't due a fee at all and that the half fee was simply a nod to our history with the client. All of this is dependent on the candidate getting hired, but whether that happens or not, I would like to make the client aware of the legal vulnerability of such tactics. My question is, since the candidate made it clear he was working with me and copied me on the submittal to the new staffing director, legally does it appear as if I am on solid ground?

Here is the email trail that I received from the candidate, most recent first. Signed, Morrie Lee Wright

## EMAIL NUMBER 1

**From: <<Guy Standup.>**

**To: <<Fayla d'Ethics>>**

**Hi <<Fayla d'Ethics>> I am certainly interested in speaking with you about the position. In fact, I just submitted my resume to Morrie Lee Wright last night to pass along to you. I believe you should receive it from him today. I look forward to speaking with you more about this opportunity. Thanks. <<Guy Standup>>**

## EMAIL NUMBER 2

**From: <<Fayla d'Ethics>>**

**To: <<Guy Standup>>**

**Would you send me the new resume? I'd like to get it over to the hiring manager as soon as possible. Thanks so much! <<Fayla d'Ethics>>**

## EMAIL NUMBER 3

**From: <<Fayla d'Ethics>>, <<Resume attached>> (The candidate cc'ed me on this email/submittal.)**

**From: <<Guy Standup>>**

**In the interest of expediency, I am attached my newest resume, which I sent to Morrie last night. Thanks. <<Guy Standup>>**

### ***Tom Keoughan responds:***

It is important to note that we are missing a key piece of information here: What does your contract say constitutes a referral? Since you had not even given the candidate's name to the company, I strongly suspect that you did not meet the contract requirements.

The main thing to understand in this case is that YOU are to blame for your situation. Why would you give the company so much information that they could easily find the candidate on their own when all you had to do was wait until the next day and submit his resume? You could have told them that you had surfaced a great candidate that you were getting ready to present without supplying so much information.

Yes, the staffing director did pull a sleazy maneuver, but she doesn't get paid for just staffing; she also gets paid to cut the costs of staffing. The company doesn't see this as sleazy; they're giving her "attaboys" because she saved them thousands of dollars just by being on top of things.

I would have done as you did and gone to my longtime contact the VP of HR and pleaded my case. Did he turn out to be a spineless wimp? Yes, he did, but he doesn't see it that way. He just got an easy five-figure advance on justifying his budget. If you truly did collect over 200 fees from this company, he also probably feels that you owe him a freebie.

Human resources departments are becoming much more aggressive about trying to take credit for our work without paying us for it. They see it as a game. It is up to you to protect yourself; you can't rely on them to do it for you. That's not in their short-term interest. Part (and only part) of what we do in recruiting is act as information brokers. If you give away too much information without satisfying the contractual requirements for a referral, then you make it easy for your client to cut you out as the middleman. Will it always happen? No, but it will happen regularly and it will begin to happen more often.

It seems that you have done a lot of business with this company and could do a lot more in the future. Since the situation is your fault anyway, you should graciously accept the half fee (which they don't have to pay you at all) and back off from trying to make any kind of point with the company. Your legal case is weak, and you will only succeed in losing their business. Accept that you had a lesson to learn, learn it, and realize that you got off cheap.

Keep in mind that you have been put on notice. The staffing director at this company is very aggressive, less than ethical, and her agenda is not the same as yours. Make sure that your contract is well-written. Make sure your contract is signed. Do a great job for the client. Don't give away information before you can satisfy the contractual requirements for a referral. Document everything. If in the future you determined that the staffing director is making it impossible for you to either do your job or get paid for it, then walk away. In the meantime, continue your great track record with the company and place as many people as you can.

**January 2008**

**The Problem:**

**Genco Pura, one of our largest long term clients, retained us to do multiple searches and asked our firm to focus specifically on them since they had time pressure. We completed most of them successfully, with a few of the manager positions being canceled after the first payment when they hired their own candidates for those positions.**

**What we believed happened next is that a new CEO, Vito Coreleone, came in, reviewed expenses, and pulled the hiring manager, Sonny Corleone, in and demanded an explanation for the search fees for all his hires, which had just hit Vito's budget from VP of HR Tom Hagen.**

**Then Tom called us, saying that Sonny told him to contact us and demand refunds on searches for which they hired their own candidate, even though we have a contract saying that they were required to pay us and we don't refund. We showed them candidates for the profile they requested and deserved the fee.**

**Sonny Coreleone has said that if we don't do it as a strategic partner and credit or refund \$116,000, then he will no longer do business with us. We believe that his division is done hiring and may have overhired.**

**We have told Tom Hagen that we feel like we are being held hostage. Tom seems sympathetic to our plight but also seems powerless.**

**We have a lot of outstanding invoices that we are hoping get paid before we have to address this issue. I offered to apply something toward future placements as goodwill and Genco Pura said no, they want immediate gratification. Then I offered half of the \$116,000 in a credit against outstanding invoices that have nothing to do with those searches to appease this client. They are not going to settle for that little at this time.**

**The question is, do we tell them we did nothing wrong and put the account in jeopardy and stand by my morals?**

**Signed, Virgil "The Turk" Sollozzo**

***Tom Keoughan Responds:***

The account is already in jeopardy and has been since they brought in the new CEO. New senior management means a new relationship. He may have his own people or his own search firms that he wants to bring in, and he has no previous relationship with or particular loyalty to your firm. You may have some fans over there, but they're not going to take a bullet for you. It is likely that the change at the top already has them worried that they may soon be "sleeping with the fishes." As to the problem at hand, I would do as you did and try to negotiate a credit of between 25% and 50% toward future searches. You should only be willing to give something up if you are going to get something in return. This is what "strategic partnerships" are all about. I would only agree to credit if it is divided over a number of searches (say five). This almost assures you of the next five searches (because they are discounted) and means

you will be making more money in the future rather than taking less money now. It also gives you an opportunity to shine in the eyes of the new CEO.

I would absolutely not offer any credit against outstanding invoices. You're not getting anything in the deal. They could easily pick your pocket and then just walk away and never use your services again.

The new CEO has obviously decided to show his henchmen what a "hard case" he is and is unlikely to want to back down in front of them. He will probably try to use the money that they already owe you as leverage. I would not be at all surprised should he try to declare his own discount and take it out of your current receivables. You need to be very careful about the wording of anything you put in writing during your current negotiations, as there is a pretty fair chance that this one will end up in the attorneys' offices should they refuse to pay your current invoices.

You shouldn't feel at all like the bad guy here. You will be offering a 25% to 50% credit that you are not contractually obligated to in order to try to save the relationship. You haven't changed the rules of the game, the new CEO has, and by trying to apply strong-arm tactics, he has not shown the least bit of goodwill. Depending on how this all plays out, you may find that this company, under its current management, is not one that you want to have as a client. Should they reject your kind and generous offer and try to bully you into accepting less, then it's time to get in touch with your inner "hard case." This is an offer you can refuse.

**March 2008**

**The Problem:**

**I recently got copied on an offer letter for a fee of \$36, 625 that had a clause I have never seen before. The offer was accepted and the candidate, Esau N'wissue, has started. Everything is fine. I'd like to know what Pinnacle members think of this clause. I don't know if pretending like I didn't see it was right. I don't know if I should encourage or discourage or maybe even suggest it in the future. I'll confess, before you respond, that I like it and I am pretty comfortable at least with the idea of acting as though it is none of my business. If it matters, the client agreement I gave this company has a 90-day pro-rated replacement. Here's the clause copied from the letter:**

**"CovrasCo has chosen to incur the expense related to fees associated with your head hunter agreement. In turn, CovrasCo will require a commitment from you to remain at the company for a minimum of one 12-month period. If you choose to depart CovrasCo prior to the first anniversary of your start date, you will be required to reimburse CovrasCo in full for that expense within 30 days of your departure."**

**Signed, P. Pilate**

***Tom Keoughan responds:***

I've seen this sort of thing before, mainly with relocation expenses but occasionally with recruiting fees too. I don't think that it's that big of a deal for us, but there are positives, negatives, and a warning.

On the negative side, it may be marginally more difficult to close a candidate, but anyone not expecting to stay in a new job for a year shouldn't be taking it anyway.

On the positive side you can be pretty sure that a hired candidate is not going to leave on his own before your guarantee is up for either flaky reasons or because he got a better offer elsewhere.

The warning is that any company has such a clause in their offer letter either has an overactive attorney (aren't they all?) or has probably experienced fast turnover problems. It's not guaranteed that this is happening and this is not enough of a reason to stop working with a company. Think of it as a yellow flag instead of a red one. Things will probably work out fine, but it's a good idea to be on the alert.

**April 2008**

**The Problem:**

In my 20 years, this has NEVER happened! I had a candidate (Richard Head) today disclose in our interview that he was under a court monitor and was wearing an ankle bracelet. (I had to sign a form that stated that he actually was here that he gives to the court monitor). Why, you may ask, was Dick wearing this lovely accessory? Well, as a Partner at a respected local CPA firm, he has a "photography" hobby on the side... "you know, like Playboy kinds of stuff" he tells me. Anyway one of his "regular" models brought friend (Jill Bate, who said she was 18) to a photoshoot. Jill subsequently got arrested for drug trafficking and they traced a call from her cell phone to his and ended up convicting him of a misdemeanor violation of aiding and abetting a minor.

So, why am I telling this to Pinnacle Society?? One, if you thought your day was crazy, I think this story beats anything that happened to you today; but two, the guy really wants to work. He is a former Tax Partner and I am not sure, ethically, how to approach this. I know I have clients that won't check his criminal background, but this was just a bit off...Robert Hole is sending his resume out, but am I wrong to be cautious here? Thoughts?

Signed, Anita Long Hautschauer

***Tom Keoughan Responds:***

The first thing to do is make sure that you have your Errors and Omissions Insurance paid up. If you know this type of information, I think you are ethically (and perhaps legally) required to disclose it to your clients. So you could do that.

However, if anything weird or unprofessional should happen after you refer or place him or should it be discovered that he is not telling the whole story (which seems likely), the hit to your reputation will last a whole lot longer than this candidate will be in your active file.

Surely there are other CPA partners sans beeping ankle accessories. Not to mention you're probably not going to place him anyway. Accounting firms like to present a pretty conservative image and in a post-Enron world, it is likely that his story is known throughout the community. I'm guessing that his own firm doesn't even really want him around which is why he's out looking for a job change in the first place.

Let Robert Hole shoot themselves in the foot. Plan to have fun competing with them in the future: "Robert Hole? Weren't they the firm that referred the guy who?..."

**May 2008**

**The Problem:**

I had a conversation this morning with an employer, The World Poker Tour, who's prepared to pay my engagement fee. It is an attractive search for a variety of reasons. I plan to accept.

In my back pocket, I have a candidate, Perry Aces, that I am confident Doyle Brunson of WPT would want to interview. I don't anticipate "losing" Perry by delaying for the time it takes to ink this deal and get the check in my bank account. On the other hand, I could imagine there might be some value to putting the guy forward now. As a practical matter, WPT has multiple needs and would likely roll the engagement fee over after hiring this fellow anyway. What would you suggest?

**Signed, Jack Pesci**

***Tom Keoughan responds:***

You've gotta be kidding me! You seem to have nothing to gain and everything to lose by putting forward the candidate now. Never present a candidate prior to having a signed contract in place. That's like grabbing your ankles with your pants down. Maybe nothing bad will happen, but it depends who walks by. You give up all control and hand all the decision making power to them. You may not like the result...OUCH! In these times with claims of "I already have him in my files" or "I found him on the Internet"-you need to protect yourself not only from rampant thievery but also from thievery of the "Hey, I know that guy" variety. As for the check, I don't think you need to wait for it to clear, but you should definitely have it in hand and preferably deposited. Rolling engagement fees are fine. Put it in the contract.

If you're working in the recruiting business in this day and age without a signed contract, you need to wake up QUICK. Otherwise, you are going to learn some very expensive lessons, very fast. I know you're chomping at the bit because you think you have a slam dunk, but don't get overly excited-breathe-dot the l's-cross the T's.

**August 2008**

**Question: I have a client, A.A. Milne, Inc., with whom I have placed 40 people over eight years. I had candidate, Mr. Hunny, interviewing for a position in the Pooh department and was in the process of negotiating an offer for Mr. Hunny when the position was put on hold. The candidate then received the offer I negotiated for him (I have emails between me and HR negotiating the offer) from another department, Tigger. The Tigger department that made the offer received Mr. Hunny as an employee referral one month prior to my submittal to the Pooh department, which I am not disputing.**

**What I am disputing is that had I not had Mr. Hunny in the process, he would have accepted an offer from another company because the Tigger department had been sitting on his resume for six months. The VP I work with in Pooh is on my side, but there is not much he can do for me at this point. What would you do?**

**Signed, Eeyore**

***Tom Keoughan responds:***

I'll bet you could negotiate to collect 50% of the fee pretty easily, but sometimes it's better to generate a little good will. Even better than generating a little good will is generating good will and getting something in return for it. Typically, a company will be focused on short-term dollars and cents in this sort of situation...but give it to them in exchange for something that will enhance your business with them in the longer term.

The first thing to do is decide what you want. Are you doing exclusives? Maybe they will agree to do the next search as an exclusive. If it works out well the first time, maybe they'll want to continue to work with you that way. Or, maybe you want to start doing searches for Tigger or some other department in the company. This could be an opportunity to being to broaden your footprint with A.A Milne, Inc. Do you want better access to hiring managers? Maybe that's it.

You want to figure out what you need to maximize your business with A.A Milne Inc. Then use a soft approach to negotiate for it. They get their short term cash savings, you get to be "a good guy" rather than "a bad guy" AND you get an opportunity to make a lot more money in the long run. With a good client it's

often best to approach short term problems by giving a little in exchange for longer term strategic considerations. Judo Tactics 101.

**November 2008**

**Question: Joe Loyal has been a Managing Director of We Hate Hurricanes (WHH) Insurance Company for many years. He has also been a client of Mary D. Headhunter for 7 years. Joe has hired 12 candidates of Mary's for various positions for the last three years, with some fees being as much as \$100k. Since their initial success in working together, Mary has had retained relationship with WHH with Joe being the hiring manager and point person on the searches.**

**Because of dissatisfaction with senior management, Joe now wants to leave WHH after 15 years. The only recruiter he trusts is Mary and he wants Mary to represent him to other firms. Of course, Mary is conflicted because she has a tremendous amount of personal loyalty to Joe, yet has a contractual relationship with WHH that prevents her from recruiting out of WHH. Mary is further conflicted because she has two people interviewing with Joe for open positions. What should Mary do?**

**Signed, Exit Strategy**

***Tom Keoughan responds:***

This is a very tricky situation indeed. There variety of outcomes range from keeping a very good client, WHH, and gaining an additional good client (Wherever Joe Goes, Inc.) to losing Joe's trust and admiration and losing the trust of other clients that you work with AND facing a big fat lawsuit from WHH which could conceivably end up with giving those 12 fees and more back to them. There is a risk in anything you do and there is risk in doing nothing. Although this could turn out favorably for you, I would prefer that this situation had not come up at all. Unfortunately, that is not the case.

The first thing to do is to make sure that your E & O Insurance is paid up. After that, pull out your dog-eared copy of Machiavelli's "The Prince" and reread it. You could take "the high road" here and explain to Joe that you are contractually bound not to represent him. Although he will say that he understands, it is likely that he will think that you're a bit of a stiff. He also may end up working with another recruiter and find that he likes him better than you. You could take "the low road" and just start shopping Joe all over town but you might suddenly find yourself in a whole lot of trouble and destroy your reputation to boot. The real question here is: how to work toward the best possible outcome while exposing yourself to the least possible risk (Isn't that always the question?). The answer lies in being almost completely honorable (ACH).

Explain to Joe that you are contractually forbidden from recruiting him to another company but that you would like to help him out and act as his advisor. First, offer to review his resume. Be sure to make at least a few tweaks in order to enhance your perceived value (I've never seen a lawyer not mark up a contract no matter how perfectly it was written). Tell Joe that you are open to acting as a surrounding board during any interviews or negotiations that take place during his job search. Suggest to Joe that he make up a list of companies that he's interested in and offer to give him a verbal thumbnail sketch of each company which will include who in senior management it would be best for him to contact. He's your friend, don't torture him by sending him to HR.

As you hear about openings that Joe may fit, tell him about them and who to contact. Don't go overboard here, two or three should do it. Your goal is not to place Joe but to help Joe place himself. As you have searches that Joe will fit, tell Joe about them, tell him to leave your name out of it. You may be tempted to try to represent him to your clients either on the QT or without charging them. Don't do it. I would hate to



have to explain to client B how you are contractually constrained from recruiting people from WHH but that you have recruited Joe for them and just won't charge them for it—wink, wink. I can almost feel the ensuing silence. Also, whether they hire Joe or not they may call WHH in a fit of righteous indignation and tell them what went on or they may blurt it out during a trade show after a couple of drinks. Uh oh! During all of this 'advising' DO NOT use email to advise Joe. DO NOT advise Joe on his work phone or during business hours. DO NOT advise Joe on his cell phone if his cellphone is company paid. DO keep in mind that your overall goal here is not to place Joe but to help Joe place himself.

As for your existing client, WHH, you should realize that your relationship with them is going to change. That change could be very minimal or you could immediately lose the account or it could be anything in between. At the very least, there will be a new point person with a slightly different personality and/ or way of working. The new point person could be great to work with or he might be a complete horror show. He could have his own agent. He could have a cousin or golfing buddy who is a recruiter. He might just not like your face. The job here is to minimize turbulence in the turnover process. Find out from Joe (if you don't already know) who "the Kingmaker" (the person who will decide who the next point person is). Put together a letter to him/her in both hard copy and email formats that reintroduces yourself, describes your mutually beneficial relationships and lists all your successful placements and their current job titles. I say successful placements in case there is a placed candidate who either didn't work or worked out great but later left WHH. Those types of situations tend to stick in the craw of companies and are more vividly remembered than an overwhelming number of successful long term placements. So, omit them. After Joe leaves, not the next day please, but seven to ten days later, FedEx the letter along with your brochure to the Kingmaker. The first thing the next morning send him/her the email version. Two days later call him/her. If you happen to be working on a search with Joe when he gives notices that makes things easier, because of your current work together you obviously know that Joe is leaving. Adjust your letter accordingly. FedEx and email it to whoever Joe tells you is taking over the search and the Kingmaker. After Joe leaves have him give a briefing on the new point person and how he/she likes to work.

As far as your current or future searches are concerned, remember Joe may leave the company in two days or two years or he may change his mind and never leave at all. It's not likely that your long standing client has suddenly turned to mud. More likely is that Joe is blocked from or was passed over for a promotion, or he doesn't like the way senior management is doing things. That doesn't necessarily mean that they are wrong – there are a lot of different ways of doing things – it's not Joe's way. It could be that after fifteen years Joe is feeling a little stale and that it's just time for him to go. So as long as it's still a quality company there is no reason that you shouldn't continue to recruit for the. If, over a reasonable period of time, you determine that they are no longer a quality company or if the new point person makes it impossible for you to succeed in helping them then it will be time to re-evaluate the relationship.

This response will undoubtedly get me into trouble with strict moralists in the group (right, Ted?) but then I'm usually in trouble with them anyway. Please keep in mind that I never asked to be thrust into this situation and I was very happy with the status quo. That said, in the recurring business—from turmoil comes opportunity. If you don't snatch it, the next guy will.

## February 2009

**The Problem: We have all read the numerous articles and heard the trainers expound on the virtues and pitfalls regarding social networking. However, I have yet to see anything on how the use of social networks may make what was once considered propriety/trade secret information less so. For instance, if a recruiter establishes an account on LinkedIn (or Plaxo, which may be an even better example, since it captures and maintains contact information) and works it as prodigiously as his/her manager would like, I wonder what happens if/when that individual leaves the employ of his current boss? In theory, the links and contact information go with him. Who "owns" those connections? Who owns that database? Yes, the recruiter was paid to build the**

**network/database of contacts on behalf of the company, but does that mean that the data can no longer be accessed by the recruiter? Who owns the recruiter's social networking account?**

**Sincerely, George Carlin**

***Tom Keoughan responds:***

I apologize in advance for going on a rant, which is beyond the scope of the question, but here we go. I'm no lawyer, but I strongly suspect that if you ask one, you will find that LinkedIn owns the LinkedIn network. They incentivized (semi-duped) recruiters into building that network (not the architecture, but the content) for the. They are now in the process of monetizing the network by selling high-priced special packages to companies and corporate "recruiters." This is similar to what happened with AIRS, Monster, etc.

The strategy for these sorts of things seems to be "if we can induce recruiters to build it, then we can sell it to their competition." Back to the point, LinkedIn owns the LinkedIn network. It is theirs.

I certainly expect recruiting firm owners to moan, squawk, and scream that this is proprietary information, but the fact is that it's not. It's out there for everyone to see. I hardly think a court will say "Yes, well anyone can use it except for a former employee of ABC Recruiting." These recruiting firm owners have only themselves to blame. They never thought about defense. They never thought about how to use LinkedIn to their best advantage without giving away the store.

In the short term, they let a very convenient tool make them look lazy. That worked for a little while, but long-term laziness makes you stupid. They had their employees build a network for LinkedIn rather than using LinkedIn to build a network for their recruiting firms. Yes, there are techniques for doing that. No, I'm not going to tell you what they are. I'm sure that some will be very pleased with that response. All I can say is that yes, I have benefited from using LinkedIn but, no, LinkedIn has not benefited from using me—neither have other recruiters, human resources, hiring managers, etc. benefited from piggy backing off my network. I feel good.

Certainly a recruiting firm owns databases, files and materials which should be protected as proprietary information when a recruiter leaves the firm. That said, I am a big believer in a free market for labor. As an executive recruiter, I am a facilitator of that and I stand against abusive non-competes in my day to day practice (non-disclosure agreements are fine). I've long felt that the lengths that some recruiting organizations will take to stop a recruiter from going elsewhere or out of his own are highly hypocritical. Attempting to restrict the geographical area in which a person can work or the field they work in trying to make them remain idle and not work for a period of time is, well...horse-hockey. After all, presumably every recurring firm owner left someone else's company to start his own at some point or another.

In the interest of full disclosure, I should say that I have been committed to being a solo shop. A secondary reason from this (the primary reason being the economics of the recruiting business) is that I don't have any interest in creating my own competition. If you are going to build a larger recruiting firm, then you will have to figure out a way to retrain your key players. If you are unwilling to do what that takes, then they will become our competition. That's as it should be. Recruiters help secure better opportunities for people and recruiters themselves should be entitled to the same.

**November 2010**

**Question: I consider myself a very fair corporate recruiter. I am the type that most agencies would beg to work with. If you get on my good side and show me value, I will send you anything I need help working on and will even say great things about you to all my managers and VP's. But if you**

**double cross me and don't follow my rules then I will no longer send you any jobs to work on and will tell the other divisions not to use you.**

**So why is it so hard to follow my rules? My rules are simple:**

- 1. Don't go around me. Don't reach out to manager and ask to work on a position that we have not gotten approval to use an agency on. That simple, we have a budget to work with and need to manage to that budget. And cannot use an agency on a position unless it is approved by HR management. We will let YOU know when we need help**
- 2. Don't send resumes of candidates to managers when you haven't been asked to work on a position. 1- We may already have that candidate. 2- We may not need help. 3-We may not even have an opening in that area.**
- 3. You must submit all resumes through our application tracking system. If you haven't submitted them into the system first, then they aren't considered your candidate.**
- 4. And did I mention DON'T do behind my back and submit resumes to a manger when you haven't been asked to by me?**

**This may sound like I am being harsh, but we have a system and process in place and all I am asking is for everyone to follow process. I tell agencies that if they don't follow this process and send a resume to a manger without me knowing, they WILL NOT get credit.**

**So I get a call the other day from one of my managers. They want me to take an offer to a candidate. And oh by the way this candidate came from XYZ agencies so we will need to pay a fee. My issue with this....**

- 1. The agency did not contact me and was not asked to work on the position**
- 2. The candidate is not in the system**
- 3. They don't even have signed contract work on the position. They no longer even have a contract with us because we told them we would not work with them if they didn't follow process. (they have done this in the past)**

**So the dilemma...do you think this agency deserves a fee? My feeling on the subject-Absolutely not! Because we told them on multiple occasions through email and by phone how our process works and that they must abide by it. What are your thoughts?**

***Tom Keoughan responds:***

It doesn't take very long to realize that you are far more focused on your wants than your company's needs. It's unlikely that I would consider running through brick walls for you in order to solve YOUR PROBLEM in the first place. Since I'm a "get it done guy," no doubt you wouldn't want to work with me either. That said, let's address your complaints.

- 1. "Don't go around me."**

Well, do you return your phone calls? Are you open and honest in your communications? Or do you respond evasively by e-mail, only answering one of three questions or opaquely saying "We've got that covered" ---whatever that means? Does your attitude say loud and clear "We will let YOU know when we need your help." ? if you are unwilling to communicate openly and honestly then the best recruiters aren't going to bother with you. They will either work directly with your hiring managers or, failing that, use your

company as a recruiting source (which may provide you some degree of job security). What you will get is a bunch of weak recruiters who aren't very good at filling jobs, but are quite willing to jump through hoops and bow and curtsy to please you. After all, that's what's really important anyways, isn't it?

2. "Don't submit candidates to my managers."

Uh, in this case, the hiring manger seemed quite happy to receive qualified resumes of strong candidates and is even seeking to make a hire. So the real question is – why are your hiring managers more than willing to go around you and circumvent your process, even though they risk getting a little hot water? The answer comes in three parts.

First, they need good people and you're not providing them. If you were, your hiring managers would prefer not to cause a commotion to the HR Department, but you're not doing your job so they have had to take matters into their own hands.

Second, you're a "corporate recruiter" and your hiring managers know what that means. It seems like most of the time it means that you have already failed in the recruiting business and decided that you would rather receive a steady paycheck amounting to 20% of what a strong recruiter can make on the outside. It's always amusing to pull up a LinkedIn profile when speaking with a "corporate recruiter." Hmmm, two years at ABC Agency followed by a year and a half at XYZ Recruiting then eight months at TNT and Associates then—blip – (read in a big gruff voice) "I'm a corporate recruiter and I've worked on your side of the fence." Ha! You failed on our side of the fence and apparently the only marketable job skills you have are something you already failed at and so you have become a "corporate recruiter." Your hiring managers know this and, after initially giving you the benefit of the doubt, have come to realize that if you couldn't do it when you were highly incented, you're probably not going to do it now.

Third, your hiring managers have come to learn that you have a completely different agenda than they do. The hiring manager's agenda, indeed the company's agenda, is to get the best person for the job and get them pretty quickly. The "corporate recruiter's" agenda is "I don't care if they're the best and I don't care if it's fast, as long as I do it myself." There is a fundamental disconnect between what you want and what your company wants.

A typical reply that I'll hear from a corporate recruiter (once I'm finally able to get a hold of him/her) is, "We don't need any help, we have a candidate." Wow, impressive. That can usually be translated as "We have someone who has been phone interviewed by a "corporate recruiter" but hasn't even spoken with the hiring manager yet, so stay away, this baby is a slam dunk!" Sad to say, but your hiring managers don't want "a candidate." They want a roster of five or six strong potential team members culled from the best in their industry. That's what a top recruiter will provide.

I often ask hiring managers – "How many totally unqualified resumes do you get from your corporate recruiters?" They let out a groan --- "Dozens and dozens and dozens." Cheerfully, I respond, "So if they don't know what you're looking for, how many strong candidates has your corporate recruiter just blown off or thrown away?" The sound shifts to a low wail and the repetitive *thunk* of a head being slowly beaten against the desk.

The longer a "corporate recruiter" has failed in the task, the more desperate they become not to let a quality recruiter take over and get the job done. After flailing around for three, five, six months, it wouldn't look very good if a real recruiter presented a roster or six strong candidates in a week and a half, so when management finally forces them to go outside they feel that it's better to use some of the weak sissy recruiters who have been jumping through hoops and genuflecting to their personal rules. These weak recruiters will confirm your claims of how hard this job is to fill. Of course, the reality is that the job could have been filled months ago if you brought in a top recruiter.

Gee, Dave, that was fun, but I'm afraid I might have overdone it a little (nah!) so let's move on.

"If you haven't submitted them to my system first, then they aren't considered your candidate." Well, by whom? The hiring manager considers them my candidate and he has told you so. So whose candidate do you think they should be now? Yours? You didn't even know he/she existed. You didn't even know an interview had taken place (some wired-in recruiter, eh?). When was the last time you spoke with the hiring manager? No wonder he's seeking outside help. I guess you've been too busy parsing through resumes on the Monster Board.

Finally I'd like to respond to--- "my issue with this..."

1. **The agency did not contact me**—Your company doesn't care that the recruiter didn't contact you. They want to hire this guy and you couldn't come up with him. You so alienated the people that could actually help you that they gave up on you and went directly to the hiring manager who had given up on you as well. He asked them to fill his long-vacant job opening.
2. **The candidate is not in the system**—Correct. He is beyond the slow grinding system and your company would like to make him a job offer. Isn't that a good thing?
3. **They no longer even have a contract** – Personally, I would never work with a signed contract, especially if I knew there was a snakey "corporate recruiter" who would pound his/her tiny fists trying, and failing, to wriggle out of paying my fee. A little contract law, Bub/Bubettee.... The recruiter appears to have had a signed contract with you but you "told" them that "we wouldn't work with them." Uh, was the contract rescinded in writing? Oops. Also it appears that your company is more than willing to work with them as long as they provide the candidates that you are unable to.

Now that this executive recruiter has shown you up, you want to try and weasel out of paying them and point out to your higher-ups how you were able to save money on the fee. "I failed to help the company and they succeeded but I'll stick 'em on the fee so how about a few 'atta-boys/girls."

I think that you should try it. There's always a chance that the recruiters are spineless and will just walk away. However, in this case their actions say otherwise. They were able to provide ongoing future value to your company despite all the roadblocks, speed bumps, and potholes put up by the person who was supposed to provide that value, but couldn't. The recruiters don't appear very interested in what your personal rules are or what you think. For that matter, your company doesn't seem to care much either. When these recruiters show that they aren't going away, your company's legal department will probably point out to you that the legal bills alone will be larger than the fee that you will, of course, still have to pay. Not to mention, you will also be trumpeting through your company and to its highest levels that you were unable to do the job you were hired for but the company was able to hire a strong candidate despite all of your efforts to block them from doing so.

My advice is to spend your evenings perfecting your latte making skills. Starbucks awaits.

Disclaimer: There are many fine "corporate recruiters" and many excellent Human Resources professionals, and working with them is like a dream. Unfortunately, that is usually the expectation rather than the rule and unfortunately this guy/gal ain't one of them. Of course, all the "corporate recruiters" and Human Resource professionals that I personally work with do an exemplary job and will quickly realize that the above comments are largely tongue in cheek....Gulp!

**May 2009**

**Question: In a market like this, would you work a straight commission sales job that will pay you a percentage over the gross sales earnings of the person you are placing over a two-year period? In this case, we just closed a deal for 3% of the first year's sales (could be a million) paid to us quarterly and 2% of the second year's sales paid to us quarterly. This is a long-term cash flow option for us (if the person can sell!) and it is a placement. Is this the best we can find in the market right now? Do we work these sorts of deals or just get back on the phone?**

***Tom Keoughan responds:***

If you have absolutely nothing else on your plate you may want to proceed, albeit with caution. There are so many different types of peril here. These are a few things to think about before you decide what to do:

First, realize that you are not being paid based on the success of your search. You are being paid to find a person acceptable to the company who is willing to take what they offer him, which is likely to be similarly backloaded (very low salary, possible high commission). The company has to have an attractive product which is appropriately priced for its marketplace. Next (let's assume that this is a physical product rather than a service), the company must design the product, tool up for manufacturing, make the product, pass product safety and quality control tests, and deliver the product – on time – and get paid themselves. All of those things need to happen in order for you to get paid. That's a lot of hoops and hurdles. Your expertise is executive recruiting BUT you are being paid for the success of a manufacturing venture. Hmm.

Second, you are being paid a percentage of delivered sales just like an outside sales rep. In my area of expertise there is a long history of outside sales reps getting stiffed. It doesn't happen a huge percentage of the time but it is a steady 15%. Also, you are lower on the food chain than an outside sales rep. They may want an outside rep to sell for them again next year but your work is already done. Sales bonuses that were already earned for the previous year's work are often viewed by companies as motivators for the next year's performance. If the company is either dishonorable or runs into financial difficulties you are very high on the list to not get paid. They are unlikely to be highly focused on paying a recruiter when they perceive that his contribution ended a year ago. Essentially, you are not a vendor but an investor with no upside. The company is operating on your capital and if things go poorly, you will not be paid. If things go well you will be paid – maybe.

Third, is the deal priced right? Companies are notorious for trying to lowball sales executive salaries by painting big pie-in-the-sky bonus numbers based on highly unrealistic potential sales volumes. "Could be a million!" – could be two hundred thousand. How would you feel about that? Would it be worth all the aggro? Would it be worth time taken away from other projects or potential projects? What has their average salesperson billed in his first two year? Will they show you the data? I doubt it. Even if you are an expert recruiter in this area of business it is going to be very difficult to appropriately price the project. Keep in mind that your client is going to be overinflating potential sales volumes and thereby reducing your (and your candidates') actual earnings every step of the way.

Fourth, during these difficult economic times do you want to focus your energies on something that may (and, there is a better than usual chance, may not) pay off in dribs and drabs somewhere down the road...or do you want to find a project with less potential snares that can pay off today? The best type of cash flow is having money in the bank and being able to decide when to spend it.

All that said, if this is a company or senior hiring manager that I have already worked with easily and honorably and is willing to show me that they are in decent shape financially (I'm going to have to sell candidates that you are in good financial shape. Help me do that), and I am able to price the deal appropriately (that means getting the data) then I would give it a go. That's a lot of conditions and in most cases I'm sure I would end up turning the search down. The deck may not be stacked against you here but it's definitely much more stacked against you than you might think.

Write a tight contract. Have your attorney review it. Keep looking for a better use of your time – even if you accept the assignment. Best of luck.

**July 2009**

**Question: I have an agreement with a client whom I consider to be a great firm, and have a strong history with placing all-commission salespeople. The fee agreement we have is from an original retained search we completed, which states that the fee for subsequent new hires will be x% of new hires' first-year compensation. We then bill quarterly on commissions for the first year net of T&E. The candidates we have placed are paid on a commission draw for their first year, so as that is considered income, we bill our percentage off of that plus any commissions they make on top of the draw. While it takes a while to get paid, I don't mind because we are billing off of commissions all year.**

**A recent placement received a different deal. Instead of the commission draw, the candidate received the entire year's draw amount as a lump sum payment on day one. The payment is technically structured as a loan to the candidate over a two-year period, so that even though he received the money day one, if he leaves in his first year, he repays the full amount; if he leaves before the end of the second year, he repays half.**

**Upon hearing this, I assumed that we would bill on his compensation as usual, and the lump sum amount would be included in his first-quarter billing. However, the client states that our contract uses the term "compensation," and that this money is a "loan." Therefore, we do not bill on that amount.**

**After arguing on that point, they conceded that we should indeed also bill on the lump sum payment, but only for half of it, and only at the end of his first year of employment. The reason they gave was that for tax purposes, although he receives the money upfront, they are only able to show half of the money in his W2 at the end of his first year, and half at the end of his second. Therefore, they will only pay us when the money hits his W2 and only for that amount.**

**Can't help but to be frustrated as I just placed a senior candidate who will bring millions to the firm and who specifically requested upfront compensation to feel comfortable while he builds up the business for them. Although he has the money in his checking account, the firm is playing a language and tax loophole to significantly reduce their fee. Kind of hurts to wait 12 months to get half of what I thought I would receive in the next quarter.**

**Any thoughts would be appreciated. Their point of view is that they want to pay us for net compensation produced during his first year as it hits his W-2.**

***Tom Keoughan responds:***

To quote one of last century's great dissemblers: "I feel your pain." That said, it sounds like this has been a great client for you and could continue to be in the future. Focus on client preservation. When choosing between time and money, I'd choose money. The client seems to be focused on time. In the current uncertain economic climate, companies want to hold on to their cash security blanket for as long as possible. Recently, I've had several historically "good clients" come to me at the closing of the search asking for discounts or payment plans. I push in the direction of full price/payment plan every time. This can actually strengthen your relationship with a client because you are willing to work with them during these difficult times. In your case, my argument would be that you should be paid for both halves of the lump sum payment but that you are willing to wait until the end of the first year. By that time, hopefully his commissions will exceed his draw anyway and you will be whole. They hope so. He hopes so. And now, you hope so, too. If you get enough pushback your fallback position can be:

“Okay, half the draw at the end of the first year and for the other half, we’ll just settle on the commissions. You should end up whole or almost whole. Yes, you will have to wait but you also may end up with a strengthened relationship with the client. Keep in mind they’re not so much looking to screw you (unless they recently hired a new CFO or HR head); they’re trying to preserve cash due to the uncertain economic climate. I wouldn’t be this easy on them in normal times.

I would tell them that it will have to work differently next time but don’t rush to work that out right now. Let tempers cool and the economy improve.

For other clients, and especially new clients, I would look to plug the hole in your existing contract right away. Contracts should be living documents and when you run into a snag, they should be tweaked to prevent a similar situation from arising in the future.

### August 2009

**Question: I was contacted by a candidate who had been referred to me. Because he was unemployed, I took care to ask which firms already had his resume and where he had interviewed. The first list was short. The second was non-existent. About a week later, I’m on a call to an employer whom I knew as a candidate before she accepted her current position (no, I didn’t place her there) and with whom I enjoy a good relationship. From previous conversations with her, I’d known that she needed to add someone to her practice, and I’m schmoozing a little bit as a prelude to presenting this candidate. I start hitting the highlights, taking care to reveal something about his work history I thought she would hear as “close-but-no-cigar.” She actually was increasingly interested. She agreed to an interview and we were in the process of handling logistics of scheduling and resume submittal. In the course of that conversation, I said, “Just so you can write it in your calendar, his name is so-and-so.” “Oh,” she says, “I have a phone message from him this morning, from before I got in. I haven’t called him yet, but I was planning to.” What would you do/say?**

***Tom Keoughan responds:***

Even though it seems likely that the employer was being truthful (and they ain’t always), this is really just another case of the old “we know that guy” scenario. There are hundreds of variations: “we have his resume in our database from five years ago,” “somebody mentioned his name and we haven’t gotten around to doing anything about it, but we were going to,” “I already know that guy exists...somewhere,” “I worked with this guy back in 1987,” and on and on and on.

I will offer two pieces of advice:

- ) First, never set up an interview, forward a resume, or reveal too much about a candidate (especially the names of the companies where he’s worked) before having a strong signed contract in place. (I can already hear the “but, but, but’s – so here is my second piece of advice...)
- ) Second, never set up an interview, forward a resume, or reveal too much about a candidate (especially the names of the companies where he’s worked) before having a strong signed contract in place.

That may not have entirely solved your problem in this case but it would have given you a leg to stand on and at the very least would have given you the opportunity to be magnanimous rather than just having to live with whatever the company dictated. Having a strong, signed contract in place would also solve about half of all the problems that recruiters take to attorneys. Ask Jeff Allen. Should a company refuse to sign a fair contract, those sounds you hear are alarm bells NOT the ka-ching of the cash register.



Also, realize that the candidate likely has no idea who some of the companies he sent resumes to are if he's been responding to blind ads on the internet. Lastly, before you MPC a candidate, try asking the candidate to sit tight for a week or 10 days while you contact companies on his behalf. However, in the current economic climate, that may be a difficult agreement to get.

**February 2010**

**Question: The candidate has been on multiple interviews with client; client has had multiple candidates through the interview process.**

**After months of interviewing, client now wants to make candidate an offer. Candidate is employed and confidentially looking. References on past employment and background check have been completed. Client has extended a contingent offer to candidate that is acceptable; however, client does not want the candidate to give notice or discuss position with others until client has had the opportunity to conduct a final reference with candidate's current boss. Client is adamant that reference check with candidate's current boss needs to be completed before offer is official. The candidate is concerned about confidentiality being jeopardized because current boss is somewhat unpredictable and unaware that candidate is looking. Without the reference, there is no official offer.**

**What would you do?**

***Tom Keoughan responds:***

Of course, your client is being completely unreasonable and he knows it. I know you think that you're in a tight spot but the reality is that it's your client that has their back against the wall. They must be desperate to fill this job if they're looking to hire in the current economic climate. So, they're desperate to hire and they have had multiple candidates through multiple interviews in a process taking several months. Wow! Sounds like the right time for a client take away close.

Soften it some. Don't actually do a pure take away but tell them that "in this economic climate the candidate simply can't put his family's future in jeopardy by allowing the client to alert his direct supervisor that he has been interviewing for other employment." I like your euphemism, "somewhat unpredictable," but I think we can all read that as very predictable and very ... let's just say "unpleasant." Mention that to your client and advise them that if they alert the

candidate's current employer to the fact that he has been interviewing AND they don't hire him AND he gets fired or downsized for ANY reason they might find themselves facing some unforeseen legal vulnerabilities. Those types of cases can be expensive even if they ultimately prevail. Then wait.

The company is desperate to fill the job and after an exhaustive search has found the guy they want. They will have to decide whether to let their CYA pig-headedness stand in the way of developing the team they need to compete in today's economy. In truth, there's very little you can do about it. You win some, you lose some.

Certainly, and don't tell your client this, but – just between us kids – if the hiring manager (or team) doesn't feel comfortable evaluating a candidate he has interviewed multiple times over several months, and checked a variety of other references on, then he isn't really qualified to perform his own job and should give you a search to replace himself.

**September 2010**

**Question I thought this was pretty obvious and then I thought about it some more and I am not so sure. There are a lot of unknowns but I'd like Pinnacle members' perspectives on what to do with what we do know in this situation. I have an agreement with a client reading "SearchMax agrees not to solicit Spacely Sprockets' employees during the term of this Agreement as defined above and for one year following the latter of either the termination of this Agreement or the final payment made to SearchMax."**

**I had a split partner send me a resume from a job board with full contact in the open saying she is at Spacely Sprockets. It feels to me like a 'hey, why not?'**

***Tom Keoughan responds:***

I think it's important to do all that you have agreed to do. While technically you may be able to play at "I didn't actively solicit her," if Spacely Sprocket finds out you will lose them as a client and they may spread the word and damage your reputation. You really can't be working both for and against a company at the same time. If Spacely Sprocket is a good client, you shouldn't want to. If they are not – get rid of them.

In any case you should fix the following problem in any and all contracts. You have contractually agreed to non-solicitation of employees for a period of "one year following...the termination of this agreement." What does that mean? I have rarely seen a recruiting agreement formally terminated. If they just stopped giving you searches, the agreement would not be terminated and you would not be able to recruit their employees...ever. Either they would have to send you a document formally terminating the agreement or you would have to send them one thereby telegraphing your intent. Base any non-solicitation agreement on concrete events: one year from the date of any contract signed, candidate presented, or money received by Searchmax, etc.

A large part of becoming a big biller is deciding what you will and won't do and following through on that. You should be thinking long term. If you have a client that you don't like working with, turn them loose. For clients that you want to keep – live up to the spirit not just the letter of any agreement. Go beyond expectations for a good client and you will be amply rewarded over time. "Hey, why not?"

**April 2010**

**The Question: I just had something happened for the first time and I'm not sure how to feel about it or how to react to it. I work a well-defined, small and tough niche. There are many people who claim to be in it but not many who are really effective. There are a couple of people with whom I do the occasional split but that kind of activity is usually a waste.**

**One of the few guys I do like working splits with just requested a LinkedIn connection from a candidate I supplied for his client. I am not sure my question about whether this is something that should be done should depend on whether the guy is placed there or not. He is not yet. I am not sure if there is anything wrong with this at all but I know it would not have occurred to me to ask candidates he sent me to link up for the purposed of "mining" his links. What do Pinnacle members think about this? How should I react? I usually form opinions instantly but I really don't know what to think about this. I also suspect the other recruiter didn't think about it either.**

***Tom Keoughan's Response:***

Sorry Dave, but this is going to be a bit of a tirade. First of all, I don't do splits. I work in a very narrow niche and I'm not interested in helping the competition. I don't feel that half a fee is worth having a competitor look good to become more entrenched with a potential client. I would rather that they do poorly so that I will have a better chance to show the client what I can do. This is competition—not everyone gets a trophy. Also there are companies that I won't work with because they treat their employees badly.

My competitors may work with them but I'm not going to sell my candidates down the river for a quick buck. My competitors may have no qualms doing so, but let that stink be wholly on their hands. Furthermore, I think that when you give a candidate to another recruiter, for the most part, you will get paid if he places them in his current search. But I think that becomes less and less likely in the case of future searches as time goes on. Finally, if it's me who has the opening, I don't need someone else's candidates. I'll fill the job myself—it's what I do for a living.