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# NALSC®

National Association of Legal Search Consultants

SPRING 2015

## Inside this issue:

### President's Message with Conference Details and Dates for Future Events

by Warren Smith, LL.B.,  
Managing Partner of  
The Counsel Network-Canada

### Timing is Everything: The Law Firm Recruiting Calendar

by Valerie Fontaine, Esq., Principal of  
Seltzer Fontaine Beckwith

### Protecting the NALSC Code of Ethics® Certification Trademark

by Dan Binstock, Esq., Co-head of the  
Partner and Practice Group Division of  
Garrison & Sisson, Inc., based in  
Washington, DC

### Two Legal Search Firms Battle over Trademark

by Julie Triedman, *The Am Law Daily* -  
Reprinted With Permission From *The  
American Lawyer* January 15, 2015

### The 2015 Mantra for Smart Law Firms

by Young Mayden, LLC

### A Tribute to Marty Africa

by Ken Young, Esq., Principal of Young  
Mayden, LLC

### Do The Right Thing— For Employers

by Amber Shockey, JD

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## President's Message with Conference Details and Dates for Future Events

by Warren Smith, LL.B.

Dear NALSC® Members,

I hope everyone is looking forward to a warm spring and that you are all busy in your practices. I am thrilled to report that NALSC® continues to prosper! Our membership remains strong and interest in NALSC® continues to grow among clients and candidates on a nationwide basis.

Our NALSC® 2015 Annual Conference is almost here! Taking place at the legendary Westin St. Francis in San Francisco, from Thursday, April 30th to Saturday, May 2nd, this event will be a standout. The Annual Conference continues to be a must-attend event for legal recruiters, law firms, corporations and our valued sponsors. Our theme this year is "Discover the Golden State of Legal Recruiting," and will include a star line-up of dynamic speakers combined with interactive sessions.

Our keynote speaker this year is Ross Fishman, CEO of the award winning advertising agency, Fishman Marketing. Ross' company is recognized internationally as one of the leading marketing and branding organizations for law firms— he will be speaking to NALSC® on some of the lessons learned in legal marketing that have applicability to our industry, along with delving into how to maximize your relationship with law firm decision makers, handling "law firm logjams," recruiting by the NALSC® "gold standard," evaluating lateral partner candidates, retained searching, evaluation of candidate persona profiles, and much more.

As always, we continue to offer educational sessions, interactive breakouts, gala receptions, and fantastic networking opportunities throughout the event. I continue to be impressed with the caliber of our membership and event attendees— from the numerous speakers and discussion leaders to individual conversations over food and drink— it is inspiring to spend time with so many leaders in the recruitment industry.

Also, we thank our generous sponsors for their continued support of NALSC®. Our Platinum Sponsors are ALM and lawjobs.com; Gold Sponsor is Kelley Drye & Warren LLP; Silver Sponsor is Leopard Solutions; and Bronze Sponsors are Above The Law, Broadlook Technologies, The Cluen Corporation, Invenias, LegallyLooking.com, and TFI Resources. Also, our law firm Honorary Sponsors are Akerman LLP; Bilzin Sumberg Baena Price and Axelrod LLP; Cadwalader, Wickersham & Taft LLP; Dechert LLP; Duane Morris LLP; Gibson, Dunn & Crutcher LLP; Greenberg Traurig LLP; Michelman & Robinson, LLP; Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; and Proskauer LLP.

Conference details, registration form & hotel room block information are available on [www.nalsc.org](http://www.nalsc.org).

We are also pleased to share the dates for our upcoming 2015 full-day New York Symposium. It will be held at the beautiful midtown offices of Chadbourne & Park LLP on Friday, October 23rd. As with all of our past New York events, we anticipate having a record number of attendees. We will

provide more detailed information closer to the event but wanted to make sure you save the date.

Finally, we are excited to share that we will be having our 2016 Annual Conference in tropical South Florida from Thursday, March 17th through Saturday, March 19th. Join your fellow members as we enjoy the surf and sun at the Hilton Ft. Lauderdale Beach Resort. This property features every guest room with an ocean view as well as a balcony, direct access to the beach, a beautiful pool and spa as well as top-rated restaurants. All of our receptions are scheduled to take place outdoors with spectacular views and balmy ocean breezes. I have personally visited the property and know that it will be a wonderful event. Please mark your calendars!

Best regards,  
Warren Smith, LLB- President

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## Timing is Everything: The Law Firm Recruiting Calendar

by Valerie Fontaine, Esq.

In recruiting, as in life, timing is everything. While law firm hiring is a year-round effort encompassing associate and partner level laterals as well as student recruitment for summer and entry-level classes, different goals take priority at various times of the year. Therefore, knowledge of what goes on inside law firms can help you advise your candidates about timing their approaches for maximum effectiveness or, at least, understanding how the competing demands on hiring partners, hiring committees, and recruiting staff affects their candidacy.

There may not be a choice regarding job search timing if, for example, your candidate's firm closes or loses partners, or if an irresolvable client conflict occurs. Moreover, many candidates consider personal factors such as staying for a year-end bonus or, if considering relocation, waiting for children to complete a school year. While those are valid considerations, your candidates also should know what is going on from the perspective of law firms' recruiting schedules.

The following is a typical large law firm recruiting calendar:

### January

Most law firms complete their annual budgeting process at the beginning of each year. Firm management makes projections for the upcoming year regarding recruiting budgets and head count. They set start dates for fall and summer associate classes, and allocate funds for salaries, travel, social events, and receptions. Similarly, various practice groups within the firm assess their hiring needs for both partners and experienced associates and set the lateral hiring budget, including recruiter fees, candidate travel expenses, and relocation costs. The firm estimates any necessary office build-out and additional staffing costs, as well.

Consequently, in mid to late January, large law firms begin contacting their preferred legal search firms with a list of lateral hiring needs for immediate and long-term growth. At many firms the assessment of lateral hiring needs continues throughout the year, but at others, once they exhaust the allocated funds, lateral hiring must stop for the year.

Most law firms pay bonuses for the past year and establish new compensation levels in January or early February. Thus, many lawyers decide whether to stay or start a new job search early in the year, depending upon the outcome of the bonus and salary decisions. As these lawyers start making their moves, additional positions open up at their former firms, and the lateral recruiting market becomes more fluid.

### February and March

As a general rule, interviewing for lateral hires is more intense during these months than at any other time of the year.

In February, firms must complete and submit their "NALP Forms" for inclusion in the next edition of the *NALP Directory of Legal Employers*, published at [www.nalpdirectory.com](http://www.nalpdirectory.com). The NALP forms contain all sorts of information useful to you and your candidates, including numbers of lawyers at various levels and in which areas of practice, how many students it hires for summer and entry-level classes, how many make partner, diversity breakdowns, billable hours, benefits, and so forth. While firms can edit some of the information to the online edition throughout the year, numbers regarding population and demographics are frozen at the February deadline, for purposes of comparison from year to year.

Also by February, firms determine at which schools to recruit for their summer and first year associate classes. This is

when they reserve on-campus recruiting dates at the target law schools, and begin planning for the summer associate program.

### April

Law firm recruitment administrators and law school career services directors from across the US and Canada meet for the annual NALP conference for a week in April. Therefore, if your candidate's résumé is received then, or if he or she is in the midst of the interviewing process at this time, there may be a delay in response time or scheduling if you are working through the recruiting staff. Lateral hiring decisions and interviews continue throughout this month, however, and arrangements for the summer program are completed since the students arrive at the firm mid-May.

### May, June, and July

During these months, lateral hiring may take a back seat to the summer associate program at many large firms. In May, orienting the students, assigning them to supervisors, and mentors, as well as providing them with useful and meaningful work while dining, and partying, occupies most of the time and attention of the recruitment staff and many lawyers. Management of the summer associates' workflow, training, evaluation, and social events continues throughout June and July.

At the same time, law firms make final arrangements for fall recruiting. They determine hiring goals for summer and fall classes, select and train interviewers, and plan any on-campus receptions. Lateral hiring moves along, as necessary, depending upon the specific staffing needs of the firm.

### August

There's a flurry of activity unrelated to lateral hiring in the

**"...knowledge of what goes on inside law firms can help you advise your candidates about timing their approaches for maximum effectiveness..."**

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(continued on page 3)

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first half of the month. Most summer associates return to school in mid-August, and firms must wind up their summer programs with exit interviews, evaluations, and decisions regarding whether or not to extend offers of full-time employment after graduation to each of their summer associates. Immediately thereafter, the firm's attention turns to on-campus recruiting, which begins in early August at some schools and extends through the beginning of September. Because a number of lawyers on law firm recruitment committees either take vacation in August, or participate in on-campus interviewing, they're not as available for other candidate interviews. Consequently, lateral hiring slows this month.

### September

The first-year class of associates traditionally starts after Labor Day at most large law firms. Orientation and training begins right away and continues through October.

Summer associates who received offers for full-time employment to begin the following fall have until November 1 to accept or decline offers according to the NALP "Principles & Standards for Law Placement and Recruitment Activities," but responses typically begin coming in by September. As firms begin to gauge their offer acceptance rates, they determine how many third-year students they must interview to fill their first-year associate class for the next fall, even as they continue interviewing second-year students for the upcoming summer program.

Fall season on-campus interviewing concludes in September and many of the larger firms finish by the middle of the month. Students then visit law firms for callbacks, more in-depth interviews, throughout September. The larger firms, especially, aim to have their callback interviews

completed by the end of the month. Therefore, lateral hiring slows down for some firms as the third quarter ends and recruiting attention is on law students primarily. Furthermore, budgeted funds for lateral recruitment may be running low.

### October and November

Summer associate and entry level hiring is wrapping up. For those firms still in the throes of fall entry-level recruitment, callback interviews must be completed by Halloween. At many large law firms, the recruitment committee meets weekly to evaluate candidates. They make offers by November 1 to second-year law students as prospective summer associates and then to third-year students as prospective entry-level associates for the following fall. The students have 28 days to respond to the offers. The objective is generally for all offers to be accepted or rejected by December 31, the official end of the fall recruiting season for large law firms.

Firms usually don't consider it economical to bring in new lateral partners late in the year. It takes three to six months for revenues generated by these new partners to start flowing into the firm to offset expenses. This became increasingly important as profits-per-partner figures published in the legal press gained traction as a way to rank law firms. The last few months of the year are especially good times for your senior- or partner-level candidates to begin a search, however. The hiring process at that level usually takes a while, and this timing allows them to collect their share of the profits and disbursements at their old firms and start new employment early the following year.

Note, however, that for your partner candidates with a large, profitable, and portable book of

business, almost any time is a good time to look!

### December

On December 1, first-year law students are "released" for recruiting purposes; their first round of exams are done and grades are in. Until then, they're "off limits" for purposes of law firm recruitment according to NALP's ethical guidelines. If a firm didn't yield enough second-year students to fill its summer program, it can begin recruiting first-year law students to meet its quota. This is usually not much of an issue, however, since there are few, if any, vacancies to fill.

Although the holiday season presents some scheduling issues, contrary to popular belief, lateral recruiting revs up again in December. Law firms begin to interview candidates who wish to stay at their current firms long enough to collect their annual bonuses and begin employment early the next year.

The preceding recruiting calendar is relevant primarily for law firms that participate in on-campus recruiting for summer associates and entry-level classes. Those are the larger firms, for the most part. For smaller firms, small offices of larger firms, and those that only hire laterally, similar economic, budgeting, forecasting, and vacation considerations usually apply. For such firms, however, their actual hiring schedules have much more to do with lawyer departures, workflow, and client needs. In those cases, rely upon your own research and relationships to determine the best timing to present your candidates.

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Valerie Fontaine is a Board Member of NALSC®. She is also a Principal of Seltzer Fontaine Beckwith ([www.sfbsearch.com](http://www.sfbsearch.com)). Valerie can be reached at [vfontaine@sfbsearch.com](mailto:vfontaine@sfbsearch.com) or 310-842-6985.



***"Note, however, that for your partner candidates with a large, profitable, and portable book of business, almost any time is a good time to look!"***

## Protecting the NALSC Code of Ethics® Certification Trademark

by Dan Binstock

Over the years, NALSC® members have raised the question of whether certain search firms—who are not members of NALSC®—can rightfully or legally claim that they abide by the NALSC Code of Ethics®. The NALSC® Board of Directors has recently considered this question and the short answer is “no.” The Code of Ethics section of the NALSC® website also has been revised to include guidelines on this point (see <http://www.nalsc.org/about/ethics.cfm>).

In short, NALSC® is the owner of several federally registered trademarks, including the NALSC Code of Ethics® certification mark (Reg. No. 3010588). The NALSC Code of Ethics® certification mark is used by NALSC® members to

indicate their ongoing obligation to comply with the Code of Ethics.

The right to use the NALSC Code of Ethics® certification mark is limited exclusively to current and active NALSC® members. Why? An essential element of the NALSC Code of Ethics® is the enforcement mechanism against members who violate the NALSC Code of Ethics®. If a member of NALSC® allegedly violates the NALSC Code of Ethics®, they are subject to an investigation and potential enforcement proceeding. This enforcement mechanism is an essential component of the NALSC Code of Ethics® and the key method to maintain consistent quality associated with the NALSC Code of Ethics®.

If you become aware of any non-NALSC® member search firms using the NALSC Code of Ethics® certification trademark on their website or marketing materials, or otherwise claiming or suggesting that they are abiding by the NALSC Code of Ethics®, please inform NALSC® Headquarters (by emailing [info@nalsc.org](mailto:info@nalsc.org)) or Helene Ashenberg, Chairperson of the Ethics Committee (by emailing [helene@capstonepartners.com](mailto:helene@capstonepartners.com)).

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## Two Legal Search Firms Battle over Trademark

by Julie Triedman, The Am Law Daily - Reprinted With Permission From *The American Lawyer* January 15, 2015

Lateral.ly, a startup legal search firm with a novel online platform that has been called the “Tinder” for lawyers and suitor firms, is locked in a bitter trademark battle with larger Los Angeles-based search firm Lateral Link.

On Monday, the upstart firm convinced a federal judge not to block it from using its name, a move that Lateral.ly’s lawyers said would have threatened its core business during peak recruitment season. U.S. District Judge John Kronstadt indicated during a hearing that he would deny Lateral Link the injunction it sought. An injunction would have immediately barred Lateral.ly from using the name on its site or in communications with law firms and associates just as the lateral hiring season reaches its annual peak.

Lateral Link filed suit in July in a Los Angeles federal district court,

claiming that “Lateral.ly” infringes on its trademarked name and poses unfair competition by allegedly confusing Lateral Link’s customers.

“If you hear the names, it’s obvious that they’re almost identical,” says Robert Tauler, a Los Angeles solo practitioner handling the matter for Lateral Link. Lateral.ly, meanwhile, alleges in a response and counterclaim that Lateral Link’s suit is a thinly-veiled anticompetitive effort to squash a threatening new player in the market, as well as an attempt to monopolize a generic term, “lateral.”

The battle between the two search firms—a trial is scheduled for December—may just be the first skirmish in the industry. That’s because Lateral.ly offers a very different business model that

eliminates the need for a recruiter middleman in lateral transactions.

According to Lateral.ly’s cofounders, Micah Springut and Audrey Barron, the online platform they created directly connects jobseekers and job listers in law firms, bringing a higher level of transparency to the law firm hiring market. The company, founded just last April and the service rolled out officially in June, shows wannabe laterals all jobs currently available in their practice areas. Unlike traditional legal search firms, law firms listing jobs are also identified to users.

Springut, the company’s CEO, and Barron, its chief legal officer, say that some 3,000 lawyers, mostly associates, signed on to the new service in the three months after it officially rolled out its platform in June, though they won’t give current subscriber data. They also say that

**“Lateral.ly, a startup legal search firm with a novel online platform that has been called the ‘Tinder’ for lawyers and suitor firms, is locked in a bitter trademark battle with larger Los Angeles-based search firm Lateral Link.”**

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most Am Law 100 firms have also signed on to list associate jobs.

Ironically, Lateral Link, founded in 2006, was also viewed as a disruptive upstart in the industry when it became the first to offer a "pay-to-place" bonus to each associate it placed in a firm in 2008, according to our previous reports. But its model, like virtually all legal search firms, depends on its stable of recruiters.

Barron, 27, a former Shearman & Sterling associate and clerk in the Northern District of California, and Springut, 30, previously a vice president for search engine company Ark.com and e-commerce giant Groupon's former China head, say they initially planned to create a sortable online directory for lawyers, kind of like a Martindale.com on steroids. But they quickly found that "people wanted to use it to find jobs," says Springut, "so we created a marketplace. We were quite shocked when we saw that no one had done this before."

JDMatch has a similar service, but just for law students. Vault.com and LawCrossing.com both provide job boards and job alert services, but

don't provide any screening or a way for firms and job seekers to directly communicate via the site. Lawmatch.com offers to connect employers with potential lateral hires, although its platform doesn't focus on large corporate firms.

On Lateral.ly, potential laterals—who can enroll for free, but must upload their resume and transcripts—can search and view available jobs. Alongside each firm with a listing are sortable columns identifying that firm's "prestige" ranking, profits per partner and associates per partner.

When a candidate indicates interest in a job, Lateral.ly sends his or her information to the target firm, which chooses whether to pass on the candidate or to have an online "conversation." Listing law firms, for their part, can see all the candidates who have expressed interest in a given job, and may either send messages inviting specific applicants to communicate directly, or may pass on them. Information about why the firm rejected a candidate is forwarded to that candidate.

The founders say that outside of

Springut's initial capital investment, the company has generated enough revenue from completed associate hires to support a staff of seven, including three computer software engineers and a data expert. That's true even though the two say their rates—negotiated individually with law firms who post on the site—are far below those of traditional search firms. The company is hoping to roll out a product for partners in the job market soon.

Lateral.ly is represented by Century City, Calif.-based IP boutique Steffin Lelkes Azod along with founder Springut's father, Milton Springut, an IP litigator with New York-based Springut Law. The two argue that Lateral Link's trademark is unenforceable because the dominant name shared by both parties—"lateral"—is the generic term for an attorney changing employment. Lateral.ly's lawyers claim that Lateral Link can't monopolize such a term solely to hinder rivals in the same business.

Read more:

<http://www.americanlawyer.com/id=1202715294419/Two-Legal-Search-Firms-Battle-over-Trademark#ixzz3W4yQKfP>

***“The two argue that Lateral Link’s trademark is unenforceable because the dominant name shared by both parties—‘lateral’—is the generic term for an attorney changing employment. Lateral.ly’s lawyers claim that Lateral Link can’t monopolize such a term solely to hinder rivals in the same business.”***

## The 2015 Mantra for Smart Law Firms

by Young Mayden, LLC

When Ken Young and Barbara Mayden started practicing law at different large law firms in the late 70's, most law firms were convinced "bigger is better" because they had leverage driven profit models. They hired lots of associates, worked them hard, and the partners at the top of the pyramid made very nice profits. We now live in a post-recession/large layoffs legal climate, however, where most law firms look more like a diamond than a pyramid. The days of "for services rendered" bills are but fond memories; clients have become so insistent on not paying for "research" by young associates that large law firm starting salaries in some states are actually

going down despite the uptick in the national economy.

Another mantra formerly preached by large consulting firms to law firms was "merge or die." But we are all painfully aware of the many national and international law firm mergers that have failed just as miserably as the Mercedes Benz-Chrysler experiment. And conversely, there are many small to medium sized law firm boutiques around the country that have their own unique "niche," and are doing just fine financially.

So as we head into 2015, what do we see as the defining factor

between firms doing well, regardless of size, and those that are struggling? Firms doing well are more apt to have a clearly defined strategic plan that the partners understand and support. Instead of the dreaded "collecting dust on the shelf," firm management executes the plan as opposed to making ad hoc decisions as various challenges and opportunities arise. However, many law firms still have no written strategic plan and accordingly have not furnished their managing partners a road map for firm direction. These firms are often at best standing still, but usually going backwards because valuable senior associates and partners sense the

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firm's lack of direction and jump to better-positioned, more profitable firms.

Firms that engage in the planning process usually agree that smart growth is always desired. What is "smart growth"? Number one on the smart growth list is client driven growth. If a firm needs to grow to better serve valuable clients and attract new ones, it's a no brainer.

The smart growth list also includes hiring partners and associates who are team players and do not damage the culture or reputation of the firm. Our advice when guiding firms through merger discussions, acquiring new practice groups or opening offices in new geographic regions, is to carefully assess the culture fit before digging through the dollars. Of course, there is no need to talk at all if there are insurmountable client conflicts or significant rate/compensation differences that can't be reconciled. Where those are not issues, however, the courtship and

synergy discussions need to move at a deliberate rather than breakneck pace. Firms should heed the advice their management labor lawyers often give corporate clients: "Hire slow-Fire fast." Annulments are as painful and costly in the legal arena as marital ones.

Last but not least is "one and one should equal more than two". Firms discussing a combination are wasting valuable, billable time if the merger merely increases administrative headaches, client conflicts and year end financial issues. But where two firms combine and bring new expertise to the table that can be used by their respective clients, as opposed to the clients having to use other law firms, definitely is a good result. Or where a firm/practice group is located in a geographic region desperately needed by another firm to serve valuable clients, and both groups will utilize each other for legal work they previously would not have received, also is a potential "win-win."

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**"Firms that engage in the planning process usually agree that smart growth is always desired. What is 'smart growth'? Number one on the smart growth list is client driven growth. If a firm needs to grow to better serve valuable clients and attract new ones, it's a no brainer."**

## A Tribute to Marty Africa

By Ken Young, Esq.

Martha Fay ("Marty") Africa, a true pioneer and internationally known legal recruiter who helped start the search firm that became Major Lindsey & Africa, passed away on January 22, 2015 after a protracted battle with cancer.

Marty joined Bob Major in 1984 from her position as Director of Law Placement at the University of California, Boalt Hall School of Law. Passionate about the legal profession and the role of legal search in improving that profession, Marty was a highly influential member of the legal community both in the Bay Area and nationally, and active in both the ABA and the Bar Association of San Francisco. She was the founder of, and inspiration behind, the Women

Rainmakers, an organization devoted to training women lawyers in the art of networking and practice building. She served on numerous ABA committees relating to advancement of women and minorities, and served on a number of non-profit boards. In addition, she was a member of the Scripps Institute of Oceanography Council and was a prolific writer, editor and speaker on a wide range of topics relating to law practice.

Marty conducted searches at all levels, from General Counsel to Executive Director for major corporations, not-for-profit organizations, and educational institutions. Her unique style, warmth and insight made her one of the most beloved and sought after

figures in the legal search profession, and hundreds of individuals trace the roots of their successful careers to Marty's guidance. I am honored to include myself in that group.

When I decided to leave the practice of law in 2007 and was considering starting a legal search firm, I sought Marty's counsel as we knew each other from our extended ABA involvement. Marty spent countless hours, over the phone and at ABA meetings, telling me about the legal search profession and why she loved it. "Helping people is fun and I love it; the money is secondary" was the gist of her message. Integrity, honesty and genuine concern for the well-being of all with whom she came in contact were her trademarks. But what I most

(continued on page 7)

(continued from page 6)

remember was how interested she was in my budding search firm and how many pointers she continued to provide every time I called her, regardless that I was in a market which had a MLA office. She simply wanted to help me be the very best I could be, even though I was on the opposite side of the country and there was certainly nothing “in it for her”. It was typical of the generous, loving way Marty chose to live every day of her life.

Marty knew at least a year before her death that her cancer would eventually win what had been a long and hard fought battle. But Marty faced death as she did everything in life, with grace, poise and a desire to immediately get started, with her

beloved husband Stewart Levine, on their bucket list.

Marty leaves an unparalleled legacy of professional success and personal kindness in the legal recruiting field. We should all strive, particularly during those “trying times” that unfortunately occur quite frequently in our practices, to approach our candidates, clients and colleagues, as would Marty Africa.

**ABOUT THE AUTHOR:**

*Kenneth E. Young, Esq. practiced labor and employment law on the management side for 30 years before founding Young Maiden LLC, a legal search and consulting firm*

*that provides services to law firms and law departments nationwide. He also serves on the ABA Law Practice Management Section Council. You can contact him via his direct dial (704) 366 - 8546, and/or his email address [kyoung@youngmaiden.com](mailto:kyoung@youngmaiden.com)*



## Do The Right Thing- For Employers by Amber Shockey, JD

NALSC® recruiters must abide by the NALSC Code of Ethics®. Because of the Code of Ethics, ethical and unethical behavior on the part of recruiters is clear. More importantly, unethical behavior has consequences, and the behavior can be adjudicated by the Ethics Committee.

What many do not realize is that NALSC® membership is not limited to recruiters, and a growing number of employer members (law firms and corporations) are joining the organization. Member employers are able to explicitly agree to abide by the NALSC Code of Ethics® and to require recruiters to resolve conflicts according to the Code. But, the Code does not speak to the behavior of employers in dealing with recruiters.

At a recent conference, there was a discussion about certain questionable behaviors on the part of a few law firms (who were not employer members of NALSC®). Sometimes these questionable behaviors were clearly done with the intentional purpose of circumventing a placement fee. Yet some were less clear and

could be attributable to naïveté as to the recruiting norms.

This article provides some situational examples of behaviors that, although possibly justified by law firms, are questionable from an ethical standpoint and will impact a law firm's reputation with search firms. We raise these with the simple purpose of improving communication and expectations.

**“We already know of this candidate”**

NALSC® recruiters know that if another recruiter has submitted a candidate to the same client within a certain number of months (governed by the contract or company policy), then any attempt to interfere in that submission is a violation of the Code.

How a law firm or corporation will handle candidates who are “known” in some form or fashion really only becomes clear when a problem arises, and both the recruiter and employer are well into the relationship. But, from the

perspective of recruiters, certain expectations already exist. The following examples spell out situations that recruiters regularly encounter, and we hope will alert employer members to be more aware of potential unethical behavior—so that they can address those situations up front.

What are some examples of obvious unethical behavior on the employer's part when claiming a candidate is a “known candidate,” meaning the recruiter will not earn a fee on the submission?

1. A partner is friends with a recruiter-submitted candidate and recognizes the name on the resume when it is passed around to the hiring authorities to determine interest. The partner cannot fathom paying a recruiter a fee for a “friend.”
2. A candidate authorizes a recruiter to submit his/her resume, but also reaches out to contacts to bolster their submission. When they do so, they fail to mention that their resume is in front of the company

**“NALSC® recruiters know that if another recruiter has submitted a candidate to the same client within a certain number of months (governed by the contract or company policy), then any attempt to interfere in that submission is a violation of the Code.”**

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(continued from page 7)

through a recruiter, and the hiring authority receiving the direct communication moves faster than the normal channels—edging the recruiter out. When told that the candidate came from a recruiter, the hiring authority challenges on the basis that the candidate also reached out to him/her.

3. A recruiter calls a candidate during a search for employer. The candidate is intrigued, and asks to think about the position. During that thought process, the candidate reaches out to an employee of client to get information to decide whether to submit. The employee encourages the candidate to submit through them to get an internal referral fee instead of the recruiter.

Law firms and companies have numerous individuals active in the recruiting process, some heavily involved and some not involved at all. In each of the situations above, the recruiter identified the candidate, made contact, and sparked interest on a particular candidate, but the organization receives conflicting information from employees that they sourced the candidate.

An employer that values its relationships with recruiters will investigate whether the recruiter was the first to contact the candidate. The legal industry is small, so pre-existing relationships almost certainly will be present—and those pre-existing relationships are valuable in the hiring process—but employees are not tasked with trying to think of every friend who might be interested in each position and actively recruiting them. Once the employer decides to reach out to a recruiter for assistance, the honorable and ethical approach is to pay the recruiter who was the “but for” proximate cause.

Advice to search firms: find out any relationships that the candidates you

have called may have at the employer organization. Tell the candidates that pre-existing relationships are very helpful in the process, but must be managed appropriately. Ask the candidates to wait until their resumes have been submitted before reaching out directly to the client. If the candidate is intent on getting information from the company before submitting, ask that they be clear that a recruiter has called and ask them to not send a resume without talking with you first—even their friend asks for the resume.

**“We can’t afford to pay a recruiter fee—but we really like your candidate”**

Recruiters spend equal amount of time learning the candidate pool and keeping track of needs at client organizations. Much of the recruiter’s daily activities remain uncompensated until a placement is made. Receiving a call from an employer with a search may seem so easy, but the months and years of relationship building leading to those calls is time consuming.

An employer has a choice of calling a recruiter and sourcing on its own, but it is ethically bound to budget for and be prepared to pay a fee once it makes the call to the recruiter. Below are situations that arise much more frequently than those outside the industry realize:

1. One partner of an employer calls a recruiter and asks the recruiter to present candidates for a particular need. The recruiter submits the ideal candidate, and during the interview process, another partner tells the candidate that the firm cannot pay their desired compensation because it needs to pay the recruiter X amount.
2. An employer organization makes a decision to outsource a particular attorney need to a recruiter. The employer signs a

fee agreement. During the search, it becomes apparent that the salary range desired by the employer is not producing the most qualified candidate pool. The employer organization determines that the salary range needs to increase, but asks the recruiter to cap its fee.

3. An employer organization hires a recruiter but also continues efforts to source candidates on its own. Two finalists emerge—one a direct, one a recruiter – submitted candidate. The recruiter-submitted candidate is the favorite, but the company tells the recruiter that the slight edge that the recruiter-submitted candidate has does not justify a fee. To fix that, the company asks the recruiter to reduce their fee—otherwise the company will hire the direct candidate.
4. An employer organization hires a recruiter for a position. Subsequently, economic factors make hiring more difficult. The employer has an interest in several candidates submitted by the recruiter, but has no budget for recruiter fees. It waits until the ownership period of the candidate ends in the recruiting contract and reaches out directly to the candidate.

Ethically, an employer must fully intend and be prepared to pay a recruiter fee before engaging the recruiter. That means that everyone who must approve the decision has approved it, and that everyone participating in the interview process have been instructed that a recruiter is involved and that the employer is prepared to pay a fee. The burden to communicate these decisions appropriately is on the employer. Once someone in the interview process casually tells a candidate during the interview process that the employer does not want to pay a fee, the damage is difficult to repair (and, frankly, reflects poorly on the employer).

**“Recruiters spend equal amount of time learning the candidate pool and keeping track of needs at client organizations. Much of the recruiter’s daily activities remain uncompensated until a placement is made. Receiving a call from an employer with a search may seem so easy, but the months and years of relationship building leading to those calls is time consuming.”**

(continued on page 9)



(continued from page 8)

To avoid these situations, an employer organization should 1) develop clear channels of responsibility for who is authorized to hire a recruiter; 2) develop clear guidelines for when a search is outsourced to a recruiter; 3) communicate its decision to do so to the people who are part of the interview process; and 4) eliminate any person from the interview process who has the potential to make unethical comments on behalf of the organization (or have the person interview jointly with the person who is authorized to hire the recruiter). Because larger employer organizations are more likely to have policies for recruiter hires, it is really the smaller organizations that are more at risk for having partners who feel their approval for a recruiter is required, and might say something unethical to a candidate if they are surprised by the candidate or the recruiter-submission.

**Advice to search firms:** During the early conversations in the search relationship, ask who has authority to hire a recruiter, what the approval process is, and whether approval by all necessary internal parties has been obtained. This could help identify if there is one person not on board with paying a fee who could be a road block on down the road.

**“Sure we will take recruiter resumes”**

NALSC® recruiters are required to have authority to submit resumes to a search. Recruiting without authority is unethical and can be adjudicated by the Ethics Committee.

True, contingent search requires recruiters to bear the risk that they will do the work for the search but ultimately not produce the final candidate. Historically, the business has worked well under the let me show you some candidates that beat your direct. But as more employers add more formal HR employees, including but not limited to internal

recruiters who are also compensated for success, and/or financially reward managers for cutting budgets, some very grey ethical areas are beginning to emerge. Here are some sticky situations that really won't be clear, but it is worth presenting them to raise awareness and to open discussions internally.

1. A hiring manager and the internal HR group are at odds for a particular salary band for a position. The hiring manager wants stronger candidates, but cannot get HR to approve a higher range. The hiring manager calls a recruiter without the knowledge of HR and asks the recruiter to submit candidates directly to him/her. The recruiter write-ups include the salary information. The hiring authority uses this information to encourage HR to increase the salary for a candidate who was already involved in the interview process with the company, but was previously unreachable due to the salary band dispute. The recruiter is unaware of any of the internal backstory (or that his/her work was used primarily to justify an increase in compensation), and only hears that the company has hired an previous applicant.
2. HR is asked by a hiring manager to source candidates for a particular position. HR posts the position on LinkedIn and the job boards and receives 100 resumes, but is not sure which candidates are qualified or how realistic their compensation is. HR hires a recruiter to also send resumes and write-ups on qualified candidates. With this extra information, HR is able to go back through the direct resumes and find comparable candidates to send to the hiring manager and to advise the hiring manager on the terms for

an offer for each potential candidate. The hiring manager never sees the recruiter-submitted resumes.

It is hard to resist the temptation to have a recruiter go out to see what exists in the market to compare to what the company was going to source. This trend is newer, and there are not clear guidelines one way or another, especially in contingency search. The best advice is to be open with your recruiter with what you need. The recruiter may be able to quickly provide that information..

**Advice to search firms:** Early in the relationship, ask to also have contact with the hiring authority and/or HR. A successful relationship depends on having a line of communication with not just the hiring authority, but also HR, and vice versa. If that is not possible, ask why. To avoid the most obvious pitfalls, ask the hard questions early on.

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Note: “Do the Right Thing” is not reviewed by the NALSC® Ethics Committee, nor does NALSC® approve or disapprove of the thought process or proposed resolution of the dilemma presented. If you would like to submit a “Do The Right Thing” scenario for future Newsletters you can email it to HQ at [info@nalsc.org](mailto:info@nalsc.org).

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