



NALSC® STATEMENT REGARDING RECENT MANATT/\$335,000 RECRUITER FEE CASE

October 11, 2018

By now, you may have read in the press articles about Gregg Ziskind & Assocs. v. Manatt, Phelps & Phillips LLP in the California Court of Appeals (“Manatt Case”) which drew headlines for awarding a legal recruiter \$335,000. Because this case discussed the NALSC Code of Ethics®, and certain wording of the decision could be taken out of context without a close look at the opinion, we wish to provide a brief clarification.

The NALSC Board of Directors would like to remind our membership of Article II, Section 3, of the NALSC Code of Ethics, which states: **“Candidates shall be submitted to employers only with the candidates’ express prior consent.”** We understand that the decision in the Manatt Case could be read by some as potentially creating an exception to this rule in the case when a recruiter performs a targeted search for a law firm. This is decidedly not the case. Consent must be obtained from candidates in every instance.

Why is there potential confusion? There was a portion of the opinion discussing expert testimony that “the consent requirement in the NALSC ethics code did not apply to a targeted search” and that the jury could consider testimony that “the prior consent of a candidate is not required when a recruiter performs a targeted search for a law firm.” These statements regarding prior consent and a targeted search appeared in the section of the opinion analyzing a raised argument of whether candidate consent was required for there to be a ***contract between the search firm and the law firm***. Of course, a contract between the search firm and law firm is an entirely different issue than candidate consent for purposes of being submitted to an employer. But viewing the above quoted statements outside the context of the full opinion could incorrectly suggest otherwise.

Takeaways:

1. The presence of a targeted search (between the employer and a search firm) does not somehow eliminate or circumvent the requirement of candidate consent for a submission to a prospective employer under the NALSC Code of Ethics.
2. As a best practice, agreements between our members and their clients should contain language expressly addressing when a fee would be payable including, for example, clarifying that a fee is payable only where an introduction of a candidate is made with the candidate’s express prior consent.
3. We wish to make clear that any published or unpublished statements or opinions of individual or groups of NALSC members or non-members regarding the application of the Code of Ethics are the personal opinions of those expressing those views and, in the absence of an express decision by the NALSC Board of Directors, are not the view of NALSC and are not binding on NALSC or any of its members.

Thank you for reading this notice, and if you have any questions about the above, please feel free to contact NALSC President, Dan Binstock, at (202) 559-0472/dbinstock@g-s.com or NALSC Chair of Ethics, Avis Caravello, at (415) 979-0200/acaravello@aviscaravello.com.