

NALSC® NEWS

National Association of Legal Search Consultants Newsletter

Summer/Fall 2020

“Thank you very much for the great NALSC Presents webinar. Very good topics and discussion – I felt like we could have gone another 60 minutes.”

“I just wanted to let you know how terrific yesterday’s webinar was. I think it was far and away the best and most informative that NALSC has ever offered. Thanks so much for putting this together for us.”

“THANKS very much! GREAT GREAT GREAT webinar.”

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Announcing



NALSC® 2020
Fall Symposium

LOCATION: Virtual SCHEDULE: October 22-23, 12pm-3:30pm ET

Watch for more details on speakers, sponsors and networking



NALSC®
National Association of
Legal Search Consultants

Dear NALSC Members,

We hope you all are staying safe during these unprecedented times. As pressures on society continue worldwide, our communities are working together in order to confront the challenges facing us all. NALSC is adapting as well, and we are pleased to be incorporating many new initiatives and adding additional value on a virtual basis to our membership.

New Virtual Programs: We have been offering virtual programs including monthly surveys with search firm and law firm responses, town hall meetings to discuss survey results, semi-monthly "NALSC Presents" resource webinars, and monthly Board-moderated "Office Hours" for your recruiting questions. Recordings may be requested and are available after presentations.

New Job Board: Also, website additions include a public "Job Board" for your internal recruiting hiring needs, a fee agreement checklist with provisions of contract terms as a reference tool, and more. New features are accessible via the NALSC website (www.nalsc.org), so be sure to familiarize yourself with them. Since many require your member username and password, contact headquarters (info@nalsc.org) for this information, if necessary.

New Law Firm Advisory Committee: In addition, we have established an Advisory Committee which will provide expertise to the NALSC Board of Directors on how NALSC can best meet the needs of its law firm members, and how law firm members can best contribute to the overall success of NALSC. It is comprised of NALSC supporting (law firm) members and a Chair/Vice Chair. Since terms are only for one year by design, this gives NALSC's Advisory Committee the advantage of always having new members, fresh perspectives and up-to-date market information. This committee will provide written reports updating the NALSC Board twice per year coinciding with Spring and Fall Board Meetings about (a) knowledge of legal industry trends, (b) suggestions to refine legal recruiting best practices, and (c) strategic thinking on potential relevant programming. As a liaison between law firms and search firms, Advisory Committee reports will serve to complement the existing Board without interfering with the authorities of the Board.

Flourishing Membership: Under the leadership of a great Board and Headquarters, NALSC continues to flourish. We are 200+ members strong, as an increasing number of legal search firms are joining, in addition to law firms. Search firm membership benefits include affiliation, credibility, networking, education, advertising, visibility via NALSC directories, adherence to the NALSC Code of Ethics®, and more. Also, NALSC is partnering with more law firms as sponsors and supporting members. The connection fostered between search firms and law firms is crucial to NALSC's mission of upholding the highest ethical standards, building relationships with clients, and the overall success of our industry. Furthermore, NALSC deeply appreciates our corporate sponsors who provide the legal search community with valuable goods and services.

Virtual Fall Symposium: Due to the pandemic, we will not be able to have an in-person Symposium at Latham & Watkins in 2020. However, there have been great advancements in the ability to have virtual conferences and we have found an excellent platform. We are hard at work on planning an exciting virtual Fall Symposium scheduled on October 22nd and 23rd (half days for each to avoid Zoom fatigue). We have some great programs that incorporate member suggestions

President's Message

by Dan Binstock



and feedback from prior events and virtual forums. We have heard a desire for even more audience interaction and practical take-aways, and this is what you can expect, especially given the unique nature of the virtual conference software we are using. The sessions will encompass a variety of recruiting-related topics for all types of attendees, and we are investing in top-notch speakers. For example, we will have both a Thursday Keynote and Friday Keynote featuring our highest-rated speakers Larry Richard and Cara Hale Alter. Additional sessions will focus on the Science Behind Why Some Relationships Never Leave and Others Never Stay; Advanced LinkedIn for Brand Building; Switching Sides – Insights from Members who Moved from Search Firms to Law Firms and Vice-Versa; What's Working in Diversity and Inclusion Recruiting and Retention; Interactive Breakout Sessions on a variety of recruiting topics; and more.

In addition, our Symposium will incorporate time to chat with sponsors, visit virtual exhibit booths, reconnect with colleagues, and network with clients. Enjoy the friendly camaraderie virtually over Friday Cocktails and toast to NALSC with us. This event will combine education with virtual meet-ups among sponsors, vendors, fellow recruiters, and our newest members.

Thank you for allowing me the privilege of serving as your President with the assistance from the outstanding Board of Directors and invaluable Headquarters.

Best regards to all,

Dan Binstock - President of NALSC®

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Link to NALSC 2020 Fall Symposium:

<https://www.nalsc.org/nalsc-2020-fall-symposium/>

NALSC Membership Growth

by Patrick Moya

NALSC® is pleased to welcome seven new members since the last newsletter (Summer/Fall 2020). We currently have 204 members consisting of 144 search firm members, three affiliate members, 11 branch office members, seven individual members, 38 supporting members (law firms), and one associate member (vendor). Following is a list of recent new members and the cities and states in which they are based.

Our new Regular Firm Members, Affiliate Firms Members, and Branch Members are:

- The Advocates - Denver, CO
- Lex Recruiting Group - Los Angeles, CA
- Lippman Jungers Bala – Sherman Oaks, CA
- National Partner Search, LLC - Washington, DC
- Recruit Lynx, LLC - Atlanta, GA
- Rosado Search Group, LLC - Ft. Lauderdale, FL

Our new Supporting Member (Law Firm) is:

- McGuireWoods LLP - Charlotte, NC

The Board remains at its maximum head count of 13 and includes Dan Binstock, Mitch Satalof, Patrick Moya, Valerie Fontaine, Jane Pollard, Ken Young, David Garber, Marina Sirras, Raphael Franze, Avis Caravello, Scott Love, Arthur Polott and Natalie Thorsen Harris. Nick Rumin is Emeritus Director.

We welcome Natalie Thorsen Harris as a new Board member and have voted to keep Nick Rumin for one year as Emeritus Director. There will be a number of new Board vacancies beginning in 2021. For a deeper dive into the obligations and contributions of Board members, please contact anyone on the Nominating Committee (myself, Mitch Satalof, David Garber, Avis Caravello or Raphael Franze).

Current NALSC Committees include Executive, Nominations, Newsletter, Ethics, Audit/Risk, Governing Documents, Long-Range Strategic Planning, Website and Advisory.

The Executive Committee is comprised of Dan Binstock (President), Mitch Satalof (VP-Long Range Planning), Patrick Moya (VP-Membership), Jane Pollard (Treasurer) and Valerie Fontaine (Secretary).

The new Advisory Committee consists of seven supporting law firm members plus a Chair and Vice Chair. Its mission is to provide expertise to the NALSC Board of Directors on how NALSC can best meet the needs of its law firm members, and how law firm members can best contribute to the overall success of NALSC. Members serve a one-year term and currently consist of Karen Kupetz, Senior Director of Legal Recruiting for Goulston & Storrs PC (Chair); Carryn Sheen, Director of Lateral Partner Recruiting at Crowell & Moring LLP (Vice Chair); Stephanie Casker, Recruiting & Legal Personnel Manager at Kelley Drye & Warren LLP; Chuck Curtis, Firmwide Director of Attorney Recruiting at Pillsbury Winthrop Shaw Pittman LLP; Shannon Davis, Director of Legal Recruiting at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC; Carmen Kelley, Director of Lateral Attorney Recruiting at Morrison & Foerster LLP; Sabrina Lonergan, Director of Lateral Partner Recruiting at Goodwin Procter LLP; and Melissa Peters, Senior Manager of Lateral Recruiting at K&L Gates LLP

As members, sponsors, event attendees, speakers, committee members, and Board Directors - we truly appreciate all of your efforts on behalf of NALSC in helping to strengthen and grow the organization.



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NALSC – Long Range Planning in the time of COVID-19

by Mitch Satalof

The COVID-19 pandemic required NALSC to cancel on short notice its planned Annual Conference scheduled for March 2019 in Nashville and do an immediate pivot to support our members during this crisis.

Desiring to respond to both immediate and long-range needs, the Board looked to the information gleaned from the member survey conducted by our Long Range Planning Committee last year. That survey showed member support for even better and stronger programming/education, continued training seminars, and expanded networking opportunities. The Board embraces these and other improvements in quality to enhance the NALSC membership experience.

Despite the unexpected hurdles we now face, while these overall goals remain on track, the mission of NALSC expanded and was re-defined almost overnight as we recognized the need for a platform for search firms and, to some extent, law firms, to meet as a sounding board for goals no longer far over the horizon – but within reach today.

As a starting point, we surveyed both our search firm and law firm members regarding their initial experiences and responses to the pandemic over the first couple of months and held several Town Halls to discuss results and share coping strategies. We also developed our ongoing “NALSC Presents” series which offers content for those seeking up-to-date trends and developments in the world of attorney placement. Past NALSC Presents Webinars include:

- “Effective and Compassionate Communication Strategies During COVID-19”
- “Building Resilience Muscles”
- “The LFQ Lateral Firm Questionnaire: What Lateral Partner Candidates Need to Know Now”
- “FOR OWNER’S ONLY: Working ON your Business Not IN Your Business”
- “How to Use LinkedIn for Brand Building in a Changed Marketplace”
- “We’re All in This Together – How Search Firms and Law Firms Can Work Together Effectively in the COVID Era”
- “An Insider’s Look at the Financials of the Legal Spend”

Attendance has been strong, and we will continue to offer NALSC Presents for both its educational and informational value on a bi-monthly basis.

We’ve also initiated our monthly “Office Hours” program – a chance for search firms to bounce ideas and questions to those able to provide guidance in a multitude of areas in recruiting today including COVID-related issues that change on a daily basis. We will continue to provide this sounding board as a forum blending in current developments with additional recruiting advice.

NALSC added a Resource Page and a Job Board on our website, the latter specifically designed for search firms seeking to fill their recruiting and administrative needs.

We’ve also voted to initiate an Advisory Committee made up of law firm members who will offer constructive suggestions to the Board giving us strategic advice that will only strengthen the already solid back-and-forth between law firms and search firms.

COVID-19 certainly changed how we view our symposium and conference formats going forward. This year we moved to a two-day virtual Fall Symposium on October 22 and 23, 2020 on the Whova online platform. In the past, our Fall Symposium always was a sellout and, due to space constraints, was limited in terms of participants. With the virtual format, we now can offer expanded, impactful programming to a larger audience as there is no longer a space limitation on the number of attendees we can accommodate. The Whova platform also provides the backbone for live presentations online; virtual sponsor booths; virtual meetups with attendees, sponsors and speakers; networking receptions; a community board; and more. Whova is available via computer as well as mobile devices. The Symposium



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site will be available after the event – six months for the mobile app and three months for the web app. Costs for the Fall Symposium have been adjusted down so that search firms and law firms can attend both days at the suggested price of \$159 (please visit <https://www.nalsc.org/nalsc-2020-fall-symposium/>).

Many of these changes necessitated by the onset of COVID-19 required quick decisions and the Board acted admirably and without hesitation in that regard. We are working to add new programs such as a Member Milestone Anniversary recognition webpage; hybrid live/virtual future programming; and more localized NALSC forums. We continue our work to build our membership size and resources and to improve our overall organizational health.

In some ways, due to responding to the challenges posed by the pandemic, NALSC has never been stronger. We are the only organization representing legal search firms and believe that, in times such as these, NALSC has become even more essential to its members. We are blessed with an extraordinary Board of Directors and a wonderful and dedicated Executive Director in Stephanie Ankus - all of whom are driven by the needs of our membership.

In the coming year, there will be new opportunities to join the Board and be a part of shaping the future of NALSC. Please contact me or any member of the Board if you would like to become even more involved in that regard.

Compassionate COVID Communication Strategies for Recruiters

By Joe Ankus

what you are saying. For example, telling a candidate that “I’ll get back to my client no later than Monday at five p.m.” is better than “I’ll get back to my client early next week,” even if you know you intend to call your client on Monday. In crafting messages, it may be helpful to use the W,W,W,W&H mnemonic which stands for “Who, What, When, Where, Why, & How.” I find that when I evaluate my message through that lens, the ambiguities can become glaringly obvious and easily correctable.

TIP #4- BE AWARE OF BIAS. When we send and receive messages, we necessarily are biased. Our personal belief systems are accumulated over decades and many of them are unconscious. While we may prefer that everyone thinks like we do—they don’t. What you may think is “fair” is not what everyone else thinks is “fair”. In fact, it costs lots of money and time to determine what is “fair” when two people resort to litigation. Be flexible in these circumstances. Don’t always consider every situation to be binary. Knowing that we all view things differently allows you to avoid rigid “all or nothing” thinking that can create more problems than you bargained for.

TIP #5- BE COMPASSIONATE. Simply put, we may never know what someone else is going through. When our communications are limited to email, phone calls, and Zoom, we may not be getting someone’s full life story. Personal and professional boundaries are blurred due to working at home. Remember that, if you find yourself getting frustrated with someone who is non-communicative, it may be helpful to simply ask them how they are holding up. If they choose not to tell you, please respect their privacy. At the same time, let them know you are always happy to talk, if and when they want to. Being compassionate means keeping the lines of communication open even if they aren’t being used right now. Undoubtedly, you will find that clients and candidates may, without explanation, either stop returning messages or simply refuse to communicate. Eighty percent of the time it won’t be because of anything you did or didn’t do. We tend to personalize things and reflexively ask “what did I do wrong?” when, in reality, you never were part of the problem. I recommend going easy on them—and going easy on yourself.

As we move forward in our recruiting practices, I hope these tips give you more confidence to speak clearly and with compassion.

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When I began to write this column, I had to remind myself that it has been over five months since I have had any semblance of a “normal life.” While we all experience COVID in different ways, one of the common threads that links us as recruiters (and as people) is the need for clear and compassionate communication with our clients, candidates, and colleagues.

For the first four months of the pandemic, I was quite reluctant to cold call candidates. I was convinced—in my own mind—that any calls would be viewed as intrusive, insensitive, and ill-timed. When I reached out, however, many potential candidates appreciated a sincere, caring voice. Learning that my assumptions were largely incorrect motivated me to tackle this much more challenging legal market. In this article, I share some key communication tips I use in my daily practice. I find they are even more relevant under current circumstances.

TIP #1- BE CREDIBLE. Especially now, candidates and clients may be under unusual amounts of stress, both business and personal. When we are speaking to someone, especially if it is a new relationship, remember that your word is your bond. If you promise to do something, do it, and don’t promise things you can’t do. The old adage, to under-promise and over-deliver, is especially applicable now. The management of expectations regarding all aspects of recruiting should be on your daily communications checklist.

TIP #2- BE CONCISE. When I teach legal writing, I tell my students that “words cost money.” With limited attention spans during COVID, try to use as few words as possible. Try being a word miser when you are sending emails or speaking to someone. People may have less ability to listen carefully or process lengthy and complex messages. Working from home, managing a family, or listening to our lovable barking pets create a drain on our limited ability to concentrate.

TIP #3- BE CLEAR. Ambiguity in messaging creates significant problems. We use so many different channels of communication, each of which is vulnerable to misinterpretation. Before you send a message, in any form, quickly ask yourself if there are alternative interpretations for

“I was convinced—in my own mind—that any calls would be viewed as intrusive, insensitive, and ill-timed. When I reached out, however, many potential candidates appreciated a sincere, caring voice.”

Can NALSC Members Help Improve Race Relations in the Legal Profession?

By Mary Clare Garber

We, as a country, are taking stock. We are taking stock of our health care system and its weaknesses. We will be taking stock, in just a few months, of our political future with the upcoming election. And, we are taking stock of the systemic racism that exists in this country.

We are in a time of upheaval, and across the country, race relations are being discussed. It is the moment for industry leaders, like us, to take an honest look at how our own organizations, organizations that we recruit for, and our membership in professional organizations such as NALSC, can advance diversity and inclusion in the legal profession. We have seven suggested steps you can take to make a positive impact.

1. Reach out with empathy

The concept of “weathering” has been garnering increased attention recently. Simply put, “weathering” is the ever-present level of stress that results from consistently experiencing either small or significant incidents of discrimination. Over a lifetime, “weathering” could explain the increased likelihood of health issues that are prevalent in diverse communities.

Call your colleagues, candidates, and clients of color and ask them how they are weathering the current race relations conversation and events. What positive changes do they see happening? Listening with genuine empathy goes a long way.

2. Tap into the resources already in the organization

Consider sponsoring a Diversity & Inclusion Initiative in a client organization or share sponsorship across several law firms or organizations. Possibly ask to sit in on a brainstorming session on how the D&I team or group can improve diversity in their firms or across firms. Keep the conversation moving forward focusing on solutions.

Ask if there are mentoring programs for lawyers or other professionals of color in which you may be able to participate as a mentor. You may have a wealth of knowledge to impart about navigating legal careers and what leadership attributes are highly sought.

3. Benchmark with in-house and firm leadership

We all know that two heads are better than one. Your search firm likely will not have tried certain approaches. So, ask leadership in the legal community what they are doing to improve their own organizations’ diversity awareness.

4. Reach out to bar organizations focused on a particular minority group

Most states throughout the country have diversity bar associations. The Asian Pacific American Lawyers Association, the National Bar Association (Black lawyers), the Hispanic Bar Association, and The National Muslim Lawyers Association are just a few.

You may consider sponsoring an event and/or volunteering to participate on a panel with a diversity bar association so that you can foster dialogue and learning. Positive diversity conversations will be the path to better understanding, knowledge, and synthesized growth.

5. Focus on diversity in hiring practices

Law firms, companies, and not-for profits likely have procedures in place when it comes to hiring lawyers. The current climate in our nation should be the catalyst that pushes you to review the hiring pro-

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cesses at the clients you recruit for and see how you can further their diversity initiatives.

6. Go beyond diversity and inclusion, and pledge to invest in the future

Systemic racism is not always obvious. Systemic racism manifests in unspoken norms and routines that delineate better or worse opportunities for employees based on skin color. In sum, we know that acknowledging the problem is the first step to solving it. Pledging to invest in the future by contributing to law school scholarships for students of color or law schools that promote and advocate for diversity may contribute to a more robust future pipeline.

7. Own it and think outside the box for solutions

D&I training can help, but awareness alone does not get you where you need to be. Rather than educating professionals on microaggression (indirect, subtle, or unintentional discrimination against members of a marginalized group), look for training programs that provide the tools to respond to the behavior. Indeed, a two-hour training, or diversity lunch, helps but may not go far enough. Accountability and empowering us to uphold diversity principles is a solid first step.

And if you’re feeling courageous enough, host a Town Hall Meeting like Damien Atkins, General Counsel of Hershey Corporation: <https://www.law.com/2020/07/07/small-acts-of-courage-hershey-general-counsel-damien-atkins-on-driving-diversity/>. Being a leader of color may help, but you may also find a leader inside or outside your organization to partner with in running town hall conversations (where appropriate).

Conclusion

Our country is taking stock concerning race relations. Our current national dialogue surrounding systemic racism presents an opportunity for all of us to prospect for diverse and inclusive opportunities in our own organizations and professional affiliations, and with clients and candidates. To be sure, the issue will be challenging to discuss. Yet, as always, we can quietly and confidently facilitate the advancement of this worthwhile endeavor.

Eliminating Unconscious Bias in Legal Starts With an In-House Job Description

"You have to test for bias at every step of the way. If the job description is seen as the foundation then the foundation has to be steady in order for the entire process to be steady," Melba Hughes, partner and national diversity practice leader at Major, Lindsey & Africa in Atlanta, said.

By Dan Clark

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Eliminating unconscious bias and getting more diverse candidate slates for in-house attorney positions begins in the description of a job posting.

In-house legal recruiters told Corporate Counsel that making sure in-house job descriptions include air-tight requirements versus what is nice to have and to avoid specifications on law schools will help recruiters find a diverse slate of candidates.

"You have to test for bias at every step of the way. If the job description is seen as the foundation, then the foundation has to be steady in order for the entire process to be steady," Melba Hughes, partner and national diversity practice leader at Major, Lindsey & Africa in Atlanta, said.

One issue legal recruiters see with in-house job descriptions is listing too many requirements. The way white men look at those requirements often differs from how women and people of color look at the requirements. White men may see something that they can learn or see a particular requirement as something that is nice to have for the job.

"It does tend to work against women and minorities who say, 'This is a long list of requirements and I don't have all of them so I'm not going to apply at all,'" Sonya Olds Som, a partner at Heidrick & Struggles in Chicago, told Corporate Counsel.

Job postings should speak to in-house experiences that will be necessary for the role such as leadership and business acumen. That, Hughes said, is more inviting to diverse candidates than Big Law credentials.

Putting in standards for graduating from a top 10 law school or gaining experience at an Am Law 100 firm narrows the overall candidate pool.

"Looking for someone who went to a top 10 law school or worked at a top law firm are things that may exclude people as opposed to including the largest population available for a particular job," Hughes said.

Olds Som said there are plenty of successful white male in-house lawyers who went to state schools that someone decided to take a chance on. Diverse candidates who did not go to a top law school should be given the same chance, she added.

The reason for some of these requirements in job postings is risk aversion.

"Lawyers who hire other lawyers tend to be risk-averse so they fall back on their networks so they can feel comfortable that there is a minimal risk that hiring a person will go wrong," Olds Som said.

Those law school or law firm requirements perpetuate the standards that were put in place to keep women and people of color out of the legal industry in the first place, Olds Som said.

"If you were willing to take a white guy from Iowa State 30 years ago and he was able to work his way up, you shouldn't say, 'We'd love to have a woman or a person of color but we only want someone who went to a top 14 law school,'" Olds Som said.

Those in positions to hire in-house attorneys should also be careful of using certain gender-specific phrases in job descriptions or language that can be seen as exclusive. Olds Som said the use of the singular "they" is helpful so legal departments are not seen as specifically looking for someone who identifies as male or female.

Job descriptions for in-house positions should also be inviting rather than excluding. Phrases like "cultural fit" may deter diverse candidates.

"'Cultural fit' can be coded towards 'we're all a certain way here and you need to be that way if you're going to fit in,'" Olds Som said.

"Job postings should speak to in-house experiences that will be necessary for the role such as leadership and business acumen. That, Hughes said, is more inviting to diverse candidates than Big Law credentials."



ABOUT THE AUTHOR: Dan covers cyber security, legal operations and intellectual property for Corporate Counsel. Follow him on Twitter @DanClarkalm.

The “LFQ”: Lateral Firm Questionnaire, or What Lateral Partner Candidates Need to Know - Especially Now

By Valerie Fontaine and Barbara Mayden

Virtually every law firm engaged in lateral partner recruiting requires candidates to fill out an LPQ, or Lateral Partner Questionnaire, as part of its vetting process. The LPQ requires submission of information critical to the firm’s decision-making process going beyond basic resume information (such as the candidate’s educational and employment background), but delves into areas such as client base, billings and collections, and various ethics issues such as malpractice claims, involvement on corporate boards, etc.

Just as firms realize the importance of digging into what candidates’ would bring with them, it’s equally important for lateral partner candidates to dig deeper into what is beyond the readily apparent with their prospective law firm employers, and even more important in the post-COVID era. The way a law firm handled the economic shutdown and reopening, as well as its management and financial posture afterward, are vital considerations when determining which firm would be the best fit for the candidate and, for partner candidates, her clients.

Astonishingly, a few years ago, an American Lawyer survey found that most lateral partner candidates never asked even the most basic questions of their potential new firms about finances, firm management, or their partnership agreements. It is shocking that sophisticated business lawyers who never would allow a client to enter a business combination without scouring the books, wouldn’t do the same for themselves.

Perhaps partners who have been with one firm for many years assume that all law firms are alike. From 40,000 feet they may seem alike - comprised of smart, usually personable lawyers, with sophisticated clients and businesses. But, once you drop below 40,000 feet, firms can be very different. Compensation systems vary and management styles vary, all resulting in different incentives and different firm cultures.

For a lateral partner move to be successful, a potential lateral should understand that firms are different and he or she must understand the internal moving parts – and incentives – before s/he makes the jump. How to garner that information? Just as the firms do – ask. And, among the questions to ask in a COVID-19 pandemic era, are questions directed at obtaining information to assess which firm is better positioned to ride out any turbulence for long term success.

Just as most firms, at some point in the courting ritual, require that prospective lateral partners complete an LPQ, we propose that a senior lawyer contemplating a move consider something similar—an “LFQ” or “Lateral Firm Questionnaire”—a checklist of the information the lateral partner candidate needs to make a sound decision. To that end, we created a generic LFQ a few years ago. We reprint it here with some post-COVID updates.

But, first, a couple of caveats:

Caveat #1: Who should use our LFQ?

Our LFQ is for the more senior lawyer whose compensation most likely will be based upon a combination of individual performance and firm performance. Thus, the candidate will need to know a lot more, such as,

- What is the general health of the firm?
- What is the firm’s history with laterals?
- Are the firm’s structure and billing practices likely to positively affect the lateral’s ability to attract and service clients?
- What is the firm’s leadership modus operandi?

Caveat #2: When to ask? Timing is everything.

Just as the easiest way to scare off a potential suitor is to ask probing questions on the first date about future plans, earning potential and the like, clearly, the candidate and prospective law firm want to establish mutual interest before broaching the hard questions. Even in the age of Twitter, there is information that is sensitive. The best time to ask these questions is when the prospective firm presents its LPQ, hence the posture is “I’ll show you mine, if you show me yours.” With that symmetry, it’s a lot less awkward.

“Just as most firms, at some point in the courting ritual, require that prospective lateral partners complete an LPQ, we propose that a senior lawyer contemplating a move consider something similar”

But remember, our LFQ is a little tongue-in-cheek.

It doesn’t have to be a formal document; rather, it’s more of a checklist to make sure your candidate gets all the information

enabling a wise decision. And they should be reminded that, in addition, there may well be opportune times to pick up bits and pieces along the way.

Caveat #3: How? Don’t be too pushy – you want this job! But be pushy enough. Before you really know if you want the job, you need this information.

If the firm’s reaction is to label a candidate as pushy for asking for the information – that is, in itself, the most telling information. A firm’s reluctance to share this information to someone who would come in at a senior position says volumes. So, advise your candidate to pay attention not only to the answers to the questions posed, but also to the reaction to the fact that they were asked. The firm that should be attractive to a potential lateral is one that values lawyers who make important decisions based upon germane information, gathered at the appropriate time.

In fact, some of our law firm clients have told us that the failure of candidates to ask these questions raises a red flag. It reflects negatively on the candidate’s seriousness, sophistication, or judgment. It even can signal a sense of desperation to make a move—any move. You certainly don’t want your candidates to send these negative messages, and you want them fully informed, so they make the best career choices (and placements that “stick.”)

The Fontaine/Mayden Generic LFQ (Lateral Firm Questionnaire)

[INTERESTING SOUNDING LAW FIRM COURTING ME]

LATERAL FIRM QUESTIONNAIRE

I am honored that Interesting Sounding Law Firm Courting Me (the "Firm") shows interest in my becoming a partner. The Firm gave me a Lateral Partner Questionnaire to complete and, as we enjoyed substantive conversations that are continuing, I am pleased to complete that "LPQ." Just as it is important that relevant data about me be available to the Firm in order to assess whether the combination of my practice with the Firm is wise, it also is important that I review relevant data for a similar assessment. Accordingly, I request the following information from the Firm.

I. FINANCIAL DATA

1. **Liabilities.** Describe liabilities of the firm, including leases and debt. Is there a Pension Plan? Is it Fully Funded?
2. **Billing distribution.** Has any client/affiliated group represented more than 25% of the Firm's billings in any of the last 5 years? Are the firm's clients concentrated in a select number of industries? Are billings distributed throughout the partnership, or primarily via few rainmakers?

II. BILLING MODELS

1. **Billing Rates.** List for all levels of partners and associates as well as differentials for location and practice group.
2. **Alternative Billing Arrangement.** Describe the nature of any alternative billing arrangements used by the Firm and the frequency used.
3. **Flexibility.** What flexibility does each partner have to set fees, agree to discounts, or utilize an alternative billing arrangement?

III. PARTNERSHIP STRUCTURE

1. **Tiers.** Describe any tiers in the partnership structure, and mobility between tiers.
2. **Retirement.** Mandatory? Is there a required "step down?" Is any retirement required from the firm or from the partnership? Describe policy.
3. **Business Development Expectations.** Describe. Is there a "runway?"

IV. COMPENSATION

1. **Decision-makers.** Describe the compensation/advancement decision-making structure. Is it open or closed?
2. **Criteria.** Describe the considerations factored into compensation decisions. Business development? How is business origination credit allocated—by client or matter? Is credit given for administrative duties? Pro bono?
3. **Timing.** Describe the timing of payments to partners, i.e. when draws are made; profits distributed.
4. **Capital Contributions.** What is the required capital contribution? When is it payable? Does the Firm arrange financing? What are the conditions of repayment?

V. REQUIREMENTS

1. **Billable hours.** Are there minimum billable hours for Partners?
2. **Other Firm Obligations.** Detail required other Firm obligations.

VI. BUSINESS DATA—for the current and each of the past three to five years, list:

1. **Profits Per Partner**
2. **Revenues Per Partner**
3. **Average Billable hours, Partners**
4. **Average Billable hours, Associate**

VII. FIRM OPERATION AND MANAGEMENT

1. **Committees.** Describe the primary Firm Committees. Include information as to selection of members and representation of offices and practice groups.
2. **Operational structure.** Describe how the Firm operates across offices. Is the firm organized by office or practice group? Are there multiple profit centers?
3. **Management.** Describe any professional management in addition to lawyer managers.

VIII. FIRM PERSONNEL

1. **Leverage.** Describe in general the number of associates and the number of partners at the firm. How are they staffed on matters? Describe generally the "required" billables for associates, attrition rates, and compensation levels of the Firm's associates. Is paralegal support available?
2. **Support Personnel.** How is secretarial support apportioned? What kind of IT support is provided?

IX. MARKETING

1. **Professional Staff.** Describe formal/professional marketing support at the Firm; the Firm's track record of supporting lateral partners in growing their client bases.
2. **Cross-Selling.** Describe intentional cross-selling undertaken by the firm. Is it formalized; incentivized?
3. **Budget.** Is there a Business Development budget?

X. EXPERIENCE WITH LATERALS

1. **Onboarding.** Describe the onboarding and lateral partner integration process.
2. **History.** What has been the firm's history with laterals? Successes? Failures? And, to what factors has either success or failure been attributed?

XI. CHANGE IN NATURE OF THE FIRM

1. Are any transactions currently contemplated, such as a merger, acquisition, a group or a practice or spin-off, or a group or a practice addition, or other Firm expansion or contraction that could significantly change the nature of the Firm as currently constituted?

XII. FIRM PROFESSIONALISM

1. **Pro Bono Commitment.** Describe any formal Pro Bono programs undertaken by the Firm.
2. **Lawyer Leadership:** Are "extracurricular" activities encouraged by the Firm? Describe leadership roles in the community or in bar associations undertaken by Firm lawyers
3. **Diversity and Inclusion.** Statistics? Goals? What programs are in place? Describe plan and results.

XIII. DOCUMENTATION

1. With this questionnaire, or at a time deemed more appropriate, please provide:
 - (a) A copy of the Firm's Partnership Agreement
 - (b) [Financial Statements] for the previous three years

ADDITIONAL POST-PANDEMIC DILIGENCE

I. CLIENT BASE

1. Has there been any change in industry or practice focus, financial health of clients or loss or addition of clients?

II. CASH FLOW

1. What is the current status of and has there been any change in collections, reserves or lines of credit?

III. PRODUCTIVITY

1. Has there been any change in hours billed, billing rates or billing arrangements?

IV. COST CUTTING MEASURES

1. **Personnel**
 - (a) Pre-pandemic personnel - for partners/associates and other lawyers/staff, describe furloughs/layoffs and compensation/benefits adjustments
 - (b) Impact on summer associate and first year classes
 - (c) Impact on lateral recruiting at partner and associate levels
 - (d) Communication/Messaging regarding changes
2. **Other cuts** – describe changes to travel, marketing budgets, Bar Association participation support, capital expenditure delays, benefits plans and any other

V. SHIFT TO REMOTE WORK

1. **Tech support**
2. **Maintaining morale**
3. **Reopening plans**

VI. "PLANDEMIC"

1. Describe the firm's plans for a post-pandemic future; changes in Firm structure due to lessons learned



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The Recruiter's Bookshelf

FINANCIAL PSYCHOLOGY FOR RECRUITERS: A Conversation with Dr. Brad Klontz, Psy.D

By Raphael Franze

Brad Klontz is an Associate Professor of Practice at the Creighton University Heider College of Business and a pioneer in the growing field of financial psychology. His mainstream published works include *Mind Over Money*, *Wired For Wealth*, and *The Financial Wisdom of Ebenezer Scrooge*. Dr. Klontz can be contacted at brad@klontzconsulting.com.

When most people think of the different fields of psychology, “financial psychology” is not typically one that comes to mind. How would you describe financial psychology?

Financial psychology is the intersection between our emotions and behaviors and our money. Standard finance theory suggests that we have a tendency to act in our best interest in all areas of our life – we want to increase our experience of pleasure and decrease our experience of pain. But, when it comes to money, we are actually wired to do everything wrong. Therefore, we have to override our natural impulses to get it right and that's where psychology comes in.

Financial psychology as a formally recognized area of study is a recent phenomenon, championed in recent decades by you and other pioneers in the field (including your own father, Ted Klontz). To what do you attribute this emergence?

When we first started in this field, it was indeed not recognized by the establishment and was in fact largely ignored. It has become an established field of psychology at this point, with academic programs springing up and training people in the area of financial psychology.

I saw a big surge in interest during the 2009 Great Recession regarding how we got in that situation – a lot of people overbought and there was essentially mania in the real estate market. People made a lot of decisions that were not in their best interest and, in retrospect, had a hard time understanding why.

I had begun a study on the treatment of money disorders in 2002, collecting data and running treatment programs. We had completed the study in 2009 and published it just one month before the Great Recession hit. At that point, I pitched it to the media that this concept of disordered money behaviors and our psychology around money is very relevant and the *New York Times* wrote a feature on it. The momentum from this resulted in us doing a lot more writing on the topic moving forward.

Much of financial psychology is premised on the understanding of “money scripts” – the unique, deeply held beliefs around money that we hold as true when they often are not. Can you speak to the concept of money scripts and how they may show up (both positively and negatively) in our lives?

My father and I actually coined the term. Before we started on it, nobody had ever done a study linking our beliefs around money to our financial outcomes (which is kind of crazy in retrospect). In attempting to transform people's relationship with money, we sought to measure and track people's beliefs around money to see if we can shift them. Through the course of that, we now have a lot of studies done on money scripts, which are essentially these beliefs that we typically inherit from our parents and grandparents and develop in childhood. Studies show that money scripts can predict things like one's income, net worth, credit card behaviors, what socioeconomic class they grew up in and an entire host of financial behaviors. They're incredibly powerful in anchoring the top and bottom limits of our financial comfort zones and, while most people often aren't conscious of what their money scripts are, these beliefs are indeed driving their outcomes in life.

Given that money has long been considered a taboo topic in our society, there aren't a lot of opportunities for us to talk about or even reflect on our thinking about money. When we allow ourselves to do so, however, it's relatively low-hanging fruit in terms of self-improvement because all we have to do is start thinking about our relationship with and from where our notions about money come. We see a lot of people having pretty dramatic shifts just by thinking about their relationship with money in this context for the first time.

The typical recruiter is paid for their results instead of their time. Whether they are retained or contingent recruiters, most do not earn a consistent paycheck in the conventional sense (other than

possibly a draw on future commissions or a nominal salary). A good month may consist of multiple placements made while a dry spell can last for several months or longer. Given the anxieties that often come with such inconsistent income generation, what should a re-

crUITER be mindful of to better cope with and even overcome these challenges?

Similar to other lines of work that are entrepreneurial in nature, a recruiter's compensation directly relates to a combination of their efforts and environmental challenges and shifts. The fact that results are unpredictable makes sense as to why anxiety around money might be prevalent. A most obvious but effective approach would be to, in times of plenty, develop a strategy where you create and contribute to an emergency fund that can be drawn from to normalize and equalize income. This can indeed be tough to pull off; nonetheless, it decreases a tremendous amount of anxiety for people.

In the midst of the anxiety, though, where you may be burning through such reserves and trying to keep a level head, there are psychological strategies that come in handy. One is to avoid any catastrophic thinking by gaining perspective upon reflection on previous experiences of economic downturn and/or personal strife.

Another strategy is an exposure technique exercise that I call “The Worst-Case Scenario.” Essentially, this exercise exposes that the financial stress we bring to situations is disproportionate to the actual threat inherent in the situations themselves. Studies do show that living in a high state of financial stress has a significant negative impact on your longevity and mortality akin to heart disease, cancer, and diabetes. Therefore, it is critical we understand that what we perceive as an actual threat is just our responding as if there were one.

As you run down the list of scenarios playing out in your mind to the worst-case scenario (lose job/have no income/run out of money/lose home/move in with parents/etc.), it will bring you to the realization that this is clearly a setback but not something as severe or insurmountable as you had previously thought. My worst-case scenario would involve moving in with grandparents, which my young kids might otherwise find to be the best time of their lives (so we’d have that going for us)!

Keep in mind that the average millionaire in the United States has experienced three major financial catastrophes in their life. Failure is just part of the process – if you’re in the midst of your first or second experience with financial catastrophe, you’re still taking steps to learn how to ultimately reach a state of more permanent prosperity. In the meantime, don’t let it kill you.

During those instances when feelings of helplessness have crept in and escape seems impossible and procrastination sets in, there is a mantra that I find extremely beneficial: *Where Is The Opportunity?* It is helpful to ask this multiple times a day to orient yourself to see these opportunities in both your personal and professional life when they might not otherwise be evident.

In your writing, you discuss various money scripts that result in the avoidance of acquiring wealth or even repelling wealth outright. Two common examples of this in the recruiting profession is in the undervaluing of services and operating beneath one’s skill set. How else might these and other negative approaches to wealth more subtly present themselves in the context of earning a living?

Our more recent research has shown that money scripts generally fall into one or more of four categories: money avoidance, money status, money worship, and money vigilance. The first three categories are highly detrimental while money vigilance is highly correlated to healthy behaviors associated with wealth.

Money avoidance (which often results in behaviors like the two you just described) involves a negative psychological association with money. Money scripts in this category include “rich people are greedy,” “money corrupts,” or “there is virtue in living with less money.” This belief pattern is not that uncommon, especially if you grew up middle class or lower where you did not know many wealthy people or had a bad experience with people who have money. Over time, such individuals may have a confirmation bias where they seek out evidence supporting these money scripts and disconfirm evidence to the contrary. This can be highly destructive, as studies show such individuals having lower income and lower net worth and engaging in more self-sabotage. Shining a light on such beliefs is important in enabling one to start adjusting their scripts in a healthier fashion.

Money status includes money scripts like “your self-worth equals your net worth” where one is prone to make outward displays of wealth or even tell others that they make more than they actually do. These people are more likely to have grown up in lower socioeconomic households and to engage in overspending, excessive risk taking, and poor investment decisions. Ironically, most of the social media I do is associated with money status and dispelling the myth of what actual wealthy people really do.

Money worship involves the belief that more money and possessions will be the solution to one’s problems, with such money scripts as “more money will make me happier” and “I would borrow money to get what I want” being common. Money worship scripts also show up in people who have grown up in lower socioeconomic households but are not uncommon in those from more affluent upbringings. It too can result in overspending and can be an impetus behind squandering sudden money, whether it be lottery winnings, a young athlete’s sports contract, or (in the case of recruiters) a windfall from a particularly large deal. An unhealthy degree of workaholicism has also been shown to originate from money worship scripts.

Money vigilance is the collection of beliefs most associated with wealthy people. Money scripts in this category can include “it is important to save for a rainy day,” “I have to work hard to be sure I have enough money,” and “money buys freedom.” Taking this category to an extreme, though, can also result in negative behaviors as highlighted by the character Ebenezer Scrooge in *A Christmas Carol*.

In *Mind Over Money*, the reader is introduced to the concept of money scripts and how to understand the origins of their own money scripts. In *Wired For Wealth*, you go into great detail associating common money scripts with beneficial and detrimental behaviors. Finally, in *The Financial Wisdom of Ebenezer Scrooge*, you take the reader through an illuminating interpretation of *A Christmas Carol* and in doing so reinforce the importance of “authentic wealth.” In addition to (or in lieu of) reading these texts, how else might one embark on their journey to better understand their financial psychology?

The Klontz Money Script Inventory (KMSI) is an assessment of the aforementioned money script categories and is now available online at yourmentalwealthadvisors.com. Also, my YouTube channel is available for free with videos related to these topics along with my latest research. My studies are also all available in PDF form on brad-klontz.com.

For those who are interested in connecting with financial psychology professionals locally, the Financial Psychology Institute lists certified Financial Behavior Specialists across the country and around the world at financialpsychologyinstitute.com. The Financial Therapy Association is another resource for identifying specialists in the field at financialtherapyassociation.org.

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Legal Recruiter Fee Agreement Checklist

By Raphael Franze and Marina Sirras

With a parade of court cases between law firms and legal search firms featured in legal news, recruiters across all industries are reminded of the importance of formally executing a fee agreement with prospective clients. While the ideal fee agreement may look vastly different to each party, it is valuable to know the fundamentals of all fee agreements so that recruiters and their clients can come away feeling well-served by the agreement. The ability to quickly but thoroughly flesh out issues and reach consensus can make for a more fruitful relationship in the near term while also avoiding headaches months and even years down the road.

KEY PROVISIONS

The following list of provisions of contract terms is divided between what we believe are the most consequential and/or negotiable parts of a recruiting fee agreement and those that are less so.

Agreement Type

Legal recruiting fee agreements typically fall under one of three categories: contingency, retainer or a hybrid of the two (commonly referred to as “container”).

Contingency agreements are the most common type of fee agreement and require the client to pay the recruiter only upon the completion of a successful placement. Unless agreed to on a search-by-search basis, such agreements are generally not exclusive and multiple recruiters typically have such agreements with an employer. As a result, the competition to place prospects by recruiters signed to contingency agreements can be fierce.

Retainer agreements, on the other hand, tend to be of an exclusive nature and guarantee payment to the recruiter whether it be entirely upfront or in installment payments. In their purest form, retainer agreements do not require successful procurement of talent to secure payment although it is generally understood that the recruiter will assertively work on the employer’s behalf until the position has been filled.

Container agreements contain elements of both contingency and retainer agreements to varying degrees. While an otherwise contingent relationship can have a nominal retainer fee, what is commonly referred to in today’s marketplace as retainer agreements are in fact container agreements (as a final payment installment is typically tied to the recruiter filling the position).

The type of agreement a recruiter works under depends on a variety of circumstances. While the majority of agreements are of a contingent variety, retainer (and “retainer-type” container) agreements are used when it is desirable to secure the focus and commitment of one recruiter.

Fee Percentages and Limitations

Another main term in an agreement is the fee percentage. Percentages may vary for a number of reasons, such as type of position, urgency of need, sliding scale for placement of multiple attorneys, and gen-

eral economic conditions. In addition, caps are sometimes included in a fee agreement at the direction of clients for the purpose of limiting placement fees in larger transactions. Of course, recruiters and their clients are free to negotiate fee percentage in tandem with a cap (when applicable) in order to arrive at collective fee terms that both sides find fair.

Guarantee Terms

An inexperienced recruiter may not pay much attention to the guarantee terms in a fee agreement. They may also operate under the assumption that a breach of guarantee terms happens so infrequently as to not warrant their attention. After first experiencing such a breach, though, these now-grizzled veterans make it a point to dissect and negotiate such terms.

There are typically three points covered in the guarantee section of all fee agreements: the length of the guarantee period, the calculation method for the refunded amount and the amount of time granted to the recruiter for repayment of the refund.

Payment Terms

The most common payment terms in any fee agreement are the date of payment by the employer to the recruiter and a payment installment schedule, if applicable.

Length of Candidate Ownership

A relevant term that can often be overlooked pertains to candidate ownership. While competing with other recruiters to get a candidate submitted promptly is something we are all mindful of, knowing when an ownership period ends or needs to be re-tolled can be crucial for seeing through a placement process that has run longer than anticipated.

ADDITIONAL PROVISIONS

While the above criteria are most consequential and negotiable to a fee agreement, the following are not to be overlooked.

Personnel Type

With recruiting functions becoming more standardized, most large law firms have drafted multiple fee agreements to address their various functions. These functions typically include partners/practice groups, counsel/associates, staff (including paralegals and patent agents) and contract/temporary positions. Confirming at the beginning of the process that you are working off the right fee agreement will go a long way towards avoiding any hiccups and unpleasant surprises along the way.

Proper Submission Procedures

As law firms have grown larger in recent decades, efforts have been made to streamline the recruiting process to avoid confusion. This has typically meant directing resume submissions to assigned recruiting or administrative personnel in each specific office. In recent years, however, the use of portal websites has centralized the streamlining of submissions through one contact point for the entire firm. While some recruiters prefer sending the resume directly to a specific contact at the firm, submitting candidates through the portal has become a non-negotiable policy for gaining submission credit at most firms that use them.

Fee Agreement Expiration

Most fee agreements are written for a finite amount of time, with some fee agreements only good through the calendar year. While terms may not change drastically from year-to-year, it is worth the time to check that your fee agreement is still valid and therefore accurate before presenting a client with prospects.

Non-Solicitation Policy

One consequence of a successful placement is often the activation of the non-solicitation policy that most clients include in fee agreements. Such a policy dictates that a newly-placed employee not be solicited at any time during their tenure with the client by the recruiter who placed them; this requirement is also stipulated in the NALSC Code of Ethics, providing an additional layer of assurance for compliance to this term when working with a NALSC member recruiter.

Firms often also include a non-solicitation policy that applies to a broader range of attorneys in the firm for a negotiable period of time. A point to clarify is whether the non-solicitation (to attorneys other than the placed employee) applies to attorneys only in the office where a placement was made or to the firm overall.

Allocation of Vetting Responsibilities

Most agreements will articulate the client's expectations pertaining to a recruiter's vetting of prospects they are submitting. Such provisions typically require that the recruiter take rudimentary steps in assuring that the prospect's resume is accurate and that any red flags stemming from their research of a prospect are disclosed early in the process. More thorough background and criminal checks as well as conflicts checks are handled by the client, who typically incurs the cost of such research.

Dispute Resolution

In the event of a later dispute between a recruiter and client, fee agreements generally include provisions on how and where such disputes are resolved. Jurisdiction and venue for litigation are determined and often arranged for the convenience of the client. However, arbitration or mediation are often agreed to as lower cost and more amenable alternatives to both parties. Assignment of responsibility for costs incurred in resolving such disputes is also articulated in this section of the agreement.

Compliance & Indemnity

A thorough fee agreement will typically also include language pertaining to both parties' compliance with applicable hiring laws. In addition, indemnity clauses are added to make whole the client and/or recruiter for legal liabilities incurred in the context of their working relationship.

CONCLUSION

While the terms of a proper fee agreement can seem daunting, most legal employers include similar terms in their agreements and you will become familiar with them over time. Since terms will vary by client, it is helpful to keep a spreadsheet or other database for organizing the most relevant terms in each agreement. Having a quick reference guide can prove immensely helpful in being aware of the specifics in each agreement as well as

“Having a quick reference guide can prove immensely helpful in being aware of the specifics in each agreement as well as keeping track of important dates in the ongoing recruiter-client relationship.”

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Building Resilience

by Scott Love

Resilience is key to overcoming adversity. If you focus on finding solutions in this area, you will unlock solutions in other areas that are important to you, such as in relationships, health, and business.

Think of resilience both as a skill and as a muscle. The more you use it, the more strength you possess in overcoming obstacles. Like any skill, it can be learned, developed, implemented, and mastered. If one person can do it, so can another—and so can you.

When I owned a sales training company, I taught classes on how to implement this skill in recruiting scenarios. Participants learned how to build strong resilience muscles to overcome adversity in situations like rejection and deals falling apart. As the COVID-19 crisis hit in March of this year, I knew this topic would be helpful to many in our industry. During the crisis, I volunteered to donate presentations and deliver virtual training sessions to various trade groups and was honored to deliver a presentation to my favorite group of all, the National Association of Legal Search Consultants.

On March 11th, I wrote an article and published it on LinkedIn with my thoughts on the future of COVID and how we will need to adapt and recover using resilience skills. In that article, I mentioned Admiral James Stockdale and his concept called The Stockdale Paradox. I referenced this link as a resource: <https://bigthink.com/personal-growth/stockdale-paradox-confronting-reality-vital-success>

In the book *Good to Great*, author Jim Collins shares the concept of this paradox by telling the story of Admiral Stockdale during his time as a POW in the Vietnam War. Stockdale earned the medal of honor for his heroic efforts in resisting the enemy's tortured attempts to get him to break.

The paradox of his concept relates to the harsh realization that you are in a critical situation contrasted with the confidence that you are going to be okay. In learning what he went through (seven years as a POW, four years of solitary confinement in a three-foot wide cell, twenty events of torture), we can all apply his lessons to our own personal experiences in the crisis.

"You must never confuse faith that you will prevail in the end—which you can never afford to lose—with the discipline to confront the most brutal facts of your current reality, whatever they might be." – Vice Admiral James Stockdale

What action steps can you take to start your journey of resilience? Here

are a few suggestions:

1. Get a journal. Write your emotional struggles and challenges you are facing right now. Get it out of your head and on paper, and you may find that this, in itself, is a gift to you from the crisis. I've been journaling for years and suggesting this concept, and people always tell me that there are surprising benefits from writing about their challenges and victories.
2. Decide that you are going to be okay. The road to victory is never filled with doubt. Decide you are going to win the fight regardless of the facts in front of you. When the enemy has you surrounded, just know they can't get away from you this time.
3. Get help. If you need to seek a counselor or a therapist to help you cope with the stresses of this crisis, then make that investment.
4. Surround yourself with supportive colleagues. One of the secret benefits of the crisis is that our group's members have grown closer to each other through our frequent Zoom meetings where we discuss the crisis and share ideas and solutions with each other.

Keep practicing your resilience skills and, like any other muscle, it will grow stronger. Remember the Stockdale Paradox and know that, although you are facing challenges right now, you will make it through this—and any future—crisis.

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We Want to Promote You!

By Avis Caravello

The NALSC Board recently formed a PR Task Force to continue to spread the word to the legal community about the value of NALSC and our search firm members.

If you or your firm have recently been featured or quoted in the media, made a placement you wish to promote, or anything else you think is noteworthy and reflects the gold standard to which our search firm members subscribe, please send it to us and we will post it on our NALSC LinkedIn, Facebook, and Twitter accounts. We are proud of our membership and want to showcase your accomplishments!

Please send your articles, news, etc., to NALSC HQ at info@nalsc.org. And don't forget to connect with your fellow NALSC members, so you can see the updates about their accomplishments, and they can see yours.

We want to promote NALSC, its programs, and Code of Ethics, too, so make sure to follow NALSC on social Media:

- <https://www.linkedin.com/company/nalsc/>
- https://twitter.com/Official_NALSC
- <https://www.facebook.com/search/top?q=nalsc>

Multiply your individual and firm social media impact by liking, commenting on, and sharing NALSC and fellow NALSC members' posts. By using the @ symbol immediately followed by the name of the person or company/firm/organization whose post you are commenting on in the text of your comment, they will receive an alert that you mentioned them (possibly prompting a response which increases the visibility of your profile, too). Don't forget to use hashtags as appropriate, as well, to boost your posts.

In just a moment and with a few clicks, you can raise your own profile at the same time. Win/win!

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Coming to us from the Grand Canyon State of Arizona is Natalie Thorsen Harris, Managing Member of Phyllis Hawkins & Associates LLC, based in Phoenix. A legal recruiter since 2016, Natalie is our most recent addition to the NALSC Board of Directors and has emerged as an active and influential voice as we strive to meet the challenges of these most interesting times.

A fifth-generation Arizonan, Natalie grew up competing in swim meets. She was also a synchronized swimmer, developing the impressive ability to hold her breath for over five minutes (no doubt a useful skill in our profession waiting for offers and acceptances).

When it came time to attend college, Natalie chose Arizona State University and, in doing so, continued a family legacy at the school going back to her great-grandmother. Studying history and education at ASU, Natalie pursued a longtime fascination in “who lives, who dies, who tells the story” (to paraphrase a line from Hamilton, a favorite of Natalie’s) and began to better understand how much of an influence the legal system can have on individuals, communities and the world around us. This ultimately led to Natalie attending law school at Brigham Young University, where she was a Dean’s Fellow and received the Faculty Award for Meritorious Achievement and Distinguished Service. While in law school, Natalie started a professional development company working with clients on branding and networking skills.

Following law school, Natalie worked as the compliance director for a private biomass energy company and then as a commercial litigation attorney with a focus on eminent domain. While she misses digging into different disputes and working towards resolution as an attorney, her husband is also a commercial litigator and she gets to live out these favored aspects vicariously through his experiences. One aspect of law firm life that Natalie does not miss, however, is the six-minute billing increments (an opinion shared by many NALSC members, including the author of this piece).

Natalie’s career transition to legal recruiting was foretold in part during a meeting years earlier. The meeting was Natalie’s introduction to an energy lobbyist, who told her afterwards “You would get along so well with my mother - you need to meet her!” It was not until Natalie’s next position years later as a commercial litigation attorney that she would encounter this gentleman’s mother, Phyllis Hawkins – the first legal recruiter in Arizona and Past President of NALSC. True to Phyllis’ son’s prediction, the two hit it off immediately – the “natural born recruiter in Natalie” was evident to Phyllis from the start and the rest is history.

Natalie’s practice focuses on firm mergers and the placement of partners and associates as well as in-house counsel. Although Natalie works with candidates from all over the world, her placements are almost exclusively in the Arizona market. While she enjoys engaging in the recruiting process as a whole, Natalie is particularly fond of hearing people’s stories and providing insights into the legal market.

During her experiences as a legal recruiter and through her relationship with Phyllis, Natalie has learned a lot about navigating this unpredictable profession. Managing expectations was an early lesson for Natalie that continues to serve her well when some deals inevitably go south. While the preferred coping mechanism for recruiters in such predicaments include remedies as varied as brown liquor and exercise, Natalie finds solace in a

Member Spotlight: Natalie Thorsen Harris

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By Raphael Franze



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song: *Don’t Mean Nothing* by Richard Marx. Although this 1987 hit single is about the struggle towards Hollywood stardom, it does serve as an applicable reminder to Natalie and the rest of us that “it don’t mean nothing ‘til you sign it on the dotted line.” FUN FACT: Richard Marx began his music career at the age of five, singing commercial jingles written by his father’s company. A prolific songwriter in his own right, Marx has penned songs for various artists that have topped the charts in four different decades.

When Natalie is not recruiting, she enjoys spending time with her husband and their two toddlers. As a way to relax and unwind at the end of a hectic day, Natalie crochets dolls and toys that she shares with others along with her children. She also enjoys watching documentaries and listening to audiobooks – two of her favorites include *Invisible Man* by Ralph Ellison (“it made me aware of blind spots in my own life and conscience”) and *The Power of Now* by Eckhart Tolle (“helped me become more present in life”). AUTHOR’S NOTE: I second the Tolle pick!

It is the pleasure of the NALSC Board to welcome Natalie into the fold, as we look forward to her thoughtful input for years to come.

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What Recruiters Need to Know about the California Consumer Protection Act of 2018

By Tina B. Solis and Christina E. Kurow

You may have noticed a recent flurry of updates from companies about changes in their privacy policies. The reason behind this activity is the California Consumer Privacy Act of 2018 (“CCPA” or the “Act”). The CCPA, which went into effect on January 1, 2020, but became enforceable just last month, provides protections for California consumers by requiring covered companies to disclose what information is collected from consumers and where it is sold, and provides consumers the right to opt-out of the sale of their data and require its deletion. This article provides an overview of the key provisions of the CCPA and a checklist for recruiters to consider when determining their obligations under the Act.

WHICH COMPANIES MUST COMPLY WITH THE ACT?

A company is required to comply with the Act if it is (a) a for-profit business that collects California residents’ personal information, (b) does business in the State of California, and (c) falls within one or more of the following categories:

- (1) has annual gross revenues in excess of \$25 million,
- (2) receives or discloses personal information of 50,000 or more California residents, households, or devices on an annual basis, or
- (3) derives 50% or more of its annual revenues from selling California residents’ personal information.¹

Notably, companies need not be based in California or even have a physical presence in the state to fall under the Act.

WHO IS COVERED UNDER THE ACT?

The Act protects the rights of California residents.² Because the Act covers companies operating outside of California that reach consumers nationwide, you may see companies updating their policies to protect the rights of residents of all states to simplify the disclosure and request for information processes.

WHAT TYPE OF INFORMATION DOES THE ACT PROTECT?

The CCPA covers companies’ collection, use, sale, and disclosure of consumers’ “personal information.” The Act defines “personal information” as including information that could reasonably be linked to a particular consumer or household.³

Examples of “personal information” under the Act include, but are not limited to, consumers’ names; social security numbers; driver’s license numbers; passport numbers; postal addresses; email addresses; internet protocol addresses; biometrics⁴; browsing, searching, and purchasing history; geolocation; and employment or education related information.⁵ Publicly available information is not considered “personal information” under the Act.⁶

WHAT OBLIGATIONS DO COMPANIES HAVE UNDER THE ACT?

The Act requires companies to disclose categories of personal information collected from consumers and the purpose behind such collection *at or before* the time personal information is collected.⁷ According to California Con-

sumer Privacy Act Regulations (the “Regulations”), which govern compliance with the CCPA and went into effect on August 14, 2020, notice shall be made “readily available where consumers will encounter it at or before the point of collection of any personal information.”⁸ Thus, if personal information is collected online, a company may post a link to the notice on the introductory page of its website or on all webpages where personal information is collected.⁹ The Regulations also provide that notice may be given online through a link to the companies’ privacy policy, as long as the policy includes all information required under the Act.¹⁰ If personal information is collected offline, companies may provide notice on printed forms that collect personal information.¹¹ If a company intends to collect additional categories of personal information, a new notice must be provided at or before the time of collection.¹² A company need not provide notice to consumers at the time of collection if it does not collect information directly from consumers and it does not sell consumers’ personal information.¹³

Companies also must disclose consumers’ rights to opt-out of the sale of their personal information¹⁴ and request the deletion of their data.¹⁵ Under the Act, companies must provide two or more designated methods for submitting requests to opt-out, including a link titled “Do Not Sell My Personal Information,” on the company’s website or mobile application.¹⁶ Other acceptable methods for submitting “opt-out” requests include, but are not limited to, a toll-free phone number, a designated email address, a form submitted in person or via mail, and user-enabled global privacy controls, such as a browser plug-in or privacy setting or device setting.¹⁷ Companies must comply with an “opt-out” request as soon as possible, but not more than 15 business days after receiving a request.¹⁸ A company does not need to provide an “opt-out” notice if it does not sell personal information and states in its privacy policy that it does not sell personal information.¹⁹

Companies must also provide two or more methods for consumers to submit requests to delete their personal information. Such methods include, but are not limited to, a toll-free phone number, an online link or form included on the company’s website, a designated email address, and a form submitted in person or via mail.²⁰ Once a company receives a request to delete information, the company must confirm receipt of the request within 10 business days and provide information to the consumer on how it will process the request.²¹ The Act also provides consumers with the right to specifically request a company disclose the following about their personal information: (1) the categories of personal information collected from them, (2) sources data was collected from, (3) the purpose for collection, (4) categories of third parties with whom personal information is shared, and (5) the specific personal information collected from the consumer.²² Companies then have 45 days to respond to a consumer’s request for information covering the 12 months prior.²³ While not applicable in the legal recruiting context, businesses may not sell personal information of consumers if they are between 13 and 16 years old unless they receive affirmative authorization to do so, and in cases where the consumer is under 13 years old, authorization must be given by the parent or guardian.²⁴

Companies must provide at least two methods for consumers to submit requests for information, which include, at a minimum, a toll-free phone number.²⁵ Other acceptable methods for submitting requests include, but are not limited to, a designated email address and a form submitted in person or via mail.²⁶ Companies must also include an option for consumers to submit requests on its website, if a company website is maintained.²⁷ Companies that operate exclusively online and have a direct relationship with a consumer are only required to provide an email address for requests for information.²⁸

Companies must maintain records of consumer requests for a period of at least 24 months.²⁹ Reasonable security procedures and practices for maintaining these records is also required.³⁰

Under the Act, companies cannot charge consumers higher prices or refuse to provide services if consumers take advantage of their rights under the CCPA.³¹ But, the Act somewhat confusingly allows companies to charge a different price if the difference is “directly related to the value provided by the business by the consumer’s data.”³²

ARE THERE ANY RELEVANT EXEMPTIONS TO THE ACT?

As set forth above, the CCPA applies to California “consumers.” The definition of a “consumer” under the Act is so broad that it also includes employees and job applicants, which are not ordinarily understood to be consumers.

Recognizing this problem and in an effort to quell the backlash from California businesses, on October 11, 2019, the legislature passed an amendment to the CCPA, Assembly Bill 25 (“AB-25”).³³ The amendment exempts employers for one year from abiding by the CCPA with respect to personal information collected by a business in the course of a person acting as a job applicant to, an employee of, director of, officer of, medical staff member of, or contractor of that business if the information is used for (a) employment purposes; (b) having an emergency contact on file; or (c) administering benefits to the employee and their covered relatives.³⁴ In other words, if the employer’s collection of information from its employees and job applicants is solely for employment purposes, the information is exempted from the CCPA. If, however, employers provide employee-collected data to third-parties for other purposes, it would fall within the purview of the CCPA. Businesses covered by the CCPA, nonetheless, are still required to give notice of data collection and use procedures to employees/job applicants and are prevented from collecting any other data from these individuals or for any other purposes. Also, under the Regulations, a business collecting employment-related information need not post a “Do Not Sell My Personal Information” link on its website.³⁵

This exemption will sunset on January 1, 2021, and employees will then be entitled to the same protections with regard to their employers as guaranteed to consumers under the CCPA.

DOES THE EMPLOYMENT-INFORMATION EXEMPTION APPLY TO RECRUITERS?

The next step in the analysis is whether this exemption applies to recruiting firms. The answer is it depends on whose information is being discussed. Recruiting firms not only collect their own employees’/job applicants’ information; they also gather employment-related information from the candidates with whom they are working.

With regard to a recruiting firm’s own employees/job applicants, the firm must analyze the type of information being collected and for what purpose to determine if the exemption applies. To the extent the information being gathered is not solely for an employment purpose, it is subject to the CCPA.

On the other hand, while recruiting firms also typically gather employment related data from their candidates, it is unlikely that the exemption applies to a candidate’s employment-related information during the recruiting process. First, a candidate supplying this information to the recruiting firm is not applying for a job with the recruiting firm. Second, the information being provided by a candidate

is for the purpose of having the recruiter distribute such employment related information to third-parties (i.e., other law firms) in an effort to find the candidate a new position at one of those law firms.

WHO CAN ENFORCE THE ACT?

Consumers may seek statutory or actual damages and injunctive relief if certain personal information was the subject of unauthorized access and exfiltration, theft, or disclosure as a result of a company’s failure to implement and maintain required *reasonable* security procedures.³⁶ It is, thus, imperative to work closely with data vendors, including hard copy storage facilities and cloud vendors to ensure reasonable measures are in place and followed to protect consumer data.

Statutory damages available under the Act range from \$100 and \$750 per incident, or actual damages, whichever is greater. Before consumers may file suit, either individually, or on a class-wide basis, they must provide notice to the company of their intent to file 30 days before filing an action.³⁷ The company then has an opportunity to cure any alleged breach within 30 days of receiving notice.³⁸

The California attorney general can also enforce the CCPA. If companies fail to cure within the 30-day cure period, penalties can be assessed in the amount of \$2,500 for each violation and \$7,500 for each *intentional* violation.³⁹

KEY TAKEAWAYS REGARDING CCPA COMPLIANCE

With the CCPA in full force and effect, it is imperative to determine immediately whether your firm is bound by the Act. If so, you must ascertain what “personal information” the firm collects from consumers and determine whether California residents’ information specifically is being collected. At a minimum, recruiting firms are likely collecting candidates’ names, addresses, email addresses, and employment and education information during the recruitment and placement process. It also must be determined whether any personal information is sold or shared with third parties, and if so, whether the third parties’ security measures are sufficient. Marshaling this information as soon as possible is necessary, as categories of personal information must be disclosed at or before the time collected, and any additional information requested by consumers must be provided within 45 days of receipt of the consumer’s request. Firms must provide a toll-free number for consumers to request their information. Firm privacy policies and websites also must be reviewed and amended to include the specified disclosures and “opt-out” mechanisms required under the Act.

The reach of the CCPA is broad considering it is not limited to California based companies and its definition of “personal information” is wide-ranging. If your firm services California clients and you have California candidates that are being presented to these clients, active steps should be taken to determine if the firm is subject to the Act and, if so, to ensure compliance with the Act. With other states considering enacting similar laws, it is advisable, even if you are not servicing California clients, to get a jump start on collecting and organizing the relevant consumer data.

If you are unsure of whether your firm is subject to the Act or if you are in compliance with the Act’s provisions, it is prudent to consult with a lawyer.

CCPA Compliance Checklist⁴⁰

1. Confirm whether the CCPA applies to your firm

- Is the company a for-profit business that collects and controls California residents' personal information, which does business in the State of California, and falls within one of the three following categories:
 - Has annual gross revenues in excess of \$25 million,
 - Receives or discloses personal information of 50,000 or more California residents, households, or devices on an annual basis, or
 - Derives 50% or more of its annual revenues from selling California residents' personal information?

2. Ascertain what data is collected from consumers and whether it constitutes "personal information" under the Act

3. Determine whether any "personal information" is collected from California residents

4. Confirm whether any California resident's "personal information" is provided to third parties

- If so, review the third parties' security measures and policies and confirm they are reasonable and being followed

5. Ascertain sources from where consumer "personal information" is being collected

6. Update privacy policies both in hard copy format and online, to include the following:

- Any and all categories of "personal information" collected of California candidates/clients in the preceding 12 months and the purpose for such collection, and
- A notification of California residents' right to request the deletion of their personal information and opt-out of their personal information being distributed to third parties.

7. Create mechanisms by which consumers may request information about their personal information collected

- At least two means must be provided, which include at a minimum, a toll-free telephone number and an email address.
- An option must also be provided on the company's website.

8. Include a link on your firm's homepage titled: "Do Not Sell My Personal Information" that allows consumers to opt-out of the sale of their data to third parties

¹Cal. Civ. Code § 1798.140(c).

²Id. at § 1798.140(g).

³Id. at § 1798.140(o)(1).

⁴"Biometric information" means an individual's physiological, biological, or behavioral characteristics, including an individual's [DNA] . . . , imagery of the iris, retina, fingerprint, face, hand, palm, . . . voice recordings, . . . [and] keystroke patterns or rhythms . . .". Id. at § 1798.140(b).

⁵Id. at § 1798.140(o)(1).

⁶Id. at § 1798.140(o)(2).

⁷Id. at § 1798.100(b).

⁸Cal. Code Regs. tit. 11, § 999.305(a)(3).

⁹Id. at (a)(3)(A).

¹⁰Id. at (c); see also § 999.308.

¹¹Id. at § 999.305(a)(3)(C).

¹²Id. at § 999.305(a)(5).

¹³Id. at § 999.305(d).

¹⁴Cal. Civ. Code § 1798.120(a)-(b).

¹⁵Id. at § 1798.105(a)-(b).

¹⁶Cal. Code Regs. tit. 11, § 999.315(a); Cal. Civ. Code § 1798.135(a)(1).

¹⁷Cal. Code Regs. tit. 11, § 999.315(a).

¹⁸Id. at § 999.315(e).

¹⁹Id. at § 999.306(d).

²⁰Id. at § 999.312(b).

²¹Id. at § 999.313(a).

²²Cal. Civ. Code § 1798.110(a)(1)-(5).

²³Id. at §§ 1798.130(a)(2) and (a)(4)(B)-(C).

²⁴Id. at § 1798.120(c).

²⁵Id. at § 1798.130(a)(1)(A).

²⁶Cal. Code Regs. tit. 11, § 999.312(a).

²⁷Cal. Civ. Code § 1798.130(a)(1)(B).

²⁸Id.

²⁹Cal. Code Regs. tit. 11, § 999.317(b).

³⁰Id.

³¹Cal. Civ. Code § 1798.125(a)(1).

³²Id. at § 1798.125(b)(1).

³³2019 Cal. Legis. Serv. Ch. 763 (A.B. 25).

³⁴Id.

³⁵Cal. Code Regs. tit. 11, § 999.305(f)-(g).

³⁶Cal. Civ. Code § 1798.150(a)(1)(A)-(B); Cal. Civ. Code § 1798.81.5(d)(1)(A).

³⁷Id. at § 1798.150(b).

³⁸Id.

³⁹Id. at § 1798.155(b).

⁴⁰This checklist is a non-exhaustive list of items to consider in efforts to comply with requirements under the CCPA. To ensure compliance with the CCPA, legal counsel should be consulted.

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The 10 Relationship-Building Ideas During the Time of Social Distancing

By Stefanie Marrone

While we all have to do our part by staying physically distant, right now every professional and organization should definitely be using online networking and content marketing to market themselves and their businesses (in an appropriate way).

The worst thing you can do, right now, is to do nothing. We all will be relying on social media more than ever for the foreseeable future, so it would be wise to embrace it.

Here are some ways you can build relationships during the era of social distancing and quarantining, a time that requires a more human and online touch.

1. **Deepen relationships** – this is the time to pick up the phone and ask your clients how they are doing. Get personal with them. This is not business as usual. Don't rely on email right now and act like the world isn't upside down. Anticipate client needs and offer to assist them in any way you can.
2. **Learn how to use Zoom** – it is crucial that you can easily adapt to videoconference meetings – it's a great way to maintain relationships.
3. **Showcase the human side of your firm on social media** – whether it is community service activities, pro bono work or donation drives – highlight how your firm and people are helping others in a great time of need.
4. **Turn off pre-scheduled posts and reminders** – put your regular content calendar on hold.
5. **Don't post content that is self-congratulatory** or launches a new service/product. I would hold off on posting lateral partner arrivals unless their practice ties into COVID-19.
6. **Provide content of value** – client alerts, blog posts, videos, podcasts, online resources and webinars. Your objective with social media/content is to be helpful, period. Any materials you produce should address clients' pain points both now and in a post-COVID-19 world.
7. **Don't cancel upcoming events** – instead turn previously scheduled in-person events into virtual gatherings. Instead of asking for sponsorship money back, offer to take a lead role in converting a conference

into a virtual experience.

8. **Host virtual coffee breaks** and happy hours (both internally and externally).

9. **Use social media** (especially LinkedIn) to build and strengthen relationships – commit to posting/sharing an update twice a week and to expand your LinkedIn connections by 25 percent.

10. **Use hashtags** and more importantly, the right hashtags, with every social media post.

The most important question you should ask yourself right now is: how can we support our clients and our profession during this time?

Let that be your guiding light to social strategy.

I hope these ideas have inspired you in some way – this is a great time to focus on all of the things you wish you had the time to do in the daily hustle and bustle of life before COVID-19. Think of this time as a gift and opportunity, and please also do whatever you can to abide by social distancing guidelines and give back to your community. Stay safe.

Stefanie Marrone helps law firms effectively tell their stories and find their unique voices. Over the last 18 years, she has worked with some of the most prominent and innovative law firms in the world, developing and executing global revenue generating business development and communications strategies, including media relations, branding, and multichannel content marketing and social media campaigns. She is very passionate about using social media for lead generation and brand building. She has a diverse range of experience in both Big Law and mid-size/small-law firms. Connect with her on [LinkedIn](#) and follow her latest writing on [JD Supra](#) as well as her blog [The Social Media Butterfly](#).



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