

Is It An Ethics Question or a Business Judgment Question?

by Avis Caravello, Esq., Ethics Committee Chair

As NALSC Ethics Chair, I, along with the Ethics Committee, Mitch Satalof, Jane Pollard, Scott Love, and Arthur Polott, serve to uphold the NALSC Code of Ethics and help our members navigate its provisions, and application in recruiting best practices. My tenure as NALSC Ethics Chair is terming out in April. To that end, I wanted to share my observations and what I have learned about our membership since assuming this role.

Most notably, I learned that being a member of NALSC is taken very seriously by our members. NALSC members place ethical recruiting as fundamental to their business model and practices. I wish that our law firm clients, corporate clients, and candidates could have the front row seat I'm honored to have to observe our members in action, often grappling with the most minute details of their business practices to be assured that they are recruiting according to the NALSC Code of Ethics.

Most of the inquiries I've received from our membership fall into two categories, Code of Ethics questions and business judgment questions.

Ethics Questions

The Code of Ethics inquiries I've received from member search firms generally focus on confirmation that the search firm member's interpretation of the Code is correct. For example, I'm frequently asked if it is permissible under the Code to place a candidate if the search firm member placed that candidate at their current firm and the candidate subsequently reaches out to the search firm member about placement again. The search firm member often begins the conversation by saying, "I think this is permissible under the Code, but I wanted to make sure."

Solicitation is addressed in Article I, Section 5, of the NALSC Code of Ethics, which states: *No search firm shall solicit a candidate it has placed while that candidate remains with the employer that paid the recruiting fee.* If the candidate contacts the search firm about placement, it is not solicitation and is permissible under the Code to represent the candidate again. Your outreach to me about this topic underscores that our membership has a solid understanding of the Code and how it comes into play in everyday practice.

Business Judgment Questions

Another common ethics question concerns candidate submissions. Article I, Section 3, states: *Candidates shall be submitted only (i) with prior authorization of the employer or (ii) where the search firm, based on previous direct communication with the employer, reasonably believes the employer would accept the submission.* The ethics question I'm asked most frequently by members relating to this topic is more of a business judgment question. For example, the search firm member has a great candidate, but the search firm does not have a job order or a re-

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cent direct communication with the employer about an open position. While the search firm member knows it would be a violation to submit a candidate without a reasonable belief the employer would accept the submission, they reach out to seek guidance on how to make the employer aware of the candidate.

This type of question lends itself more to business judgment than ethics. I encourage the caller to have direct communication with the employer. If one is not sure if an employer might have an interest in a candidate, the search firm member should absolutely call the employer and ask. Direct communication with an employer fosters the bond that is fundamental to building the recruiter/client relationship.

What I hope law firm and corporate clients recognize about our membership is that we place adherence to the Code first and foremost. It is at the heart of what puts our membership in a league apart. It is this commitment to do the right thing for the client and for the candidate that defines who we are. And for that I'm proud to be a NALSC member. I look forward to continuing to support NALSC as it evolves and standardizes best practices in legal recruiting.

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