

# NALSC<sup>®</sup> NEWS

National Association of Legal Search Consultants Newsletter

Summer/Fall 2019

*"I look forward to attending this conference every year. The programming is exceptional and the caliber of colleagues in attendance is remarkably high. I was impressed that there was a good mix of law firm attendees from top firms and search firm professionals from national and regional firms."*

*"The sessions were interesting and informative. It was clear that the presenters had invested significant time to prepare meaningful content."*

*"Best sessions I have ever experienced at a NALSC Conference. First rate at all levels."*

*"This was one of the best conferences I've ever attended. The number of attendees made it perfect for having real conversations and the content was the best of any of the NALSC conferences."*



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# President's Message

by Dan Binstock, Esq.

Dear NALSC Members,

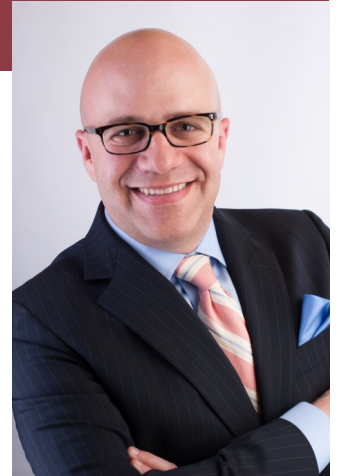
There is very exciting news on the NALSC horizon.

NALSC continues to flourish as we approach 200 members strong. Search firms are consistently joining and realizing the many benefits including affiliation, credibility, networking, education, advertising, visibility via NALSC directories, adherence to the NALSC Code of Ethics®, and more. In addition, the surge of law firms sponsoring our organization receive Supporting-level NALSC membership as well.

This healthy balance of search firms and law firms helps to broaden the perspectives, opinions, and interactions at our Conferences and Symposia. More and more law firms are recognizing the importance of the NALSC Code of Ethics® and placing an emphasis on collaborating with NALSC member search firms. NALSC recruiters have said, "clients pay me to give honest advice and tell them the truth about hiring decisions." Much of this growing trust and connection is fostered from building relationships with our clients over the years. NALSC events give us the chance to get to know each other beyond simply email addresses, voices on the phone, and the formal in-office meetings. This applies to personal relationships with our wonderful corporate sponsors as well, who provide products and services that assist us on a daily basis.

We encourage you to attend the upcoming Symposium &/or Conference: learn from our excellent programming geared specifically to the niche legal recruiting industry; connect with fellow legal recruiting colleagues who can genuinely relate to the ups and downs of your specific business; network with law firm clients and corporate sponsors; feel the friendly camaraderie; recharge your battery; and enjoy all things NALSC!

If you have not already signed up for the NALSC 2019 Fall Symposium (Friday, October 18th from 8am-7pm at the NY offices of Morrison & Foerster), please see the below link for event details. We carefully set NALSC programs to incorporate meaningful suggestions and feedback that attendees have provided from prior events. Our upcoming sessions will include in-house recruiting strategies, before-the-offer topics, after-the-offer best practices, effective communication and combating gender bias,



trends in the law firm market and their impact on lateral hiring, and lively interactive square-table discussions.

For those of you who could not attend our recent Annual Conference at the spectacular M Resort in Las Vegas, we are pleased to report it was a great success. We are excited to announce that our NALSC 2020 Annual Conference will take place March 26-28 at the beautiful Westin Nashville, so dust off your cowboy boots and save the date. Details and the hotel room block will be available shortly.

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

Best regards,

**Dan Binstock** - President of NALSC®

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Link to NALSC 2019 Fall Symposium:  
<https://www.nalsc.org/2019-fall-symposium/>

NALSC is pleased to welcome 19 new members since the last newsletter (Winter/Spring 2019). We currently have 189 members consisting of 136 search firm members, 5 affiliate members, 9 branch office members, 5 individual members, 33 supporting members (law firms), and 1 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:

- ASG|LEGAL - Independence, OH
- Baseil Associates Inc.-Attorney Recruiting Division - Morristown, NJ
- ELR Legal Search LLC - New York, NY
- Feldman Legal Search LLC - Westwood, MA
- FPC of Savannah, Legal - Savannah, GA
- Glenmont Group - Montclair, NJ
- Janus Recruiting - Spotswood, NJ
- Jowers | Vargas - Hong Kong
- Legalis Global (Los Angeles) - Azusa, CA
- Nason and Associates - Atascadero, CA
- Northside Human Strategies - Richardson, TX
- Nyne Partners - Eden Prairie, MN
- PLACED - Washington, DC
- Whistler Partners - New York, NY

Our new Supporting Members (Law Firms) are:

- Dykema Gossett PLLC - Chicago, IL
- Foley & Lardner LLP - Chicago, IL
- Hogan Lovells LLP - Washington, DC
- Pillsbury Winthrop Shaw Pittman LLP - Los Angeles, CA
- Snell & Wilmer L.L.P. - Phoenix, AZ

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

The Executive Committee is comprised of Dan Binstock (President), Mitch Satalof (VP-Membership), Nick Rumin (VP-Long Range Planning), Jane Pollard (Secretary) and David Garber (Treasurer).

Current NALSC Committees include Executive, Nominations, Newsletter, Ethics, Audit/Risk, Governing Documents, Membership and Website.

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.

# NALSC Membership Growth

by Mitchell Satalof

## ABOUT THE AUTHOR:

Mitch Satalof is the CEO of Juris Placements, Inc. Mitch serves on the Board of Directors for NALSC and is the Vice President of Membership.

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# Checklist: Coaching Your Partner Candidates Through the Resignation Process

by Karen Kaplowitz, Esq. and Valerie Fontaine, Esq.

*“For a smooth transition with maximum portable business, a savvy recruiter counsels the candidate through the resignation process which, done properly, has many moving parts. The goal is to preserve as much goodwill as possible with the old firm while not distracting the candidate from fulfilling continuing client responsibilities.”*

Congratulations! Your partner candidate accepted your client’s offer—but your job is not quite done. For a smooth transition with maximum portable business, a savvy recruiter counsels the candidate through the resignation process which, done properly, has many moving parts. The goal is to preserve as much goodwill as possible with the old firm while not distracting the candidate from fulfilling continuing client responsibilities.

The following is a checklist of practical steps you can suggest to avoid a chaotic lateral move. (The list can be modified depending upon whether the candidate is an equity partner, non-equity partner, associate, in-house counsel, or other status, as necessary.) If the candidate expects conflict with the old firm, you may also recommend consulting a lawyer who is expert on law firm agreements and ethics.

Advise your candidate to:

## Before giving notice

1. Review the old firm’s partnership agreement and determine all applicable requirements including any notice period for withdrawing. If there is a notice period, inquire of people who have left whether the notice period was enforced. Are there any penalties in the partnership agreement for breaching the notice period?
2. Take home non-essential personal belongings before giving notice. That includes personal financial information or other documents or photos in the office or on the office computer.
3. Have a complete list of clients and their contact information someplace other than on the law firm computer system.
4. Prepare a list of current matters, including all upcoming dates and deadlines.
5. Make sure all filing is up to date. It is especially important that all docketing and deadlines are recorded for client matters which the candidate plans to leave with the old firm as well as for those the candidate expects to take to the new firm.
6. Gather all keys, key cards, phones, laptops, and anything else which belongs to the old firm, so they are ready to turn in right after giving notice.
7. If his or her cellphone belongs to the old firm, get a new phone.
8. Draft a joint notice from the candidate and the old firm about the candidate’s departure and new firm.
9. Calculate monies due in terms of pay, vacation pay, expense reimbursements, vested retirement or investment funds, and return of capital contributions.
10. Find out from the new firm the eligibility date for new medical coverage and, from the old firm, what date the old coverage ends.
11. Prepare to be blocked from access to all online, data files, and physical files immediately upon giving notice.

*Continued on page 5*



#### When giving notice

12. Inform the old firm that he or she will cooperate with them on any matters the candidate worked on where the client is remaining with the old firm.
13. Present the old firm with the draft of a joint notice to clients about the candidate's departure (see 8 above) and arrange for its dissemination.
14. Let the old firm know that he or she will cooperate fully in getting their fees paid.
15. Request copies of past invoices & accounting records so the candidate can answer client questions if necessary.
16. Ask for a written receipt for everything the candidate is returning to the firm (keys, equipment, etc.).
17. Submit reimbursement requests (see 9 above) and ask when those and any additional funds due the candidate will be paid.
18. Secure medical insurance through COBRA, if applicable.
19. Ask the old firm to designate someone as a point of contact for forwarding voicemail messages, hard copy mail, and email. If possible, set up an automated email reply to provide people with the new contact information. The automated response can also designate someone at the old firm if they need to communicate with someone there.

#### Immediately after giving notice

20. Have the new firm prepare client election forms for each client the candidate expects to follow, and for each matter. Provide each client with directions regarding where to send the client election form if they want the candidate to continue doing their work, and to whose attention at the old firm it should be sent, with a copy also sent to the candidate.
21. For each client whose work the candidate will continue to perform, decide whether the client and the candidate want to obtain files on matters which are closed at the old firm, as well as for current matters, so the candidate can direct the old firm accordingly.
22. Request electronic portions and hard copy portions of the candidate's files for matters being transferred to the new firm. Start with the transfer of open matters on which there are impending deadlines.
23. Determine if there is a gap in malpractice coverage between the date the candidate leaves the old firm and start date at the new firm and arrange for tail coverage, if necessary.

#### When starting at the new firm

24. Arrange with the new firm to pick up from the old firm any large items such as furniture, artwork or heavy plants, along with the candidate's files.
25. Have a digital photo and website bio ready to be posted on the new firm's website for a continuous online presence since the old firm most likely will take down the candidate's bio right away.
26. With the help of the new firm, prepare change of address forms for each of the following:
  - a. The Post Office

b. The State Bar

c. Courts and opposing counsel

27. Update LinkedIn or have someone at the new firm do so, changing the contact information in the LinkedIn profile as well as the description. (And do the same for any other professional social media sites or online listings.)
28. Post a notice of the move on LinkedIn.
29. Also send an email notice of the move to the candidate's business contacts since some might not be active on LinkedIn.
30. Set calendar reminders or instruct the new assistant to periodically test the automated email and voicemail forwarding from the old firm.

For more ideas on how you can help your candidates make a smooth and successful move, here are additional resources: <http://www.seltzerfontaine.com/resources/publications/lawyer-transitions-series/lawyer-transitions-time-go/> and <http://www.newellis.com/PDFs/2014/March32104.pdf>.

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# Planning NALSC's Future - Part 2

## *An Update on our Long Range Planning Initiative*

By Nick Rumin, Esq., VP – Long Range Planning

*"...our membership sees the NALSC Code of Ethics® as an integral way our members can demonstrate a commitment to the highest standard of business conduct and integrity."*

NALSC's long range planning process is entering a new phase, as your Board of Directors considers and digests the results of our membership survey.

By our last count, 53 of our 189 members responded to the survey - a 28% response rate that we believe is not out of line with the response rates of similar surveys at comparable organizations. We are heartened and grateful for the time these members took

to express to us their thinking about the current health and future direction of our organization. These responses provide your Board of Directors with a critical tool to help us prioritize and focus our efforts in the coming months and years. Thank you!

What is clear to us, from the results, is that our members value the opportunity to meet, network and do business with fellow recruiters – as they do the programming at our annual Spring Conference and Fall Symposium. Members want our organization to grow larger and more prominent, and for the Board to keep up its hard work in providing thought provoking educational opportunities and other tools to help our members work more effectively in this challenging market. Almost uniformly, our membership sees the NALSC Code of Ethics as an integral way our members can demonstrate a commitment to the highest standard of business conduct and integrity.

Our Board is excited by the opportunity to use the results of this survey as a way of ensuring that NALSC continues to provide value to its members. Members who are interested in participating in the work of furthering our long range planning process are encouraged to reach out to Nick Rumin, VP – Long Range Planning.



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## [For Government Attorneys]: Navigating the Ethical Maze When Moving From Government to Private Practice

*To minimize the need for recusal during the lateral process, there are some important questions to ask yourself and your ethics officer.*

By Dan Binstock, Esq.

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If you are a government attorney looking to move to private practice, ethics are a crucial consideration during the job search process. But ethics issues can be confusing unless you understand the moving pieces at play. The goal is to minimize the likelihood of needing to recuse yourself from a matter. These are some of the common

questions and issues government attorneys encounter once they begin considering a move to a law firm:

- When do my disclosure/recusal obligations get triggered?
- What are the different ways of reaching out to a firm, such as single-blind inquiries, double-blind inquiries

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and full submissions? How do these impact potential disclosure/recusal obligations?

- Is there a difference if I approach a law firm directly versus through a recruiter?
- What if a law firm I wish to approach has an active matter in front of my agency, but not me?
- What if a law firm I wish to approach has an active matter on front of me? Do I have to recuse myself before approaching them?
- What happens if I recuse myself from an active matter involving a law firm, then apply to the law firm, but they pass on my candidacy? Is the recusal temporary or am I permanently recused from that matter, even if we didn't engage in discussions? And would it change my duties if we had discussions, but they subsequently passed on my candidacy?
- What happens if a law firm reaches out to me? Can I engage in discussions or must I first recuse myself?

As you can see, this can get complicated quickly. As a rule of thumb: If you are not involved in a matter involving the targeted law firm, your likelihood of having to recuse yourself is much lower. But the closer your involvement on a matter involving the targeted firm, or the higher your level of leadership within your agency, the higher the chances of needing to recuse yourself from a relevant matter should you wish to proceed with interviewing at the firm. Sometimes just knowing the firm is interested in you can trigger ethical obligations. I will address these various scenarios and approaches below.

Before anything else, speak to your agency's ethics official. This is a must. While the U.S. Code and Code of Federal Regulations have sections addressing seeking employment outside of the government (see, e.g., 18 U.S.C. Sec. 208 and 5 C.F.R. Sec. 2635.601, Subpart F), you should still speak to your ethics official. I have seen considerable differences in how certain agencies interpret and apply what can and cannot be permitted before requiring a recusal. Furthermore, ethics officials will keep your consideration of a move confidential, so you should view the ethics official as a necessary resource who can and should be trusted. Many or all of the above questions can be addressed by your agency's ethics official.

If you are using a recruiter, it's important to understand the various ways you can be presented to a law firm. These are divided into two main categories (blind inquiries and submissions), and each category has two subsections, as laid out below.

#### Blind Inquiries

A blind inquiry is usually when a recruiter presents a description of your background but your identity remains anonymous. A blind inquiry can have several

*"It's my hope that this tool will help provide the necessary clarity so you can approach the law firm market in the most thorough manner without inadvertently running afoul of your ethical duties or inadvertently invoking recusal obligations too soon."*

functions, including protecting your confidentiality and also avoiding invoking ethical issues by keeping the information anonymous. A blind inquiry can also keep the name of the law firm anonymous from you, if this is required to avoid ethical flags.

In a single-blind inquiry, one side knows of the other, but not both. In the most common situation, you will know which law firm the recruiter is contacting on your behalf, but the law firm will only receive a general description of your background with your identity remaining anonymous. (The law firm is blind.) Once a law firm expresses interest and your recruiter informs you, this could potentially trigger ethical disclosure/recusal obligations, depending on the circumstances and your involvement with the firm on a particular matter.

A double-blind inquiry is the most conservative approach. In this situation, the recruiter drafts a description of your background (without sharing your name/identifying information) and reaches out to firms that match your criteria but does not tell you which firms are being contacted. (The law firm is blind and so are you.) Once a law firm expresses interest and your recruiter informs you, this could potentially trigger ethical disclosure/recusal obligations, depending on the circumstances and your involvement with the firm on a particular matter.

The benefit of blind inquiries is that they allow the law firm to make an initial determination if they are interested in learning more, while completely protecting your identity and confidentiality. A downside is that law firms tend to not take blind inquiries as seriously, and they are more likely to be overlooked as compared to a full submission.

### Submissions

A submission is when the recruiter goes beyond an inquiry and shares your name/identity with the law firm. This can take the form of an informal recruiter call to the relevant individual at a law firm to share your name and gauge the level of interest (sometimes a name is all the firm will need to make a decision), or your background can be communicated with your resume and a more detailed write-up including your specific interest in private practice, prior experience that may be especially relevant, and other important information that is of interest to the individuals reviewing your candidacy. There are two types of submissions: single-blind submissions and full submissions.

In a single-blind submission, the recruiter presents your information (including your identity) but you do not know which law firms are being contacted on your behalf. This is done to shield your knowledge so that your introduction (through the recruiter) to the firm does not trigger potential recusal issues. (The theory is that if you are knowingly approaching a firm and interested in joining, and the firm also knows your identity, you are more likely to have a conflict of interest, so what you don't know can't compromise your ethical duties.) Once a law firm expresses interest and your recruiter informs you, this could trigger ethical disclosure/recusal obligations, depending on the circumstances and your involvement with the law firm on a particular matter.

In a full submission, the recruiter presents your information (including your identity) and you are aware of the firm to which your information is being shared. Both you and the law firm are aware of the other. Again, once a law firm expresses interest and your recruiter informs you, this could trigger ethical disclosure/recusal obligations, depending on the circumstances.

### Using Recruiters (or Not)

Now that you understand the various manners in which you can be presented to a firm, you may be wondering if you need to use a recruiter. You absolutely do not have to use a recruiter. But as explained above, the recruiter's role as a third party can provide the important anonymity buffer between you and a firm through the use of blind inquiries. This is not something you can do on your own, for obvious reasons. However, if remaining anonymous is not a consideration, it is your choice whether to use a recruiter or approach a firm directly. Also, it's not uncommon for firms to approach government attorneys directly (often in a gentle fashion that suggests, "If you ever decide to look, let us know").

### Talking to Your Ethics Official

Now that you understand the various ways in which a firm can be approached, below is a list of questions to help guide your discussion with your ethics official. To

that end, this list is intended for you to bring to your discussion with the ethics official. Some of the answers may be already laid out in an agency handbook, but some topics may require discussion due to the nuanced nature of your position or specific matters. This list provides a range of questions to ask.

- At what point does the trigger for a recusal occur?
- How do the recusal obligations differ depending on the circumstances?
- What are the various ways I can be presented to a firm, including blind inquiries and/or full submissions, to minimize the need for a recusal?
- Which of these approaches does the agency recommend in order to preserve my confidentiality as long as possible?
- In what circumstances are submissions acceptable without raising recusal obligations? What are my obligations around submissions, both single-blind submissions and full submissions?
- What is the difference if I approach a law firm directly versus through a recruiter? How important is the intermediary/buffer?
- What if a law firm I wish to approach (either myself or through a recruiter) has an active matter in front of my agency, but not me?
- Given my position in the Agency, if I am not involved in a particular matter involving the firm, am I able to approach the firm without having to recuse myself? Is there a trigger at which I must disclose/recuse myself, or is my lack of involvement enough to avoid needing a disclosure/recusal at any point?
- If a firm has an active matter in front of me, is a single-blind inquiry permitted or would that trigger a disclosure/recusal? Is a double-blind inquiry permitted or would that trigger a disclosure/recusal?
- If I told my recruiter the types of firms I would be interested in, and he/she sent a double blind inquiry to a firm that has a matter in front of the Agency, and the firm expresses interest in learning more about me, and my recruiter informs me of the firm, what are my obligations at that time? Do I have to recuse myself just because I know the firm is interested in me, even if they don't know who I am? Or is the duty to recuse myself only triggered if I intend to proceed with the process and the firm will learn my identity?
- What happens if I recuse myself from an active matter involving a law firm, then apply to the law firm, but they pass on my candidacy without ever engaging in discussions? Is the recusal temporary or am I permanently recused from that matter, even if we didn't engage in discussions? And would it change my ethical duties if we had discussions, but they subsequently passed on my



candidacy?

- What happens if a law firm reaches out to me and I am working on an active matter involving them? Does this interaction, even if I politely decline, create any ethical duty to disclose?
- Are there any questions I haven't asked but should know about during this process?

All of this may seem a bit daunting. But once you understand the scope of what's permissible without needing to disclose/recuse, it will become much clearer. It's my hope that this tool will help provide the necessary clarity so you can approach the law firm market in the most thorough manner without inadvertently running afoul of your ethical duties or inadvertently invoking recusal obligations too soon.



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The views reflected in this article are his own.

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## The Recruiter's Bookshelf

By Raphael Franze, Esq.  
featuring guest author Natalie Thorsen, Esq.

### **ESSENTIALISM: THE DISCIPLINED PURSUIT OF LESS** by Greg McKeown

In the simply formatted yet well-researched book Essentialism, author Greg McKeown thoroughly lays out the concepts and techniques that empower the reader to strive for what is eloquently stated in the book's tagline: The Disciplined Pursuit of Less. While, initially, it may be difficult to grasp by those who have grown accustomed to and proud of their undisciplined pursuit of more, Essentialism is written to be consumed and applied by people in all walks of life regardless of age, education, profession or personal circumstance for the purpose of improving upon their current situations.

Having read Essentialism from an external recruiter's perspective, though, I make a point to recommend it to any and all of my contemporaries who are open to a good new read. The feedback that I've received from them has been overwhelmingly positive as we agree that the book's principles have the power to transform a recruiting practice while more seamlessly accommodating it alongside one's family life, health goals and social obligations.

In describing "the essence of what it means to be an Essentialist," McKeown addresses three tenets, each

of which resonates consistently throughout a recruiter's workday: choice, discernment, and trade-offs. Understanding that the power to choose is always ours (despite sometimes having limited options), the reader is reminded that their actions are theirs to direct in the face of client or candidate or even employer motives that may run counter to the recruiter's mission or capabilities. In learning to discern what is truly important, the reader understands the few activities that in fact have a positive impact on the quality of their service and everything else that should no longer vie for their attention. By grasping the significance of tradeoffs, the reader learns what it is they want to go big on and that, while a good recruiter may be capable of servicing any one of its client's needs, it is a fool's bargain to attempt servicing every one of them.

From there, the Essentialist's journey is detailed across three general phases:

Explore - discerning the trivial many from the vital few;  
Eliminate - cutting out the trivial many; and  
Execute - making execution of the vital few effortless.

Within each phase, McKeown devotes individual chapters to different action verbs (the mastery of which enable the reader to live an "Essentialist Life"). For instance, better discernment of the trivial many from the



vital few in the exploration phase is discussed through the reader's ability to escape, look, play, sleep, and select (you read that right - play and sleep are key elements of an Essentialist Life and for good reason). Also, succeeding at cutting out the trivial many in the elimination phase is incumbent on the reader's ability to clarify, dare (to say no, in particular), uncommit, edit, and limit. In bringing the Essentialist's journey to its completion through the implementation of effortless execution of the vital few, the reader is taught how to properly buffer, focus, progress, flow, focus and, finally, be an Essentialist at their core.

As coincidence would have it, I first read Essentialism as an audiobook on the drive to and from my first NALSC conference in Charlotte back in 2014. It left an indelible mark on how I approach both my recruiting practice and every other aspect of my life. I have read it again on countless occasions since then and frequently reference the individual chapters as needed. Of any book that I can recommend to someone looking to change for the better, Essentialism would be that book. It is simple in its fundamental approach yet so incredibly effective for the same reason.

#### NATALIE'S TAKE:

As I read (or rather listened to, thanks to Audible) Essentialism and implemented some of McKeown's suggestions, I found my professional and personal life transformed in the same way that Marie Kondo's cleaning method transformed my home. While Kondo asks us to evaluate the physical objects in our space and whether they bring us joy, McKeown encourages us to look at the way we spend our time and whether it is focused on what is essential.

McKeown urges his readers to determine what they believe to be essential in their lives and points out those things that are essential to most everyone—like adequate sleep. Each of his recommendations is supported by persuasive storytelling and data and I have implemented some of his recommendations over the last few months, resulting in more work productivity and greater happiness in general. Listed below are four of my favorite recommendations that McKeown gives and how they may apply to the recruiting profession:

#### DEFINE YOUR PURPOSE

At the 2017 NALSC conference in Austin, Texas, a speaker asked the audience to explain the essence of their job in one sentence without using job titles. While many of us struggled to come up with a response, Valerie Fontaine immediately said, "I put lawyers in their place." Although meant to be tongue-in-cheek, it was

clear Valerie understood her purpose before the question was ever asked.

How can we understand what is essential in our lives if we don't know our purpose or goal?

As the book states, "Creating an essential intent is hard. It takes courage, insight, and foresight to see which activities and efforts will add up to your single highest point of contribution. It takes asking tough questions, making real trade-offs, and exercising serious discipline to cut out the competing priorities that distract us from our true intention. Yet it is worth the effort because *only with real clarity of purpose can people, teams, and organizations fully mobilize and achieve something truly excellent.*" [Emphasis added]

#### SEE WHAT REALLY MATTERS

McKeown stresses the importance of understanding the purpose behind what we are doing, using the example of good journalism. Good journalists understand the point of the information they are sharing and why it matters.

As recruiters, we are privy to vast amounts of information. It is an essential element of our job to take all the information we receive, analyze it and communicate it effectively to our clients. If we understand what really matters to our clients or employers, we will not waste

*"Of any book that I can recommend to someone looking to change for the better, Essentialism would be that book. It is simple in its fundamental approach yet so incredibly effective for the same reason."*

time presenting candidates that aren't the right fit or focusing on details that aren't important.

#### MAKE REAL TRADE-OFFS

McKeown relates a story of listening to a presentation by Herb Kelleher, the co-founder of Southwest Airlines. Kelleher communicated that, rather than try to fly to every destination, they had deliberately chosen to offer only point-to-point flights. In addition, Southwest did away with in-flight meals and first class. Although critics were sure the airline would fail, Southwest flourished. Later, Continental Airlines adopted some of Southwest's strategies; however, Continental did not enjoy the success of Southwest. Why? McKeown reasons that while Southwest focused on the essential, Continental tried to do everything—including copying the strategies of others without making the necessary trade-offs (a common practice referred to as "straddling strategies"). Continental was not willing to focus on what was most important to them and their customers and give up what didn't matter most.

We must make hard choices in the way we spend our time and structure our business as recruiters. McKeown states, "Instead of asking, 'What do I have to give up?' [Essentialists] ask, 'What do I want to go big on?'" By understanding what is most important to our clients and what we value most, we are prepared to make better decisions.

#### SAY "NO"

McKeown cites Stephen Covey in stating, "You

have to decide what your highest priorities are and have the courage—pleasantly, smilingly, unapologetically—to say 'no' to other things and the way you do that is by having a bigger 'yes' burning inside. The enemy of the 'best' is often the 'good.'"

When I started working as a recruiter, I was eager to prove myself and, in doing so, wanted to say yes to every search and every opportunity. Phyllis Hawkins, my wise mentor, encouraged me to spend time on what mattered most and say no to everything else. I trusted Phyllis and, by prioritizing what mattered most, was able to make space for great opportunities.

If you are having trouble with saying no or are curious about McKeown's other recommendations, [Essentialism](#) may be a worthwhile read for you.

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## Counteracting Counteroffers

By Valerie Fontaine, Esq.

You've done all the work: Built a client relationship, defined the search, narrowed down the prospects, shepherded both the candidate and the client through the interviewing process, and secured an attractive offer. But, the deal is in jeopardy. All too frequently, the candidate is tempted by a counteroffer from the current employer. How can you counteract that counteroffer and save this deal?

Your defense against counteroffers begins when you first speak with the candidate and continues

throughout the interviewing process. Find out what the candidate does not like about her current employment situation and what she would like to see in her new position. Very rarely does a candidate make a career move for purely financial reasons. Usually there are a number of strategic considerations relating to long-term professional and personal goals, such as advancement opportunities, practice issues, management style, personal or client conflicts, billing rate pressures, geographic considerations, travel schedule, hours, and so forth.

Those are her pain points. Then, throughout the inter-

viewing process, discuss with the candidate how the position under consideration might alleviate her pain and help her achieve her career goals. Take good notes. And then, if faced with a counteroffer, remind the candidate why she was looking at new opportunities in the first place. Repeat back to her what you discussed previously about how the offered position will improve both her current situation and future prospects. Remind her that, despite promises made in a counteroffer, the firm's culture, practice, client base, location, personnel, and personalities will not change.

Although it may seem counterintuitive to do this while you are trying your best to recruit the candidate, if there is something the candidate desires that her current firm possibly could provide to make her want to stay, advise her to ask for it *before* starting a job search, not after you do all the work to get her an offer of new employment. This also might dissuade the candidate who engages in a job search simply to leverage an offer to get more of what she wants from her current employer. You don't want to waste your, or your clients', valuable time.

If the candidate is being tempted to stay with her present employer by promises of more money, perks, or a promotion, ask her these questions: Why did it take a threat to leave to be offered these incentives? Was she being undervalued previously? Will her counteroffered compensation level offend coworkers, making her future life in the firm uncomfortable? Where is the money coming from—will it be taken out of her next raise or promotion? Will she have to threaten to leave the next time she wants to advance at this firm? Is this a better situation in all respects than the new job opportunity on offer? Your best defense against a counteroffer is to ask her: Will these enticements resolve all the reasons she had for seeking new employment in the first place?

Also, ask your candidate whether the person making the counteroffer has the authority to make good on it—or are these empty promises? If she has any thought of seriously entertaining the counteroffer, advise her to get those promises in writing. Sometimes just asking the current employer to memorialize the specific terms of the counteroffer reveals how serious the current employer is about keeping those new promises.

Empathize with your candidate. Tendering a resignation is uncomfortable in the best of circumstances. It can bring

up feelings of guilt, disloyalty, obligation, and the fear of disappointing others. Furthermore, the new job, no matter how attractive, may engender fear of the unknown. The candidate is contemplating leaving the comfort of her current duties and co-workers and will need to prove herself all over again in the new environment. With those uncertainties, it's an ego-boost for the candidate to hear how valuable she is to her present employer. At such an emotionally charged time, a counteroffer may seem like the easy way out, but it is preying on her vulnerabilities.

***"Remind her that, despite promises made in a counteroffer, the firm's culture, practice, client base, location, personnel, and personalities will not change."***

Minimize these fears by coaching your candidate through the resignation process and preparing her to handle a counteroffer. Go over the details: to whom will she give notice; when and how (in person, by phone, etc.); what she will say; and how, specifically, she

will resist any counteroffer, anticipating how her employer will respond. This fortifies her for the reality and helps her withstand her current employer's attempts to entice her to stay. Advise her to be polite but firm, keeping the discussion on a positive note, thanking her current employer for the opportunities she enjoyed with the firm, but stating that her move is best for her future career growth. Role play ahead of time and ask her to call you immediately after giving notice so you can calm any doubts.

Yes, you can save this deal. But, to counteract a counteroffer, you must build your defense into your recruiting process from the get-go. Gather ammunition at the beginning of the relationship with your candidate, add to your arsenal along the way, and use it, if necessary, at the very end.

For more tips on how to effectively counteract counteroffers, pay special attention during the "After the Offer" session of our Fall Symposium on Friday, Oct. 18th at the New York offices of Morrison & Foerster.

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*Q: HI SHANNON! HOPE YOU'VE HAD SOME TIME FOR RELAXATION AND VACATION AMIDST THE HUSTLE AND BUS-TLE OF A BIGLAW SUMMER. HOW'D THE SUMMER PRO-GRAM AT MINTZ GO THIS YEAR? I'M SURE THE NEW ASSO-CIATE ONBOARDING IS ALREADY KEEPING YOU BUSY!*

A: Hi, Raph, and hello NALSC friends and col-leagues! The summer at Mintz has been great. We host a relatively small summer associate program so that we can strategically hire a diverse group into our practice sections and tailor the experience for our students. In addition to all of the fun activi-ties you'd expect, our students are able to com-pletely integrate into the sections, assigned to cases and deals and working closely alongside our attorneys. The moment the summer associates leave, we dive straight into student recruiting for next year and preparing for our first-year class to start in September. It's a busy time of year on the associate side of our house, but it's fun and invig-orating to meet so many people starting their ca-reers in the profession. All the while, we're as busy as ever hiring lateral associates and partners into the firm.

*Q: I UNDERSTAND YOU GOT YOUR START IN LEGAL RE-CRUITING ON THE EXTERNAL SIDE. HOW'D THAT COME ABOUT?*

A: In college, I studied the history of modern France. However, there wasn't exactly a screaming demand for more French historians. So, I needed to pivot to find a paying job only knowing how to read, write, talk and, arguably, lead a revolution. One Saturday the summer after I graduated, I went to a backyard barbecue where I made a bunch of new friends and met someone who worked as a legal recruiter. We exchanged info and I asked her to meet for coffee to learn about her job and to see if she had any advice for me as I was starting out. About a week later, she hired me. At first, I helped support her clients and candidates and, in no time, I was wearing a suit and on the phone running a sales and recruiting desk of my own. It was a great life lesson on being friendly, being open to new op-portunities, and the importance of building a net-work. It also fostered a life-long love of barbecue.

*Q: BARBEQUE – TRULY ONE OF MY FAVORITE TOPICS TO DISCUSS! KEEPING THINGS ON TRACK, WHAT GOT YOU TO THE INTERNAL SIDE AND ULTIMATELY LED YOU TO MINTZ?*

A: My external recruiting experience was like boot camp. In addition to tossing me head-first into the legal industry, it taught me a ton of helpful skills – how to hustle, be resilient, listen, stay positive, and

## Sponsor Spotlight: Shannon Davis

Director of Recruiting,  
Mintz, Levin, Cohn, Ferris,  
Glovsky and Popeo, P.C.

By Raphael Franze, Esq.



get to yes. It also provided a hands-on understanding of how the industry works, making me a great (and sometimes terrible) client for recruiters today.

After a few years, I decided to move to a firm so I could focus on recruiting for one client and to be part of the team I was building. I joined Seyfarth Shaw in Chicago in 2007, where I had a great experience working with partners who wanted me to be meaningfully involved in recruiting while also learning a lot in navigating the tumult of the economic downturn and the recruiting boom that followed. In 2013, I heard that Mintz was looking for someone to head recruiting for the firm. Though I thought I was too junior for the job, not to mention having no intention of changing jobs or moving to New York, I agreed to take a first meeting. Thinking back on it, I probably should have started

packing my bags then. My meeting with Bob Bodian, our managing partner, really set the tone for what life at Mintz is like - he told me that the most important thing to him was how I think, not what I had done.

Fast forward and I've been with Mintz now over 6 years and it entirely exceeded my expectations of what my role could be, what I could accomplish, and how I could grow. Recruiting is extremely important to the firm, so I am also a core member of our leadership team with a seat at the table and input into the firm's strategic direction and decisions.

*Q: HOW ELSE WOULD YOU SAY MINTZ STANDS OUT?*

A: I think as recruiters, internal and external, we spend a lot of time trying to figure out how to pitch a firm and often it winds up sounding generic. Mintz is a great firm with great people that do great work for great clients. True, but that's the cost of admission in BigLaw.

I think what makes Mintz stand out is how we do it. My personal experience at Mintz has been extraordinary to me, but pretty standard for our firm - I have a lot of freedom and a lot of responsibility. I am expected to engage at the highest level and I am encouraged to bring new ideas and to grow.

The experience for our lawyers is similar. Partners who join the firm quickly become part of it - they are pulled in on clients, pitches, and matters with other partners who want to work with them. They are also given the autonomy and support to build and typically are quite surprised by how much they are able to expand their client relationships and practices with the firm. Most of our new partners collaborate with 20 or more Mintz partners in their first year and are astounded by how much their practices grow with us. Associates are engaged on real, substantive work; they work closely with other associates, partners and directly with clients and feel like there is transparency in their progression and a real opportunity to make partner. Diversity is essential to how we practice and, at all levels, we focus on bringing people with diverse backgrounds, experience and perspectives to the firm and integrating them into our work and client relationships.

Mintz is a firm with high-level clients and work, with engaged attorneys and business professionals who are given the opportunity and support to grow their practices and to be part of a collaborative organization. And the collaborative approach is working for us - over the last four years, our revenue has grown over 36%, profits over 37% and revenue per lawyer over 24%. It's an exciting time to be at Mintz.

*Q: THAT'S A GOOD AMOUNT OF GROWTH AND I'M SURE YOU'VE GOT SOME GOOD PEOPLE WORKING ALONGSIDE YOU HELPING*

*HANDLE IT. HOW'S YOUR TEAM AT MINTZ?*

A: My team is completely amazing. Long gone are the days of recruiting coordinators being window dressing and "yes" people. I work with a group of intelligent, driven, and high-performing women who hold themselves to high standards and who care about their work and about each other. Recruiting has the power to truly shape an organization. I take a lot of pride in watching my teammates work hard and realize how their day-to-day work impacts the future of Mintz. Beyond just working hard, my team is creative, fun, and engaged in the firm. I am really proud of what we've built and feel fortunate to be able to sponsor and support the next generation of exceptional women in our industry.

*Q: WHAT ADVICE WOULD YOU GIVE TO A RECRUITER LOOKING TO MAKE INROADS WITH MINTZ?*

A: Work with us! I love working with recruiters who want to partner with us, get to know the firm, get to know me and my teammates, and work toward the goal of helping us make great hires. Some general advice: follow up (please don't make me chase you), ask a lot of questions so you understand the firm and our searches (please don't only throw things against the wall), and make good use of your time and ours (please don't come in for a great meeting and then I don't hear from you until the next year). I understand that external recruiters have the flexibility to work with firms that they choose and I think Mintz is a great choice. We are doing a lot of hiring - upward of 40 lateral associates and more than a dozen lateral partners every year. When recruiters really want to partner with us and help us grow the firm, we invest a huge amount of time in them and their candidates.

*Q: WHAT'S SHANNON DAVIS UP TO AS OF LATE WHEN SHE'S NOT THE DIRECTOR OF RECRUITING AT MINTZ?*

A: I'm always the Director of Recruiting at Mintz, but I do manage to have a lot of fun with my trusty phone by my side. I love to travel and see the world. In July, I hiked the Andes in Peru and, to close out the summer in style, I am taking my new camera on a quick trip to Greece. Living in New York is fantastic and, when I'm at home, I go to events at the Met, order way too much food at new restaurants with friends, and dance Argentine tango at fun spots around the city. I love playing tour guide in New York so, if you're visiting, please reach out and I would love to share suggestions of great things to see and do or to meet up for a meal (though you should bring your appetite... and probably a to-go container).

*Q: BARBEQUE, PERHAPS?! I HEAR THE SCENE HAS GOTTEN VERY GOOD IN NEW YORK. THANKS SO MUCH, SHANNON!*



# Member Profile: Board Member Nicholas Rumin, Esq.

Founder,  
Rumin Search Consulting, LLC  
(New York, NY)

By Raphael Franze, Esq.



The founder of Rumin Search Consulting and a longtime NALSC Board Member, Nick Rumin currently is the organization's Vice President of Long Range Planning - a position certainly befitting his thoughtful and forward-thinking nature.

While he currently lives and works in the greater New York City area, Nick spent his formative years in Montreal and grew up accustomed to long winters playing hockey and skiing, and brief summers swimming in cold lakes and taking canoe trips through the Northern Quebec wilderness. While Nick hasn't lived in Montreal since his college days at McGill University, he enjoys returning frequently to visit family and friends, and to enjoy Montreal's outstanding cultural and food scene.

At McGill, Nick studied political science and history in part as a way to better understand how societies change and decisions are made. As the grandson of Russian Civil War refugees, he took a particular interest in Russian history and international relations. Outside of class, Nick had a weekly music radio show at Radio McGill - playing an eclectic mix of new and old music of various genres.

**FUN FACT:** Other notable McGill alumni include William Shatner, James Naismith (the inventor of basketball) and

Justin Trudeau.

Soon after completing his studies at McGill, Nick decided to expand upon his undergraduate studies as to how policies turn into law and thus matriculated to law school at the University of Ottawa.

With the fall of the Berlin Wall, Nick became increasingly interested in the opportunities in Russia, as signs of a free market economy began taking hold and western law firms began opening offices there. This led Nick to a Corporate Associate position with Baker & McKenzie based in St. Petersburg, with frequent assignments taking him to Moscow and Almaty, Kazakhstan. It was all a tremendous adventure for Nick - documenting the initial entrees of Western enterprises into the newly privatized Russian economy - particularly in the early St. Petersburg days when the principal local decision-maker for these clients was the young Vice-Mayor, Vladimir Putin.

Nick particularly took to his business development efforts at Baker & McKenzie, originating a significant infrastructure deal as a fourth year Associate. He also worked with clients in establishing the St. Petersburg branch of the American Chamber of Commerce in Russia, giving the firm additional exposure to a broad range of potential US clients.

During his time practicing in Russia, Nick grew fascinated with how law firms successfully grow and how they recruit talented attorneys. Also, as a fluent Russian speaker with local roots, it was easy for him to network in the Russian legal community. These factors, along with his success developing business, drew the attention of a London-based recruiter who inspired Nick to consider a career change and establish the Moscow office of this recruiter's search firm. (He ultimately returned to the US to begin his recruiting career with another search firm in New York.) The entire court- ing process, however, gave Nick the opportunity to compare the recruiting styles of UK and US search firms, as he considered how to eventually start his own practice.

Currently in his 20th year at the helm of Rumin Search Consulting, Nick's clients are exclusively law firms, and he recruits primarily practice leaders and groups while also handling the occasional counsel-level search. In leveraging his aforementioned professional legal experience, the geographic scope of Nick's recruiting practice is truly global as he works with growing cross-border practices to increase their international presence through acquisition.

When asked about his favorite aspects of legal recruiting, Nick is quick to emphasize how fortunate he feels to be in the profession. He finds the process to be quite engrossing and gets great satisfaction from assisting ambitious attorneys in taking their practices to the next level. He especially enjoys and is skilled at complex "needle in the haystack" searches for lawyers with unique technical expertise, and

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where his ability to get a deep understanding of a specific practice area gives him an edge and, over time, increased credibility in the marketplace.

Over the years, Nick has come away with a great deal of wisdom on how to both survive and thrive in this industry. When faced with disappointment or success throughout a given day, it is Nick's philosophy that getting back on the phone and immersing himself into the next project is always the best strategy for sustained progress. He is also inspired by an early mentor's advice to be inclined toward continuous engagement, whether it be taking formal meetings or just having frequent, simple conversations, as the flow of knowledge can ultimately lead to greater connection. To this end, Nick's main advice for starting a legal recruiting career is to understand that the industry has and always will rely upon well-networked intermediaries connecting firms and lawyers; and while it is important to keep up with technologies, market data, and modern trends, the imperative to build, maintain, and rebuild networks and relationships remains paramount.

When Nick isn't staying engaged or sinking his teeth into those highly technical searches, he enjoys spending time with his wife and 16-year-old daughter. Nick particularly enjoys music and is a fan of many various genres. Most recently, his daughter (who aspires to be a concert violist) has succeeded in getting him to more fully appreciate atonal modernist composers, as well as

***"Nick is also inspired by an early mentor's advice to be inclined toward continuous engagement, whether it be taking formal meetings or just having frequent, simple conversations, as the flow of knowledge can ultimately lead to greater connection."***

theremin music. A musician in his own right, Nick has spent years playing the guitar and ukulele and has also dabbled with the banjo, upright bass and mandolin. Not one to settle for knowing *most* of the string instruments, Nick has also spent a week with his family each of the last seven summers attending fiddle camp in Maine and is currently (finally) learning to play the fiddle.

NOTE: The theremin is the first mass-produced electronic musical instrument, invented by Russian inventor Leon Theremin. It is controlled without physical contact by the performer, who affects the tone and volume by their mere proximity to the instrument.

Nick also is an avid reader, and his daily routine and communication skills recently have been inspired by "Rest" by Alex Soojung, and "Say What You Mean" by Oren Jay Sofer.

In his community, Nick has long supported Waldorf education as it strives to cultivate children's imagination and creativity through the development of their intellectual, artistic, and practical skills in an integrated and holistic fashion. In doing so, Nick has also served for many years as a trustee and board chair for a Waldorf school.

If you're joining us at the symposium in New York this fall and want to learn more about NALSC's long term plans (or find out just how cool theremin music is), be sure to introduce yourself to Nick!

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Legal recruiters can play a key role in helping women candidates present themselves on their resume in a manner that reflects their full value.

### Inattentional Blindness

There is a theory in psychology, inattentional blindness, which essentially says that if a person is not expecting to see something, they may not see it even if it is right in front of their face and they look at it. Many studies over the years prove this theory. This means that the mere presence of information on a resume does not guarantee that potential employers see that information when they read the page.

Women candidates, in particular, must take extra care in preparing their resume to ensure that the most important information is presented in a manner that makes it more likely to be noticed. Potential employers who are not expecting a candidate to have particular skills may not see them on the resume, even if it is there. Because of implicit bias, unfortunately, this may affect female candidates even more than their male counterparts.

### Preparation

Women candidates often describe themselves in ways that devalue or discredit their skills, experience, and achievements. In addition, candidates often view their resume as a record of their work experience rather than a marketing opportunity. To counteract these tendencies, recruiters should advise their candidates to start by investing time and energy into putting together a list of their best qualities, experiences, and accomplishments. This helps flesh out content for inclusion on their resume and assists with shifting the candidate's focus from "what I have done" to "why I am amazing."

Prompting candidates to think about their best qualities helps them develop more effective content for their resumes. It facilitates their seeing the full picture of their achievements and their true value, which is generally higher than is reflected in initial resume drafts. In the brainstorming phase, encourage candidates to think about a wide range of sources of experience and knowledge, including volunteer work, continuing education, freelance projects, professional development, work at home, and self-employment.

Initially, candidates should develop a list of all of their past and current relevant experience, skills, and achievements. Going forward, keeping a continually updated list of accomplishments allows them to meaningfully refine their resume for specific positions, highlighting the most relevant information, instead of submitting a generic resume. It also keeps their achieve-

# Helping Women Candidates Shape their Resume for Maximum Impact

by Rachel J. Anderson, Esq.

ments and value at the front of their mind.

### Content

While candidates should try to fit all their relevant "best things" into their resume, they should prioritize quality over quantity. Of course, the standard advice is to avoid gaps, accounting for all time periods post-JD, and to emphasize the most relevant experience.

More importantly, coach your women candidates to view their resume through the eyes of the potential employer. Using questions to review their resume can help candidates see important information that they may benefit from making more prominent. Examples include:

- Does the information in your resume demonstrate that you can do the job for which you are applying?
- Does your resume include transferable skills that may be useful in the job for which you are applying?
- Does your resume focus on what you achieved rather than only what you did?
- Did you describe your skills directly?

In addition, encourage candidates to comb through their resume to identify and remove unnecessary information so the result is as targeted as possible.

### Form

The way that experience, skills, and knowledge are presented can influence whether a potential employer remembers details about a candidate's resume. Advise your candidates to use specific facts, numbers, and names. Encourage them to show with evidence rather than tell by using a more general description.

Women candidates often undersell their value on their resumes and rely on the potential employer to see the value in their work. The theory of inattentional blindness tells us that potential employers may not even see everything that is on the resume – much less what is left for a potential em-

ployer to discern between the lines. Shifting a candidate's mindset about her resume can be transformational, not only for her resume, but also for how she views and presents herself and her value to potential employers.

#### Checklist for Use with Candidates

##### *Preparation*

- \_ Brainstorm
- \_ Keep list of accomplishments
- \_ Consider all sources of experience, skills, and knowledge

##### *Content*

- \_ Account for all time periods
- \_ Include all relevant experience or prioritize the most important experience, as applicable
- \_ Multiple positions at a company included, if applicable
- \_ Include descriptions where needed
- \_ Show using examples that you can do the job
- \_ Focus on what you achieved rather than what you did
- \_ Include transferable skills
- \_ Preference quality over quantity
- \_ Omit unnecessary information

##### *Form*

- \_ Use specific facts
- \_ Use numbers to quantify your achievements
- \_ Use descriptions that are memorable because they touch one of the five senses

- \_ Describe skills directly
- \_ Use fewer words
- \_ Use strong verbs

#### ABOUT THE AUTHOR:

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Editor's note: The keynote address, "Disrupting Gender Stereotypes in Workplace Communications", at our upcoming Fall Symposium on Friday, October 18th at the NY Offices of Morrison & Foerster will cover more aspects of how the differing communication styles of men and women impact the legal recruiting profession.

## It's Not Just the Employer Who Can Be Sued: You Can Too!

by Mark J. Neuberger, Esq.

Anyone who practices in the professional recruitment industry needs to be aware of the expanding trend of disgruntled employees and applicants suing others besides their employer when things do not work out the way they want. In the never-ending search for a deeper pocket, plaintiffs and their lawyers are increasingly suing third parties involved in the employment process. While the practice may be new and expanding, the underlying law really is not.

The basis for recruiter liability for employment discrimination is as old as Title VII of the Federal Civil Rights Act passed in 1964. That law, which prohibits discrimination against a broad range of protected categories, specifically provides "it shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against,

any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on such basis..."

Title VII of the Civil Rights Act also provides that it shall be an unlawful employment practice for "an... Employment Agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer.... or referral for employment by such an employment agency... indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin..." 42 U.S. Code §2000e-2. Very simply, the authors of Title VII didn't want employers to be able to use others, like recruiters, to do their dirty work for them. In addition to Title VII, the Americans With Disabilities Act and Age Discrimination in



Employment Act, not to mention the ever-growing body of state and local laws, can all be applied to recruiters who engage in discriminatory practices.

Other times, as is the case in at least 11 different states, the anti-discrimination laws have been applied to anyone who is found to “aid or abet” discriminatory conduct. It is easy for a recruiter to get sucked into liability you might have thought could only attach to an employer. Potential third-party liability for hiring discrimination is not just limited to recruiters but also may include temporary staffing agencies, background screeners, and virtually any other vendors involved in the recruitment and hiring process.

Direct discrimination is easy to avoid by “Just not doing it!” i.e. don’t engage in what they call disparate treatment. However, (under the well-recognized alternative basis to find discrimination known as disparate impact,) a neutral hiring process or procedure which tends to select out minorities or others in a legally protected category at a higher rate can also be illegal discrimination. The classic example is that, before the passage of Title VII, many police and fire departments had a specific height requirement. While that standard was applied equally to every candidate, if you set it high enough you would likely screen out women, Asians, and Hispanics. If the height standard was a legitimate requirement to become successful first responder then the practice could stand. As was demonstrated through years of litigation, governments were unable to establish that most such height requirements had no relationship to insuring successful job performance as a police officer or firefighter.

In addition to recruiter liability for discrimination, recruiters can be held liable under traditional tort theories. One example is civil fraud. The way such a claim would arise is that a recruiter knowingly made a material misrepresentation of fact which induced a candidate to accept a job. However, had the candidate known the truth, they never would have accepted that job. A simple example: recruiter tells candidate the law firm I am referring to you has family-centric and reasonable billable hour requirements, knowing full well all attorneys must bill at least 2,000 hours.

What should you be doing to protect yourself or your business?

- Know your client employers and know them well. Don’t get in bed with an employer who you know or should have known is likely to screen out candidates in a particular protected category.
- Enter into well-drafted and well-thought-out con-

*“Anyone who practices in the professional recruitment industry needs to be aware of the expanding trend of disgruntled employees and applicants suing others besides their employer when things do not work out the way they want.”*

tracts with your clients which set forth the responsibilities and obligations of each party and clearly set forth the obligation not to discriminate. In 2019, conducting any type of business on a handshake is a huge risk.

- Don’t oversell! Promise the moon and the stars to your candidate and one of them just may fall out of the sky and hit you on your head.
- Check your insurance coverage. Does your general liability policy cover employment practices? Most GL policies exclude such coverage unless you purchase a specific rider. Don’t have GL insurance? Maybe it’s time to call your broker.
- Do a statistical analysis of your own recruitment and referrals. (Of course, if you are like me and went to law school because you can’t do math, you will hire a consultant with appropriate expertise.) What you need to know is whether you are unwittingly screening out candidates of a particular protected category or, in other words, engaging in disparate impact discrimination. Similarly, is your client rejecting your referrals of a particular protected category? If the answer is “yes,” seek reasons and take remedial actions.



*Continued from page 19*

Like everything in the world today, being a recruiter is complicated due to seemingly conflicting legal and business obligations.

**ABOUT THE AUTHOR:**

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