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DIVERSITY|IN ACTION

Commitment

A firm's **actions** speak to the **depth** of its **determination**.

BY KATHERINE FRINK-HAMLETT

PHOTOGRAPH BY RICK KOPSTEIN

I am the primary lateral recruiter for a major regional law firm with a growing satellite office in New York (even in this market we are actively recruiting for certain practice groups). While admittedly our hiring criteria are extremely selective, we do look for well-rounded attorneys. We are also deeply committed to creating a diverse environment but, like many firms, have struggled to make significant inroads. Recently we received the résumé of a Latino male, fourth-year associate with outstanding large firm experience and very good schools (Top 25 undergraduate and Top 15 law school). Here's the problem: Our minimum GPA requirement for laterals is 3.2. We may consider a 3.0 or 3.1 for an exceptional candidate, but this individual's GPA is a 2.9. While I am willing to meet with him, the hiring partners are not interested in pursing his candidacy because of the GPA deficit. What should I do?

Don't pursue his candidacy. But don't represent that the firm is "deeply committed to creating a diverse environment" because it is not. You, may be committed, but the firm is in "la-la" land.

It is utterly preposterous that a lateral candidate who otherwise meets the firm's objective so-called selective standards will be declined an interview simply because of a .3 deficit on the high end and a .1 deficit on the low end. This would be a stupid result whether the candidate was Latino, white, Asian or the Jolly Green Giant. However, it's particularly bizarre when the firm claims it is struggling to identify diverse lateral candidates, receives the résumé of a potentially viable Latino male and then thumbs its nose at him for a measly .3 deficit. Ludicrous. (And I don't mean the rapper.)

True or false: In the world of lateral associates of color, what does a .1 to .3 GPA deficit truly translate into? (1) The clients of the firm flee will flee; (2) The candidate's prestigious schooling and law firm training will evaporate into thin air; or (3) With a straight face, the firm's hiring managers will exclude a candidate of color. The smart money is on number three.

A recent Wall Street Journal article (Aug. 26, 2008) reported that the prestigious U.S. News & World Report is considering reworking its law school ranking system to require inclusion of low-scoring, part-time students. The article contends that counting part-timers would "roil the law-school rankings" and "likely reverse gains recently made by a number of law schools." Law school administrators interviewed for the article suggested that the proposed new ranking system could potentially narrow "a traditional pathway to law school for minorities."

Our legal community's obsessive fixation on GPAs, law school rankings and other statistical data associated with qualitative characteristics of current and potential members of the bar must be re-examined if, in fact, it has the unintended effect of artificially reducing the number of overall candidates and results in a discriminatory impact upon people of color. If the chase for numbers strangles the process of attract-

Katherine Frink-Hamlett, a graduate of New York University School of Law, is president of Frink-Hamlett Legal Solutions, Inc. and can be reached at katherine@frinkhamlett.com.

ing and retaining superior legal talent of all shades and genders without a corresponding measurable increase in the quality of the members of the bar, then it is suspect.

Are law school rankings relevant? Most definitely: The combination of administrative, faculty, students and resources creates an environment that is worthy of measurement, and certain schools have stronger reputations than others. Law school grades are also relevant, particularly during the on-campus recruiting process when there is a limited amount of information available to ascertain the potential performance of first-year law students.

However, rankings and grades shouldn't be exploited as capricious filters to bar otherwise worthy associates and, in this case, an associate of color. When infinitesimal numerical distinctions are used to exclude a lateral candidate whose attributes are otherwise desirable, then the firm's unwillingness to even speak to the individual is hugely problematic. It's particularly troubling when there is an alleged "diversity commitment," and a deep one, no less. Four years of undergraduate school, three years of law school, four years of large law firm experience, all denied for .1 off the GPA: Those numbers don't jive—not at all.

Our diversity committee and related task forces are reviewing our policies, particularly as they pertain to gay, lesbian, bisexual and transgender attorneys. We feel that we may have some gaps so are canvassing a wide range of resources and were wondering if there are any particular approaches or policies that would be helpful during our review.

Of course. Carmelyn P. Malalis is an associate at Outten & Golden and the co-chair of that firm's Lesbian, Gay, Bisexual, and Transgender Workplace Rights Practice Group, believed to be the first of its kind ever dedicated to this specific area. Ms. Malalis suggests that your firm consider its workplace policies and written materials with specific reference to anyone who would be considered a "default employee." As an openly lesbian attorney, Ms. Malalis stresses that frequently the particularized circumstances of gay, lesbian, bisexual and transgender attorneys may simply not be on the radar screen and can be easily overlooked, so it's important to sift through the details when considering a comprehensive and inclusive policy.

While most employees automatically assume that medical benefits will be available to either themselves or their family members, this may not be the case for someone who is gay or lesbian. Think about whether the firm's medical benefits package extends to a gay or lesbian employee's partner and/or or children. You may have a situation where a transgender attorney is contemplating certain procedures. Are they covered by the medical plan?

These and other medical and health benefits require careful scrutiny to ensure that they are available to employees irrespective of sexual identity and/or orientation. Even the details of written non-discriminatory and EEO policies require careful review and should be worded to specifically address prohibited discriminatory behavior based on sexual orientation, gender identity and gender expression.

Creating an inclusive environment extends well beyond the nuts and bolts of benefits and written policies and should address other areas that may not be so readily apparent and don't fit squarely into the human resources box. For example, restrooms are typically segregated by gender so make sure employees are permitted to self-select, again, focusing on the issues of sexual identity and sexual expression. It may be helpful to note that some firms are moving towards including gender neutral facilities, presumably diffusing the issue altogether.

Another area that may not be top of mind concerns invitations to various firm functions. It's important to be cognizant of the language used so as to clearly reference partners and/or significant others. Further, if the firm celebrates or otherwise acknowledges weddings, then civil unions and commitment ceremonies should be included as well. Ms. Malalis encourages firms to create an environment that is inclusive and seamless so that the milestones of all employees are celebrated without reference to sexual expression or identity.

She emphasizes that policies embracing gay, lesbian, bisexual and transgender issues should be fully embraced by the firm's executive management. Don't make the error of relegating the creation and implementation of policy to firm attorneys who may be members of any of these groups and unwittingly forced to take on the role as the firm's poster child.

Basically, at the end of the day, all attorneys want to be treated with kindness and included in a meaningful and respectful way, regardless of whether they are gay, lesbian, heterosexual, bisexual or transgender. Your firm is on the right track; do good and be well. •