

# Recruiting for DIVERSITY

BY ANN MORGAN, ESQ., WITH SPECIAL CONTRIBUTION BY ROBERT KRAMER, ESQ.



When I was first applying for a job with a law firm, I dutifully sent out resumes to all the major law firms in my city. Although I did not know very many attorneys, I had done well in law school and was clerking for a Nevada Supreme Court justice. I anticipated I would have no difficulty getting offers, let alone interviews. I was wrong on both counts.

**What I did not realize was that very few firms hired women, no matter their qualifications. It was not until my then boss, a Nevada Supreme Court justice, made a call on my behalf that I received a job offer. What if I had not had that connection?**

Today, there are 4,600 women licensed to practice law in Nevada. The Nevada Supreme Court is led by a majority of women justices. Many firms, including my own, have a majority of women in leadership and a large number of women partners. This gender diversity has helped firms continue to grow and develop even through a pandemic.

Why? Because diversity yields a better result for clients. Law firms, agencies, and companies that intentionally seek to recruit and hire diverse attorneys find that the clients do better, and the firm, agency, and company does better when diverse experiences and perspectives are brought to bear on solving

problems. Making this a goal, however, differs from making it a reality.

Recruiting diverse attorneys requires persistent, consistent effort. It also requires knowing how to avoid “reverse discrimination.” The term “reverse discrimination” is frequently defined as discrimination against members of a majority or historically advantaged group such as Caucasian males. Although most discrimination cases are brought under Title VII of the Civil Rights Act of 1964, the act does not just apply to minority or historically disadvantaged groups. The act applies to all forms of discrimination based on protected characteristics. *See McDonald vs. Santa Fe Trail Transp. Co.*, 427

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U.S. 273 (1976). All discrimination claims under Title VII are analyzed under the same three-part, burden-shifting test: (1) plaintiff must establish a prima facie case of discrimination; (2) if done, the defendant must offer a legitimate, nondiscriminatory reason for its actions; and (3) the burden shifts back to the plaintiff to show that the defendant’s proffered reason is pretext. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *EEOC v. Boeing Co.*, 577 F.3d 1044 (9th Cir. 2009). Establishing a prima facie case requires the plaintiff to show (1) he or she belongs to a protected class; (2) is qualified for the position in question; (3) was subjected to an adverse employment action; and (4) was treated less favorably than an individual outside the class.

Employers whose diversity programs permit or require the consideration of an individual’s race, gender, or other protected characteristic as part of a hiring decision or a voluntary affirmative action plan must carefully articulate how such plans are designed to remedy historical discrimination without unnecessarily trammeling on the rights of non-beneficiaries (i.e., the individuals who are not the intended beneficiaries of the affirmative action plan). *Johnson v. Transportation Agency*, 480 U.S. 616 (1987). The current version of this argument will be heard by the U.S. Supreme Court this term when it revisits the use of race in college and university admissions policies in two consolidated cases: *Students for Fair Admissions Inc. v. President and Fellows of Harvard College*, 980 F.3d 157 (1st Cir. 2020); and *Students for Fair Admissions, Inc. v. University of North Carolina*, No. 1:14CV954 (M.D.N.C. Sept. 30, 2019).

How, then, does a firm, agency or company successfully improve its diversity recruiting efforts without unintentionally running afoul of the act or

perpetrating reverse discrimination?

Robert Kramer, chief talent officer for Fennemore, advises that recruiting starts with understanding that diversity is a “value added” proposition. Diversity, rather than being restrictive, is expansive. Law firms, agencies, and companies that successfully recruit diverse attorneys recognize that effective attorneys do not all think alike, act alike, or look alike. They do, however, share the same goal of solving their clients’ issues.

Kramer advises that to successfully recruit diverse talent requires the law firm, agency, or company to think more broadly about who can do the job. For instance, although it is easy to keep recruiting from your lawyers’ alumni law schools, a commitment to hiring more diverse attorneys calls for outreach to law schools that have a diverse student body, even if no one in the firm or agency or company attended that school.

Kramer also suggests sending job openings to affinity bar associations as another way to expand your recruiting efforts. In Nevada, there are 20 affinity bar associations, also known as voluntary bar associations. Of these, six of them are dedicated to increasing the visibility of traditionally marginalized groups in the practice of law. The State Bar of Nevada also has the names and contact information for all of the officers of these affinity bar associations, and a personal phone call to those officers can yield interest that a job posting cannot. “Affirmative recruitment” efforts have been found to be characteristic-neutral, unlike traditional affirmative action plans that are characteristic-conscious. *See Shuford v. Alabama State Bd. of Educ.*, 897 F. Supp. 1535 (M.D. Ala. 1995).

Finally, Kramer advises firms, agencies, and companies to expand their investment in diversity pipelines as a way to provide long-term recruiting opportunities. In Nevada, the Justice Douglas PreLaw Fellowship program

at the William S. Boyd School of Law at the University of Nevada, Las Vegas, simulates a law school semester for high school students and helps them plan their studies to be prepared when they apply to law school. ¡Ándale! a walk/run sponsored by the Nevada Latino Bar Association, provides funding for scholarships for LSAT prep courses to Latino PreLaw students. In Northern Nevada, the Northern Nevada Women Lawyers Association funds an annual scholarship at the University of Nevada, Reno to assist disadvantaged students with the cost of the LSAT and a prep course. By supporting these and other, similar programs, law firms, agencies and companies establish relationships long before a potential job opening might occur.

Kramer advises that implementing these practices in his own firm, repeated in all states in which the firm practices, has not only resulted in a larger, more diverse applicant pool, but has also yielded a bright, talented class of associates. Recruiting for diversity, says Kramer, is good for business.

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Although he’s a lawyer working in the areas of natural resources and real estate, **BOB KRAMER** is perhaps best known for his work in Fennemore’s C-Suite as its chief talent officer, where he oversees attorney recruitment, professional development, onboarding, and retention. He is also a passionate supporter of diversity and inclusion, and he works on many initiatives in support of this important part of Fennemore’s culture.

