

A holistic approach to true law firm diversity

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Historically, law firms have measured success regarding diversity and inclusion by focusing on hiring numbers. For purposes of this expert analysis, “diverse” means of color, LGBT or female.

This method of analyzing diversity led to tokenism and focused law firms on poaching diverse lawyers from competitors to maintain what they believed to be adequate numbers of them.

Further, by using only statistics to analyze diversity, firm culture became excessively stressful for all employees — and especially for the diverse attorneys who struggled with the burden of performing well and being viewed as the “representative” of their group.¹

Unfortunately, there was little to no emphasis on retaining and cultivating diverse attorneys, leading them to pass through revolving doors in law firms and company legal departments.

As research progressed, companies began to understand that focusing only on hiring statistics does not provide an analysis of a firm’s culture or of commitment to inclusivity. Companies are beginning to request more information that provides insight into the systemic and structural issues that may be preventing talented diverse attorneys from reaching their full potential.

As clients not only prioritize diversity and inclusion but also demand real accountability and change, the legal industry may finally begin to see a long-awaited shift.

OVERVIEW OF 2017

In 2017 companies increasingly saw that the number of diverse attorneys hired into an organization or law firm is not an adequate measure of diversity and inclusion. They learned that a truer measure is whether they stayed and were given an equal opportunity to thrive.

Many law firms have begun revising their policies as part of an effort to become more inclusive. However, changing one or two policies alone does not create the positive change necessary to show progress in the area of diversity and inclusion.

Some firms have adopted a version of the “Rooney Rule” (first adopted by the National Football League for filling head coaching vacancies), which requires the firm to ensure that every candidate pool for new attorney hires includes diverse candidates.

Including a diverse candidate in every pool of potential hires increases the likelihood that the diverse attorney will be hired.

More importantly, it minimizes the biases associated with reviews of resumes and the hiring of friends or family members of firm partners, which can exacerbate the lack of diversity within law firms.

In addition, over the past several years, law firms have expanded the roles within their organizations that focus on diversity and inclusion. Law firms first established diversity and inclusion committees that primarily focused on sponsoring local events hosted by external organizations.

Over time, law firms hired directors or managers of diversity and inclusion to work within the firm to promote both. In recent years, they have also begun naming a chief diversity officer to work with the director or manager of diversity and inclusion. Often, the chief diversity officer is an equity partner within the firm. Ultimately, these positions allow law firms to focus more money and energy on meeting diversity and inclusion goals.

These kinds of changes, though, only begin to move the needle toward real progress. The issues surrounding diversity and inclusion require a deep analysis of the culture of inclusivity (or exclusivity) within each law firm. If the law firm really wants to see positive change, a review of all the policies, practices and norms that create its culture is needed.

PROJECTIONS FOR 2018

In 2017 client expectations increased as more large companies began seeking information that better analyzed a firm’s commitment to diversity and inclusion — and 2018 should show these expectations increasing.

Companies will not only continue to ask law firms for the number of diversity attorneys; they will also seek a better understanding of the culture of their law firm partners, with the aim of pushing diversity and inclusion to a higher level.

Companies frequently develop robust diversity and inclusion initiatives that address the bias and inequities within their own businesses. Like law firms, most large companies have a chief diversity officer or person in a similar position who is working to improve diversity and inclusion across the organization.²

In pushing forward to improve diversity, companies began realizing that the issues were not limited to whom they hire. They learned that these issues include what happened to those diverse employees after they joined the company, and why.

Through that analysis, companies became cognizant of the bias and inequities existing within their organizations and began implementing better diversity and inclusion initiatives to identify and remove them. They also began to expect the same of their law firm partners, including real accountability measures.

The trend appears to be most prevalent among multinational companies, but it is expanding and could lead to significant changes in law firm demographics and culture. As companies hold law firms more accountable to make real and fundamental changes to policies, practices and norms, the work culture at firms will become more inclusive.

The statistics on the number of diverse equity partners in large law firms best show the lack of an inclusive culture. The legal industry remains overwhelmingly white and male.

Clients increasingly expect law firms to show they are not only hiring diverse attorneys, but helping them thrive and succeed.

According to the Institute for Inclusion in the Legal Profession, in 2015, 1.8 percent of large law firm partners in the United States were African-American men, 2.9 percent were Asian-American men and 2.2 percent were Hispanic men.

The statistics for women of color are similarly dismal, with African-American women representing 0.6 percent, Asian American women representing 1.1 percent and Hispanic women representing 0.6 percent of large law firm partners.³

The statistics make it clear that barriers are preventing women and attorneys of color from becoming equity partners and holding leadership positions.

Lack of diversity representation at the leadership level sends a negative message. On the other hand, when women and attorneys of color hold leadership positions, it demonstrates to other diverse attorneys that there is a path to success at the firm; it shows that they, too, can be productive and influential there.

As clients increasingly request information on culture inclusivity, firms will be required to review and revise their policies and norms. Firms that are making real and intentional choices to change their culture will begin looking internally to review business processes, policies and practices and how they affect diverse attorneys. That review of the culture will require an understanding of what inclusivity means to employees.

Firms must understand the difference between equality and equity. Equality means sameness, or making the experience the same for all employees. Equity, on the other hand, means fairness, or recognizing that each employee has a

different background and so will require different tools to be successful.

Equality is a well-intentioned principle, but is clearly insufficient to improve diversity and inclusion at law firms. A firm that can be flexible with respect to its policies and practices will also need to increase the opportunity for every person to have what that they need to succeed.

Extensive research shows the effects of implicit bias on diverse attorneys. In the simplest terms, the way partners and firm leadership interact with diverse attorneys will, over time, impact the diverse attorneys' view of not only their place at the firm but their view of it.

Firms must review the subtle, everyday cultural norms. It is in the everyday practices and norms — which have often remained the same for decades — that implicit bias most often rears its ugly head and dramatically affects diverse lawyers.

These include almost everything that occurs during the day at the workplace: who lunches with partners and joins them on pitches; who gets opportunities to attend hearings, meetings and closings; how mentors and work are assigned; and how the annual review process is handled.

Firms should also review how they engage with external candidates, how they hire summer associates and lateral associates, and how they correct substandard work. In addition, they should examine their policies related to attorney reviews and compensation.

Firms must review each of their policies and practices through the lens of equity and fairness, which means considering whether they have a negative impact on diverse attorneys. If so, the policy should be amended so the firm can move to a truly inclusive culture, minimizing if not removing implicit bias from the process.

Firms must also review policies related to succession planning, credit allocation, and client relationships and management. Without proper policies and implementation, bias can invade each of these areas. The policies must be equitable and ensure that diverse attorneys get real opportunities to inherit clients, receive proper credit allocation and be included in client management.

Firms must create and implement policies to allocate credit fairly. Credit allocation can impact an attorney's opportunity to progress to equity partner and, ultimately, a leadership role.

Similarly, firms must implement policies and change norms when necessary to ensure that diverse attorneys have opportunities to develop and maintain relationships with firm clients. The revisions of norms and policies related to credit allocation and client management will dramatically affect the culture of inclusivity.

Diverse attorneys who are given fair credit for the work they bring to the firm and opportunities to manage existing client relationships are better positioned to become equity partners. Developing, maintaining, growing or inheriting business is still the best way for any young lawyer to become an equity partner and gain influence.

Firms can also improve their culture of inclusivity by implementing a sponsorship program. Traditionally, sponsorships in law firms have occurred naturally, such as when a senior partner takes an associate under his wing and guides the attorney through his career, perhaps leaving the practice to the lawyer upon retirement.

Mentoring sessions, having lunches and dinners with clients, participating in client marketing events, and being involved in important projects for clients make it significantly more likely the young associate can progress to equity partner and perhaps even a leadership role.

The young lawyer who has a senior lawyer speaking up for him, providing positive reviews to partners and clients and pulling him along when needed, has had every advantage to advance to partner and develop a book of business.

For many diverse attorneys, finding that relationship can be a challenging task. It is not often because of overt bias. But implicit bias creates situations where the young diverse lawyer did not have the same opportunity as the young white lawyer. Ultimately, it can affect the lawyer's entire career.

An appropriate sponsorship program would urge senior, "rainmaking" attorneys to take an active interest in young diverse attorneys and assist them with their career by including them in pitch meetings, integrating them into client management, involving them in marketing events, mentoring them, and giving partners information about them.

A sponsorship relationship will help retain the younger diverse attorneys and position them for future equity and leadership roles, where they can then provide the same opportunities for newer diverse attorneys.

CONCLUSION

To implement a culture of inclusivity, law firms must review practices, policies and culture to ensure they are equitable and fair to all employees.

Further, they must understand that the issues discussed here are interrelated. Firms that hire diverse attorneys but spend no time improving their culture will not truly improve diversity and inclusivity. Ignoring business development, client management or credit allocation will undercut gains from positive changes.

Law firms must act with intentionality with the clear goal of making their culture more inclusive. Firms must implement sponsorship programs, revise policies to ensure that credit is allocated fairly, review hiring policies, and review work flexibility policies to ensure that each policy is as equitable as possible to the firm employees. It is through this process that firms will change their culture to one of inclusivity. Then — and only then — will the legal industry begin to see positive changes in the demographics.

NOTES

¹ David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms — An Institutional Analysis*, 84 CAL. L. REV. 493 (1996).

² Michael Bush & Kim Peters, *How the Best Companies Do Diversity Right*, FORTUNE (Dec. 5, 2016), <http://for.tn/2gYEVnz>.

³ ELIZABETH CHAMBLISS, IILP REVIEW: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION (2017), <http://bit.ly/2zNplU4>.

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