

Work Assignment Equity

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According to the American Bar Association, the representation of women in U.S. law schools peaked at 50% in 1993 before beginning a decline to 47% in 2012, yet women have represented at least 20% of law school students since 1975. Nearly 40 years later, while women represent 45% of law firm associates, they represent only slightly more than 19% of partners according to NALP (National Association for Law Placement). Minorities now represent 25% of law school students, 20% of law firm associates and nearly 7% of partners at law firms nationwide. In our work with diverse attorneys, we find that many women and minorities become regretted departures – taking themselves out of the leadership pipeline after practicing for just a few years because they do not see themselves succeeding as partners at large law firms. One of the challenges for the advancement of women, minority, LGBT and other diverse attorneys in many law firms is the lack of equitable work assignment distribution.

Based on our research with law firms, we categorize work assignment systems into three types along a spectrum of control: (1) free market, (2) intermediary, and (3) pyramid. A free market system is one in which attorneys are free to take work from any partner in a practice area. While such a system offers exposure to many partners and a wide variety of work, it relies on informal relationships which can be more difficult for diverse attorneys to form. Intermediary work assignment systems involve people, metrics and processes to systematically assign work and usually involve assignment brokers who use tools to monitor the flow of work as well as attorney development needs in order to effectively match assignments and attorneys. While this type of system can be more equitable for diverse attorneys, it offers less control to the attorneys involved. A third type of system is a pyramid system in which attorneys receive work primarily from several partners in a pyramid who service a set of clients, and those partners in turn serve as mentors and sponsors to attorneys to ensure that they are receiving the right types of work assignments to advance at the firm. One challenge with such a system is lack of exposure to a wider set of partners and experiences and another is work-life balance as teams are structured to meet client demands regardless of team capacity.

NALP's 2012 *Lawyer's Professional Development: The Legal Employer's Comprehensive Guide* (by Ida O. Abbott, ESQ) asserts that a free market system is difficult to implement effectively unless a firm hires only attorneys who would succeed in an entrepreneurial environment, makes the culture one in which attorneys can truly accept or decline projects of their choice, and puts explicit development guidelines and tools in place for attorneys to guide their own performance. The guide also asserts that a free market system for work assignment disadvantages women and minorities because the subjectivity involved in work assignment often results in marginal work assignments for those without critical informal relationships. The guide recommends that work assignment structures should involve intermediation elements and recommends designating a person with a professional development and/or legal background to be responsible for such efforts full-time since partners often do not have adequate time. Such a work assignment broker can operate at a practice group level and be equipped with reports on staffing needs and individual development needs in order to effectively match assignments with attorneys. In addition to matching assignments, such brokers can also monitor work levels, identify performance issues and provide career guidance among other roles. This person can also help firms to remove bias from the system by ensuring diverse attorneys have fair access to all work.

The following three firms with an intermediary system of work assignment are profiled in the guide: Goodwin Procter LLP, Bingham McCutchen LLP, and Sullivan & Worcester LLP. Staffing and Professional Development Managers at Goodwin Procter LLP all formerly practiced law, and they use a proprietary software and verbal communications to track associate goals and development needs. A firm-wide litigation Workflow Coordinator at Bingham McCutchen LLP meets with partner coordinators to oversee availability in the firm's litigation department, and they use automated workflow reports that work in conjunction with workflow teams of 10-15 partners and 10-20 associates and counsel to monitor and track assignments. The work broker at Sullivan & Worcester LLP uses a work assignment database to identify associate projects and needs to best assign projects and also manages career development.

While the guide does not address in detail how such systems can effectively address the needs of diverse attorneys in conjunction with diversity best practices, we recommend the following possible steps based on our best practice research: (1) create reports to track assignment and development data by race, gender and sexual orientation, (2) assign a firm diversity leader to meet with practice groups on a periodic basis and/or serve on attorney review committees to review the career development of individual diverse attorneys and to identify any work assignment needs before attorneys decide to leave, (3) survey existing and departed diverse attorneys to assess satisfaction with work assignments and other issues, (4) identify a confidential counselor to whom bias related work assignment concerns can be raised, and (5) continue to increase awareness of implicit bias in work assignment decisions and facilitate behavioral change through continued diversity leadership training.

Several leading law firms which have outperformed a variety of industry diversity critical mass, retention and work-life metrics in the following Talent Advisory Board best practice research studies. Below are excerpts which describe firm specific work assignment methods and related diversity best practices.

California Law Firm Diversity Retention Best Practices

Managing A Shift Toward Work-Life Integration

Talent Advisory Board, July 17, 2012

This research study profiles the work-life practices including career development of law firms which have outperformed the industry benchmarks on diversity and work-life metrics.

http://www.talentadvisoryboard.com/Managing_A_Shift_Toward_Work-Life_Integration_071712.pdf

California Law Firm Diversity Retention Best Practices

Talent Advisory Board, June 1, 2011

This research study profiles the retention practices of law firms which have outperformed the industry benchmarks on retention of women and minorities.

http://www.talentadvisoryboard.com/Diversity_Retention_Best_Practices_Research_Study_Report_FIN AL.pdf

California Law Firm Critical Mass Best Practices

Talent Advisory Board, January 18, 2010

This research study profiles the diversity best practices of law firms which have succeeded in exceeding industry benchmarks on diversity representation of women, minority and LGBT attorneys.

<http://www.talentadvisoryboard.com/TAB - Fenwick Critical Mass Report - Final.pdf>

Work Assignment Excerpts from Diversity Best Practice Firm Cases

Cooley LLP staffs projects mostly through a cross-office, free-market process overseen by practice group assignment coordinators. The firm has an associate self-evaluation system to facilitate a more proactive process for goal setting and career development. The Diversity Committee Chair has also served on the Associates Review Committee to flag any retention issues related to development. Cooley's Administrative Partner works with each practice group leader to assess capacity and manage workflow.

Bingham McCutchen LLP uses a structured process for managing work flow. For example, within the litigation practice junior associates are assigned to get half of their work from 1-2 specific partners and the other half from a broader pool. The specific partners seek to provide a steady flow of work while the pool facilitates broader exposure. A former partner was appointed to head up the Committee on Associates to ensure that attorneys do not get lost in the shuffle.

Fenwick & West LLP has a free market system for work allocation through which attorneys proactively develop relationships with partners. In order to address potential bias concerns in transitioning from a lock-step to a competency-based model, the firm has held training on implicit bias for partners. Retention has been a key focus of the Diversity & Inclusion Committee which has made a concerted effort to ensure that minority attorneys do not "fall through the cracks" in such a free market system. In addition to measuring diverse attorney retention statistics, the firm collects attorney perception data through an annual attorney diversity survey. The data is segmented by race, gender and sexual orientation and survey items include propensity for departure and reasons to consider leaving.

Orrick, Herrington & Sutcliffe LLP uses an intermediary approach for work assignment which uses an assigning partner, and there is some variation by practice group. The firm examines diversity retention and pipeline issues at the practice group level to create specific and targeted action plans. The Diversity & Inclusion Committee Chair and the Women's Initiative Chair meet with practice groups annually to discuss the advancement of specific individual mid and senior level associates and junior partners. The discussions facilitate early identification of issues and create an opportunity for appropriate intervention.

Wilson, Sonsini Goodrich & Rosati PC has a pyramid model in its corporate practice in which clients are typically served by a stable team of partners and associates who service their work. Each sub-group is led by two to five partners and includes five to fifteen associates on average. The structure provides natural mentoring relationships and also provides early client exposure and work responsibility but can also challenge work-life goals. There is a weekly staffing call to help associates work with other groups. The firm's full-time confidential career counselor helps associates with many issues including how to get certain types of work. Staff formally meets with each practice group twice per year to review the organization chart and plan workforce needs based on demand vs. utilization.