



## Pushing Diversity in the Legal Profession

By Rebecca R. Hastings, SPHR

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Diversity professionals know how important a compelling business case is to the success of a diversity and inclusion effort. Law firms might have it easy in that regard, thanks to the demands of their clients, but that doesn't mean they find it easier than any other organization to achieve desired results.

"Establishing a diverse workforce is about making a better law firm," said April Boyer, employment law partner at the Miami office of K&L Gates LLP. "Law firms want their firms to be comprised of the best talent, regardless of gender, race, origin, disability, sexual orientation, or other protected characteristics," she told SHRM Online. "They also want their professionals to come from a variety of backgrounds and experiences so that they can relate to a broad group of issues and people."

But Boyer, who serves on her firms' Women in the Profession Subcommittee, said that clients have been a "driving force" in the growth of diversity initiatives in the legal profession.

"Law firms are just like any other company hustling for business in a down economy," said Rebecca Siegel Singer, senior counsel at the Dallas law firm Underwood, Perkins & Ralston, P.C. "As with other businesses, law firms have to adjust to the changing composition and goals of the clients they seek or serve."

For example, in a July 2009 news release, Sodexo, Inc., a global food service and facilities management company, announced that four law firms had been designated as "diversity leaders" by its law department. Arnold & Porter, Ford & Harrison, Hunton & Williams and Paul Hastings were selected from among 24 law firms with which Sodexo partners in the U.S. to receive this recognition.

## 'A Serious Commitment'

"These firms have demonstrated a serious commitment to building a truly inclusive workplace and increasing the diversity of their staffs," said Sodexo General Counsel Robert Stern in the announcement. "I am pleased that we have, in fact, been growing our business with these firms who best align with our corporate values."

"Increasingly, law firms that do business with large corporations and not-for-profit organizations are being asked by those clients to show clear evidence of their diversity and inclusion strategy and plans," said Peter Bye, president of MDB Group, Inc., a New Jersey-based consulting firm specializing in aligning diversity and inclusion with business strategy.

Leslie Aguilar, author and founder of International Training and Development, LLC, a diversity and inclusion consultancy in Orlando, Fla., said law firms have been focused on diversity for at least a decade.

According to the Association of Corporate Counsel (ACC) web site, the chief legal officers of about 500 major corporations, many of them global, signed a document entitled "Diversity in the Workplace —A Statement of Principle" in 1999 to affirm their commitment to diversity in the legal profession. A new "call to action," authored by Rick Palmore, the chief legal officer of Sara Lee and a member of the board of directors of the Association of Corporate Counsel, was issued in October 2004.

In the new document, signees pledged that they "will make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms" and will look "for opportunities for firms we regularly use which positively distinguish themselves in this area" and will "end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse."

And in January 2006 the Association of Law Firm Diversity Professionals (ALFDP) was established "to act as a catalyst for the advancement of diversity in the legal profession through our collective knowledge, vision, expertise and advocacy in the area of law firm diversity."

## Systemic Challenges

Law firms have become more diverse over the past 20 years in a number of categories, including gender, race, ethnicity, religion, sexual orientation and disabilities, according to Boyer. "As a result, the workplace atmosphere is more interesting," she told SHRM Online.

But the way that law firms do business can make diversity efforts a challenge.

For example, Aguilar said, the use of billable hours and the partnership process can work against women. “During the primary time women give birth (twenties and thirties) the partnership path demands excessive hours and availability,” she explained, adding that in her experience those who didn’t follow this path were often seen as uncommitted or less promising. Moreover, attorneys were less likely to participate in activities such as mentoring that do not qualify as billable hours.

Partners play a key role in the success—or failure—of any diversity effort, Bye suggested.

“As with other types of organizations, a law firm needs a clear and compelling business rationale, alignment of (diversity and inclusion) strategy and action plans to the firm’s growth objectives, a visible and influential champion, and senior partners who truly engage in achieving the goals of the strategy as a way to grow the firm,” Bye said. “The partnership arrangement introduces some unique aspects, since the partners must reach agreement on new policies and strategies such as a diversity and inclusion initiative.

“In law firms the most influential partners are usually the partners who bring in the most new business,” Bye explained. “These are sometimes referred to as the rainmakers.” Therefore, he suggested, firms consider whether the population of key rainmakers is diverse, monitor who is being given the visibility with clients so they might become a rainmaker, and evaluate whether the rainmakers focus on increasing the diversity of the law firm’s clients and areas of practice.”

### Monitoring Progress

U.S.-based law firms show continued, albeit slow, increases in diversity, according to a Dec. 17, 2009, news release by Vault.com, an online career resource, and the Minority Corporate Counsel Association (MCCA), an organization focused on diversity issues in the legal profession.

According to the 2010 Vault/MCCA Law Firm Diversity Database, an online resource containing data on hundreds of firms, minority lawyers made up 21 percent of the associate population in 2008 while women accounted for 46 percent of associates. And although minorities and women remain under-represented at high levels, they have made some gains in the partnership ranks. Attorneys of color were 6 percent and women were 16 percent of equity partners in 2008.

NALP, the Association for Legal Career Professionals, a nonprofit educational association for those involved in career planning, recruitment and hiring and professional development of law students and lawyers, is another source of legal employer data.

According to the 2009-2010 NALP Directory of Legal Employers, which includes attorney demographic information for almost 139,000 partners, associates and

other lawyers in over 1,500 offices, minorities account for 6 percent and women account for 19 percent of partners in the nation's major firms, up from 2.5 and 12.3 percent, respectively, since 1993, the first year in which NALP compiled the data.

Overall, minorities make up just over 12 percent of lawyers at these law firms, according to a statement released Oct. 21, 2009, by NALP, while just under one-third are women and just over 6 percent are minority women.

### Getting Them and Keeping Them

Law firms have made significant recruitment and retention efforts over the last 20 years, according to Boyer. But that doesn't mean that efforts are effective.

According to Vault and MCCA, nearly a quarter (24 percent) of associates who left their respective law firms in 2008 were attorneys of color, and nearly 30 percent of first- and second-year associates who left their firms last year were minority men and women. Although the rate of attrition of white women at junior and middle levels dropped slightly in 2008, attrition among women in senior ranks increased.

"Despite the fact that minority women outnumber minority men in law schools, minority women continue to leave law firms at a faster pace than their male and nonminority peers, often to pursue legal careers that are not law-firm-based," said James Leipold, executive director of NALP, in a statement.

### Exploring Causes

Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity and Inclusion in Large Law Firms, an April 2009 MCCA report, found that while many law firms claim to have a meritocracy that rewards those with top credentials from Tier 1 (Top 10) law schools, this is simply a "myth of a meritocracy," and in the real world top-tier credentials are less important to success than is fitting within the majority culture.

The report includes input from over 4,400 practicing attorneys at more than 120 of the nation's 200 most profitable law firms.

"MCCA's research reveals that when it comes to one's professional development, landing plum assignments and receiving satisfactory coaching/mentoring and feedback, whites enjoy a significant advantage over all minorities, and this advantage persists whether one's academic experience ranks as Top Tier or Third Tier," said Veta T. Richardson, executive director of MCCA, in a statement.

But backlash could be another factor.

MCCA found that many white males feel that the programs intended to build more inclusive workplaces might be leaving them out unfairly. Several felt that they were victims of “reverse discrimination,” and as a result, these lawyers tended to resent their firms’ diversity efforts.

## Getting Started

Boyer said it’s important for firms to target new hires from various demographic groups and to change the internal culture to “try to create a work environment that encourages openness and gives personnel the freedom to share different backgrounds and experiences with others.”

There are plenty of things firms can try, according to Singer, such as:

- Recruiting from a more diverse pool of applicants and schools.
- Assigning a mentor to each new attorney.
- Including new attorneys in business development activities and encouraging them to involve themselves in novel marketing activities or potential client pools.

She noted that it can be difficult to make progress without singling people out, “but steady progress can be accomplished if there is a willingness of senior partners and administration to have the tough discussions and self-evaluation that it takes to really change an entrenched culture.”

The California Law Firm Critical Mass Best Practices diversity research report, released Jan. 19, 2010, commissioned by Fenwick & West LLP and prepared by the Talent Advisory Board Inc., an independent research firm, describes a number of different approaches top California law firms take to recruit, retain and advance African-American, Hispanic, Asian, gay and female attorneys in California, such as:

- Placing less emphasis on grades for recruiting.
- Providing senior-level sponsors who are proactive in mentoring and facilitating development opportunities for advancement.
- Monitoring diversity levels in high-risk practice groups and in summer recruiting classes, to correct potential diversity issues early.

“We don’t want to rest on our laurels but to press forward and use these findings and the wisdom of our peers so that the legal profession ultimately will reflect the country at large,” said Fenwick partner Felix S. Lee, who co-chairs his firm’s diversity committee. Lee added that firms were motivated to participate in the study so they could learn how to increase diversity in their firms and across the profession.

“Virtually every law firm has an objective to grow its practice,” Bye added. So his advice to law firms is:

- Consider the range of experience, perspectives and backgrounds that you need to address the demands of your clients and to grow the practice in nontraditional and multicultural markets.
- Consider how your legal staff must be able to understand and meet the needs of increasingly diverse current and prospective clients.
- Develop a solid diversity and inclusion action plan that will help meet the firm’s needs and grow the practice.
- Hold people accountable for achieving meaningful results through diversity and inclusion.

“Striving to be an inclusive workforce takes time,” Boyer said. “While there are successes along the way, the challenge is maintaining the passion and momentum over the years until the ultimate goal of a completely diverse, inclusive workforce is achieved.”

Source: Society for Human Resource Management