

By Sharla J. Frost  
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**We have made tremendous strides as a profession and as a collection of individual firms, but much remains to accomplish.**

# Diversity from the Women-Owned Law Firm Perspective

For the legal profession, achieving diversity has become not only a matter of basic fairness and equality, but also a matter of business necessity. Increasingly, as clients achieve diversity from within, they require that the

makeup of their outside counsel reflect that same range. But for all the discussions, focus groups and studies, recruiting and retaining a qualified and diverse portfolio of associates, senior associates and partners remains disappointingly elusive.

Much has been written over the past 20 years about the benefits of fostering a diverse working environment, most of it in connection with corporate culture and politics. The legal profession has come to the diversity topic somewhat late, either because law firms assumed that diversity goals were inconsistent with the historical underpinnings of legal practice, or because it simply did not resonate that law firms had a business imperative and obligation to mirror the achievements of their corporate clients. With the advent of The Call to Action and other initiatives by corporate legal consumers, even the least attentive of law firms have come to realize that it is both the right philosophical approach

and the right business approach to develop a diverse complement of lawyers. Edgardo Ramos and Lynn Anne Baronas, *How to Increase Diversity at Law Firms in Four Steps*, THE NATIONAL LAW JOURNAL, Jan. 20, 2006.

The following are thoughts and experiences attained over almost 15 years of managing a firm with a recognized, successful diversity program. Each firm's makeup is affected by such factors as the market in which it is located, the exact nature of the practice, size, and years in existence; however, the goal of this discussion is to identify some universal concepts that can overcome a firm's individual, circumstantial obstacles to and broaden the prospects of actually accomplishing true diversity.

## What Is "Diversity?"

Often, diversity recruitment programs suffer from an ever-changing focus. Last year's spotlight on recruiting more women is



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shifted to this year's need to hire people of color, while at the same time anticipating the possibility that next year, national origin may become a priority. This fractured approach makes it prohibitive for strides made in connection with one factor to take root and become successful. This model fails simply because diversity should not be an attempt to achieve equality for one group or another, but instead, an effort to ensure that a firm's population reflects that of society at large. Brian Melendez, *It's Not Your Daddy's Bar Association*, 65 BENCH & B. MINN. 7, Feb. 2008. Once the primary focus becomes not simply accomplishing diversity but avoiding or balancing a disproportionate majority—of any group—the effort can remain constant. This balancing model also avoids the pitfall of reverse discrimination. Kate McCormick, *The Evolution of Workplace Diversity*, 44 Hous. LAW. 10, Mar./Apr. 2007.

Whereas the resources dedicated to recruiting different groups of candidates can be allocated evenly, what cannot be ignored are the realities affecting different populations. The difficulties facing people with families belonging to certain minorities or representative of groups experiencing low law school graduation rates must be acknowledged. Akshat Tewary, *Legal Ethics As a Means to Address the Problem of Elite Law Firm Non-Diversity*, ASIAN L.J. 1, Apr. 2005. In the early to mid-1980s, the stated goal of most diversity programs was to increase the number of women in the profession. Significant strides were made in increasing the number of women law students and women associates. In that time period, women rose to approximately half of the number of graduating law students and incoming law classes. Jonathan D. Glater, *Women Are Close to Being Majority of Law Students*, Mar. 26, 2001, <http://www.lawschool.com/femalemajority.htm>. As a result, the focus in the legal profession narrowed from the broad topic of women lawyers to the continually small number of people of color enrolling in and graduating from law school, and the even smaller percentages of law firm populations who were attorneys of color. Unfortunately, time has taught us that the efforts to increase both women in the profession and people of color in the profession have fallen short. *A Closer Look at Women and Minorities in*

*Law Firms—By Race and Ethnicity*, NALP BULLETIN, Feb. 2008, [www.nalp.org](http://www.nalp.org) Despite all those newly minted young women lawyers entering the profession each year, the number of women partners each year, the number of women partners peaked at 17 percent some years ago and has not made any noticeable increase. Joanne Cronrath Bamberger, *Where Are the Women in the Top Tiers?* LEGAL TIMES, June 26, 2006. African-American lawyers in the profession constitutes less than five percent, and they have not significantly increased their numbers in the management and partnership ranks. American Bar Association—Commission on Racial and Ethnic Diversity in the Profession, Aug. 2004. Women of color have achieved even smaller percentages when it comes to partnership and ownership. *Id.* How then, do we address the competing needs and demands of a corporate marketplace that demands meaningful diversity in the legal profession?

### **Diversity Recruitment as a Requirement and Not Just a Goal**

For a law firm, recruitment and retention of qualified practitioners is not a human resources issue, it's a basic business necessity. Equally, minority recruitment and retention should not be viewed merely as an administrative, personnel function. The motivation for reaching the goal should become a fundamental business purpose and not a managerial compliance objective. Increasingly, it has become clear that the nature of a firm's human capital is a factor in whether it is retained by one client or another. Kellie Schmitt, *Corporate Diversity Demands Put Pressure on Outside Counsel*, THE RECORDER, Dec. 28, 2006. In such a market, having a stated goal to achieve diversity becomes secondary to actually accomplishing one. Identifying quality candidates from nontraditional sources requires commitment to the end objective.

As in any business, advancement in a law firm is based on results. Firms are very efficient through various methods at quantifying results: billable hours, monetary settlements, new clients, and jury verdicts. However, unlike the corporate world, success in diversity recruitment is not always considered when evaluating performance. Companies that impose minimum recruiting requirements upon

their executives have historically had a higher rate of success in actually meeting their targets. Diversity Best Practices Guide, NALP, Mar. 3, 2006. Recruitment and retention should be subject to the same degree of accountability as all other business purposes that affect a firm's overall success. Allocating a percentage of a business' operating budget—that is, providing

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the necessary resources—for the specific purpose of securing diverse personnel has also proven highly effective in generating actual results. Eunice Chwenyen Peters, *Making it to the Brochure But Not to Partnership*, 45 WASHBURN L.J. 625, Spring 2006. For example, a law firm can provide contributions and personnel to nontraditional law schools as a way of identifying potential candidates whom it might not otherwise meet. Garner K. Weng, *Stereotypes and Subconscious Bias*, PLI's California MCLE Marathon 2004–2005: Legal Ethics: Current Developments—*Substance Abuse—Elimination of Bias in the Profession*, 717 PLI-LIT 287. Involvement in minority bar associations by the firm's minority lawyers has the double benefit of providing leadership and networking opportunities for the lawyers, while exposing the firm to a population of potential applicants who might not otherwise come into contact with the firm.

Achieving enduring diversity requires that the concept of diversity become an actual business purpose in and of itself as opposed to its typical treatment as an ideal relegated as a personnel problem. As part of a firm's business model, diversification should also involve all levels within the firm and be communicated to all sections within the organization. Developing a diverse team at all levels strengthens

a law firm both in the eyes of its members and its clients.

### Turning Successful Recruitment into Successful Retention

Even a firm with a proven recruitment program that has been made part of the overall business model and involves all levels within the firm runs the risk of losing

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out to the other side of the diversity coin: retention. The effort invested in identifying and hiring talented, skilled minority attorneys can be undone if those same attorneys choose not to remain with a firm. Joan Williams, Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention*, 8 WM. & MARY J. WOMEN & L. 357, Spring 2002. The true measure of a successful recruitment program is the long-term ability of a firm to mentor its associates and help them become established human assets. A recruitment program has accomplished its purpose when it focuses on *maintaining* diversity, as opposed to achieving it.

Retention has been a concern within the profession for many years. Many of the issues that apply to developing young lawyers to eventually become permanent assets apply to diverse lawyers, as well. However, the issue of diversity adds an additional layer of complication. The following are some strategies that have seen encouraging results.

- **Hire those you believe are a good fit and are likely to stay with the firm.** Candidates that are hired because they are likely to

be a good fit to your firm's culture have a high probability of remaining. *Attorney Professionalism Forum*, 80 N.Y. ST. B.J. 60, Jan. 2008. Clearly, professional qualifications continue to be an overriding consideration, but if all other factors are equal, the purpose is to locate those whose philosophy will match that of the firm; the diversity of those candidates will be self-evident. Locating diverse candidates—however qualified—who will fill a demographic need, but who are not an ideological fit, does not provide for an enduring result.

- **Give all associates control over their own dockets.** Historically, it has been shown that when attorneys have control and a direct sense of duty and responsibility, they develop a connection to both their employer and their clients. Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755, June 2006. This commitment will result in higher retention levels. In addition, putting attorneys on a direct path to promotion and partnership, which does not mean either is guaranteed, will help alleviate one of the most pervasive problems found in eliminating the “majority barrier”: it will result in higher numbers of partners and shareholders who are also members of a minority.
- **Market your diversity with an emphasis on talent, not numbers.** One of the pitfalls to avoid in retaining diverse attorneys is turning them into “poster children,” rather than just another asset to the firm. The natural inclination is always to emphasize the strengths and advantages to the potential client pull that your particular firm has over others. Certainly, in today's market, with so many corporations and businesses seeking to ensure that the diversity of their counsel reflect their internal diversity, a firm should capitalize on successful recruitment efforts. Hiring attorneys for the sole purpose of adding diversity is likely to be perceived as such, and will not foster commitment and long-term dedication to a firm. Just as a client will retain counsel based on the overriding factor of a firm's diversity, it is as likely to hire other equally diverse counsel down the line, unless your firm distinguishes itself through retention.

Retention in the legal field has become one of the most persistent problems faced by firms, whether specifically evaluating retention of diverse candidates or more generally evaluating the retention of the Generation X/Y populations. Melody Finnemore, *Meet the Millennials*, 66 OR. ST. B. BULL. 9, Nov. 2005. The tremendous cost associated with losing a lawyer makes it even more crucial to proactively train and mentor lawyers of all types, but particularly talented women and minorities with experience.

Further, the nature of the legal practice makes application of some corporate initiatives to a law firm unrealistic. Litigation, for example, does not lend itself to part-time practice, although there may be creative ways to decrease time demands on a specific lawyer. Parental leave policies for new parents can decrease the possibility that women, in particular, will leave a firm or the profession, but a firm has to have a proactive plan for covering the responsibilities of those lawyers when they are out of the office. Kira Dale Pfisterer, *When Three Fill Two: Part-Time Strategies for Full-Time Jobs*, 51 ADVOCATE (Idaho) 15, Feb. 2008. Planning, open discussion and realistic time-tables can maximize the success of such programs. The profession in general needs to develop and implement approaches that are not punitive of lawyers who take advantage of such options.

On the corporate side, legal service consumers need to develop programs that identify and reward diversity programs that show long-term results. They also need to find ways to encourage diverse lawyers at non-diverse firms: the profession cannot change if the structure of the advancement and retention process does not change. Programs that reward diverse firms are a good start, but those programs need to provide meaningful work to the firms that meet client diversity criteria. Being on the team is a good first start, but sitting on the bench while the regulars do the work does not benefit individuals or the system. We have made tremendous strides as a profession and as a collection of individual firms. Much remains to accomplish. Future accomplishments require the collaborative efforts of legal consumers, law firms and individual lawyers themselves. Making the commitment is a tremendous first step.