

# Retention Is Key To Meaningful Diversity At Law Firms

By **Shilpa Coorg and David Ramírez-Gálvez** (August 9, 2021)

Diversity has become the proverbial elephant in the room for the legal world, as it is no secret the industry is coming up short when it comes to having a diverse workforce.

The American Lawyer's 2021 Diversity Scorecard, which records the average number of full-time minority attorneys at top law firms, reports only 18.5% of all attorneys are minorities, and only 10.9% of all partners are minorities.[1]

While some law firms actively engage in efforts to improve these statistics, many others shy away from even releasing data, perhaps deterred by fears of reputational harm due to their lack of progress, decreased morale, or possible legal exposure from inadvertently revealing discriminatory policies or pay wage gaps. Yet others may fear implementing diversity, equity and inclusion policies that go too far, such that their efforts are perceived as discriminatory.

While our civil rights laws[2] certainly define the outer boundaries of what law firms can do to achieve meaningful diversity, it is entirely possible to remain within those bounds and design a fair, just and lawful diversity program.

Even programs based on defined diversity metrics can be appropriate, so long as the employer "identifies a manifest imbalance in traditionally segregated job categories" and the plan does not "unnecessarily trammel the rights of non-targeted groups," according to guidance from the U.S. Equal Employment Opportunity Commission.[3]

The best course of action, therefore, is to craft policies that further the goal of a more diverse, equitable and inclusive workplace for all employees and clearly communicate the firm's anti-discrimination policies.

What's more, ignoring the issue can result in many of the same costs law firms fear: the reputational harm of being a law firm that only pays lip service to diversity; decreased morale and legal exposure relating to concealed discriminatory practices.

More importantly, law firms that choose not to meaningfully engage will miss out on the considerable benefits of a diverse legal workforce. Indeed, it is well known that diverse firms are more appealing to top talent, enjoy higher retention rates, and are better able to serve the needs of a rapidly diversifying clientele, leading to financial gain.[4]

## Shifting the Focus From Recruitment to Retention

Perhaps because it is the easiest plan of attack, law firms overwhelmingly tend to focus their attention on recruitment. But the data shows the problem is not in recruiting minority attorneys, it is in retaining them.

According to the National Association for Law Placement's 2020 Report on Diversity in U.S.



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Law Firms, the percentage of summer associates who are women, people of color and LGBTQ individuals is largely on par with the demographics of the most recent law school graduating classes.[5] This has been true, more or less, for the last three decades.[6]

Yet diversity continues to be a pain point for the industry. The data tells us why: Just as in the 1990s, law firms today struggle to retain and progress those women, people of color and LGBTQ recruits.[7]

So, what can law firms do — beyond recruiting more underrepresented attorneys — to foster an equitable and inclusive workplace and to achieve meaningful diversity? Below are a few tips.

***Listen to underrepresented attorneys and pay them for the time they spend engaging with diversity.***

It is well known that minority attorneys leave law firms earlier and at higher rates than their nonminority peers. Still, few law firms take the time to understand why.

The 2020 Keeping the Keepers report by the National Association for Law Placement Foundation, which examined data from more than 20,000 associate departures between 2012 and 2018, found three common reasons minority associates chose to leave their law firms: (1) they felt isolated; (2) they lacked meaningful guidance; and (3) they were deprived of professional development opportunities.[8]

Anecdotal articles tell the same tale.[9] If law firms take the time to listen — including by soliciting feedback from all attorneys at various stages of their career — they are bound to find intervention points ripe for action.

At the same time, law firms cannot — and should not — expect their minority attorneys to shoulder the burden of identifying and solving issues relating to diversity that afflict the firm. That is often the default, and it operates to the detriment of minority attorneys, particularly if law firms expect them to assist with diversity, equity and inclusion efforts and to bill the same hours as their nonminority counterparts.

Law firms should evaluate any asks specific to minority attorneys — after considering whether those asks are appropriate in the first place, or if there are other ways firms can educate themselves — and then proportionally decrease minority attorneys' other obligations without negative repercussions. One measure, adopted recently by select law firms, toward that end is to credit time spent on diversity work as billable.[10]

***Be mindful of how corporate clients' demands for diverse teams affect minority attorneys.***

In recent years, many corporate clients have made clear to law firms that the lack of diversity within their ranks is a problem. Clients have put their money where their mouth is, vowing to direct substantial outside counsel spending to law firms that meet certain diversity metrics.[11] Taking these demands to heart is admirable, but firms must also be mindful of how efforts to meet those demands may affect minority attorneys.

First, repeatedly tasking minority attorneys to work on pitches or cases for diversity-conscious clients may run the risk of tokenizing those attorneys, which can be isolating.

Further, by prioritizing the staffing of minority attorneys based on client-driven demand, law

firms deprive those attorneys of agency to chart their own path. Such practices may inadvertently send a message to minority attorneys that their value proposition is only in increasing or showcasing diversity at the firm.

Second, client-driven staffing may limit development opportunities available to minority attorneys.

Corporate clients that can demand diversity from their outside counsel teams tend to be large companies with large matters. While at first blush, it may seem advantageous for minority attorneys to work on those high-profile cases, statistics show minority attorneys tend to be the junior members on the team.

On large teams, this means they are often relegated to tasks such as document review, spot research or other less substantive work. In many cases, attorneys are most able to further their own development by working for smaller clients with more direct partner or client contact.

This does not mean, however, that law firms should not strive to meet clients' diversity demands. Rather, law firms should be mindful of how staffing may affect their minority attorneys in inadvertent ways and prioritize the long-term goal of developing their attorneys in making those staffing decisions.

### ***Offer sponsorship opportunities.***

While most firms, by now, have strong and flourishing mentorship programs, many ignore the importance of having a sponsorship program as well. Both are important and, notably, serve different functions in an attorney's career progression.

Mentors advise and guide their mentees, including, for example, with personnel issues and career development opportunities. Sponsors, on the other hand, advocate for and proactively promote their proteges as viable candidates for higher opportunities such as partnership, often when their proteges are not even in the room.

Given the drop in percentage of minority attorneys at the partnership level, the career juncture between senior associate and partner is clearly one that minority attorneys struggle to cross, and is therefore a crucial time point for firms seeking to retain them.

Adding a sponsorship program, particularly one that pairs minority attorneys with sponsors who have decision-making authority, is a great way for firms to invest in their high-potential candidates and create a new class of firm leadership that better represents the world in which they operate.

### ***Create a more inclusive succession plan.***

A good succession plan includes a business strategy for transitioning large clients from senior attorneys upon retirement to others at the firm. This is a significant opportunity for firms to put forth their strongest, diverse talent in service of their clients. Yet, very few succession plans account for diversity at all.

According to an August 2020 Law360 poll, only 34% of the more than 300 respondent firms had a "written succession plan that specifically creates opportunities for greater inclusion of diverse lawyers."<sup>[12]</sup>

Moreover, minority attorneys struggle to advance to positions of authority at law firms, creating a diversity bottleneck.[13] This bottleneck will not ease until minority attorneys are given the same opportunities to lead the charge on large, high-ticket matters for important clients as their white, male counterparts.

To start, law firms should revisit their succession plans and assess them from the perspective of diversity, equity and inclusion, guided by the question: What is the firm's plan to ensure its future leaders are diverse?

There are many potential solutions. One option, for example, is to integrate sponsorship into the succession plan — pair attorneys in need of sponsorship (at an earlier stage in their career, when there is more likely to be diversity within the ranks) with rainmaker partners and/or firm decision makers.

Another is to mandate that client-originating attorneys will introduce the entire attorney team to their client contacts to foster relationships between clients and more junior members at the firm.

Firms may also want to scrutinize the existing metrics for leadership positions to ensure they are not inadvertently making it more difficult for individuals belonging to underrepresented groups to assume those roles — and, if necessary, restructure the metrics to account for those deficiencies.

One approach in this regard is the adoption of the Diversity Lab's Mansfield Rule, which requires a broader pool of candidates from which a retiring partner chooses his or her successor.

## **Conclusion**

The bottom line is this: Law firms must recognize the problem is systemic and difficult. From there, they must commit to doing the hard but necessary work it takes to move beyond simply talking about diversity in the abstract or hoping recruitment alone will bridge the gap.

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