3 Ways Law Firms Sabotage Their Own Diversity Efforts

By Aebra Coe

Law360, Grand Rapids (October 19, 2017, 12:20 PM EDT) -- Elite law firms often value traits that have nothing to do with a lawyer’s competence and instead relate to their ability to fit in at the firm — a phenomenon researchers say is killing diversity and maintaining the status quo in law firm partnerships.

Diversity among equity partners in U.S. law firms has barely budged over the past decade. While 39 percent of the U.S. population are minorities and 51 percent are women — and law school populations largely reflect those same figures — just 8 percent of equity partners in law firms are nonwhite and 20 percent are women.

Those statistics may come as a shock to some when considering the many diversity initiatives firms have implemented over the past several decades, but researchers at the University of California, Irvine, and University of Denver law schools say the persistent racial and gender inequalities make...
sense given the long-standing cultural currency at many elite law firms.

Professors Bryant G. Garth and Joyce Sterling explain that the prevailing standards that dictate what traits and characteristics are valued in a lawyer are often shaped by the people currently in power — primarily white men, from a privileged background whose spouses take on the majority of domestic and child-rearing tasks.

As a result, attorneys who do not match that narrow profile, whether with regard to race, gender or socioeconomic status, are often found to not “fit” and are disproportionately redirected to other careers in law.

“Diversity is valued, but the path-dependent structures of value and comfort all tilt toward the traditional hierarchy and those who mimic its characteristics most effectively,” Garth and Sterling say in a paper to be published in the forthcoming Georgetown Journal of Legal Ethics.

The professors’ research — a series of interviews over the course of 15 years — demonstrates the ways people operate within law firms and how what they have to contribute is valued. Their paper details the “countless almost imperceptible ways” those values affect success.

During their interviews, an Arab-American man reported that he’d experienced a lack of camaraderie with his fellow associates because he was married with children and did not drink alcohol.

An African-American man said he felt a lack of comfort in the networking needed to succeed at his law firm because he had never played golf and hadn’t grown up in the “right” part of the world to fit in.

One woman said she was told unofficially she had not made partner because she “wasn’t pretty enough.”

And after another woman asserted she wanted to work reduced hours after giving birth to her child, she was told that if she chose to do so she would be off of the partnership track and, “Either you’re a mother, or you’re a lawyer. What’s your priority?”

“Matters like religiosity, comfort with golf, appearance especially for women... conforming to or not conforming to stereotypes, having a wife at home, all can affect whether one is deemed to be partner material within a law firm or the kind of person who will be naturally thought of for a lateral position,” the researchers said.

**Unchecked Unconscious Bias**

One of the biggest ways that the idea of “fit” can contribute to inequality in law firms is when unconscious bias in hiring, pay and advancement decisions is left unchecked, according to Sharon Jones, CEO of Jones Diversity, a diversity consultancy to law firms.

Jones says that when law firm leaders say they want to find people with the “right fit,” she presses them to define what that means.
“You know it when you see it” is a problematic answer, she said, because when each person makes their own determination of fit, it passes through that person’s individual cultural lens and allows unconscious bias to flourish.

“I recommend they get rid of it and don’t use fit in employment decisions,” Jones said. “Instead, we can talk about things like writing ability or oral advocacy. You can test some things objectively and make it a good argument that they matter for your work, but fit, undefined, allows unconscious bias and conscious bias to take over.”

According to law firm diversity and inclusion consultant Kathleen Nalty, all of us pay more attention and are more aware of issues that impact us personally, and can sometimes have blind spots when it comes to the things that affect others with a different background, gender or race.

“Law firm partners are doing what comes naturally, especially straight white men who can fit in more easily and comfortably,” Nalty said. “They just don’t know how the law firm culture impacts people differently and operates to exclude women and attorneys of color in tiny, but cumulatively devastating ways.”

Nalty says she has worked with law firm leaders who, once their blind spots and unconscious biases were revealed, became committed to changing how the game is played at their law firm so that it is fair and equitable for everyone.

“Our industry is not full of bad, ill-intentioned, bigoted people. It’s full of good, well-intentioned people who don’t know about unconscious bias, don’t know how the norms and culture of their organizations are exclusionary and have no idea of the headwinds that women and people of color face in trying to get over those barriers,” she said.

**Long-Standing Social Norms**

Matters like religiosity, comfort with golf, appearance especially for women ... conforming to or not conforming to stereotypes, having a wife at home, all can affect whether one is deemed to be partner material within a law firm.
Law firms are structured in a way that makes them more like an elite club than most large corporations, allowing affinity bias — the inclination to favor those who look, speak, dress and act like us — to run rampant, according to Jones.

Often that is because law firms are much smaller than large corporations, Jones said, becoming an especially small cohort at the highest levels, allowing personal alliances to hold more weight in business decisions.

> Law firm partners are doing what comes naturally, especially straight white men who can fit in more easily and comfortably. They just don’t know how the law firm culture impacts people differently and operates to exclude women and attorneys of color in tiny, but cumulatively devastating ways.

Kathleen Nalty
Law firm diversity and inclusion consultant

“I see law firms as more like fraternities and sororities and the associate period is somewhat like hazing — they’re finding out if you are one them. It’s way more than work product,” she said.

Patricia Gillette, a mediator for JAMS and lecturer on diversity and women’s issues in business, says that the structure of a traditional law firm is premised on associates finding someone in power who can advocate for them and offer them opportunities — relationships that are often based on how well the associate can relate to potential mentors.

“The problem is that if the people who are in positions of power are primarily white males and they’re imposing and supporting that structure, they’re going to support people who look and think like them and have those same values,” Gillette said.

Associates are expected to act in ways that are consistent with existing social norms by playing golf, joining country clubs, going out to drink in the evening, and those who don’t are left behind, she said. And sometimes it’s even more subtle.

“It may be that they’re not asked out to lunch if they’re a woman or minority because a partner doesn’t know how to relate to them. A lot of it is not conscious. Comfort often reflects bias,” she said.

Rather than go with the flow, Gillette suggests law firm leaders should reach out to the rest of the firm to gather information and then explicitly define what values they want their firm to embrace and
define policies to reflect the cultural norms they want to establish.

**Billable Hours Expectations**

Sterling says that she and her co-author noticed that one of the biggest expectations of those who are on the partnership track is that they work long days. The catch is that meeting that expectation often requires — especially for those with children — having a spouse who stays home and does not work a full-time job.

“To be an ideal worker, you need to be somebody who can put in a lot of hours, whenever it’s needed, and to do that you need somebody else who’s going to take care of the ordinary needs of living. I was a little surprised at how prevalent that still is,” Sterling said.

According to Jones, most partners at large law firms are married and most have a spouse who doesn’t work and stays at home.

“It’s very rare to meet someone at that level who has a working spouse,” she said.

One way law firms are working to address the long-standing tradition of partners and partner-track lawyers billing so many hours they require a stay-at-home-spouse is by revising their parental leave policies, according to Mark Baugh, chair of Baker Donelson’s diversity committee.

Many law firms have opened up the policies to include men as well, to move past the expectation that women alone must take time off after welcoming a new child, Baugh said.

“If you take the stigma off the mother ... and there’s no judgment on someone being out of the office for whatever reason, everyone starts partaking in the policy,” he said.

Additionally, by getting more women into leadership roles — something firms like Baker Donelson and others are addressing through the **Mansfield Rule**, a pilot program under which at least 30 percent of candidates for law firm leadership positions must be women or minorities — those decision makers will often have personal experiences of not having a spouse at home to take care of household and caretaking needs, changing the dynamic of what is expected from the firm’s lawyers, he said.

“If you don’t have people at the table who have been mothers or parents, men who are fathers who are involved in the active raising of a child, then you’re getting a different dynamic of what a successful lawyer should look like,” Baugh said.

--Editing by Rebecca Flanagan and Emily Kokoll.

All Content © 2003-2017, Portfolio Media, Inc.