Despite efforts to increase diversity within the AmLaw 200 law firms, major law firms have made little progress. It is reasonable to expect increased layoffs during an economic downturn, particularly in an industry that is highly leveraged. What is troubling is that, after a substantial effort by many to increase corporate firm diversity, diverse attorneys still seem to be experiencing a higher attrition rate relative to their non-diverse peers. This suggests a “revolving door,” as first highlighted in the 2000 American Bar Association (ABA) study, *Miles to Go 2000: Progress of Minorities in the Legal Profession*. While an approximate 10% higher attrition rate for diverse attorneys may not seem alarming at first blush, the cumulative long-term impact is devastating to the industry as it eliminates the candidate pool of potential diverse partners in the AmLaw 200. With the increasingly diverse U.S. populations of business owners, corporate decision makers, judges, legislators, and other influencers, as well as consumers wielding greater purchasing power, it is only a matter of time before the continued prevalence of a revolving door at law firms and the resulting failure to meet client demand for diversity will adversely impact firm reputation and financial performance.

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1 The author summarized and drew upon the *Seton Hall Law Review* article “Ending the Revolving Door Syndrome in Law” (Volume 41, Number 3, ©2011), authored by Gibbons colleagues Patrick C. Dunican Jr. and Luis J. Diaz.

2 Notably, unemployment statistics suggest that many more African American workers are unemployed as compared to majority workers. While white men were particularly hard hit by the recession, they now seem to be returning to work at a much faster rate than minority workers. See “No Relief in 2012 from High Unemployment for African Americans and Latinos,” *Issue Brief #322*, Economic Policy Institute, February 16, 2012.

Client Demand for Diversity

There is not doubt that in today’s economic climate, corporations devote significant attention to issues relating to marketplace diversity, workplace diversity, supplier diversity, and corporate social responsibility. The number of diversity initiatives in the Fortune 500 has exploded. In short, diversity matters.

Although law firms enjoy success in recruiting diverse attorneys, the great challenge has been retaining diverse attorneys once they enter the firm. The great paradox is why, in the highly competitive marketplace for legal services, law firm diversity initiatives have failed to produce sustainable results. Commentators have noted that focusing on recruitment without a track record of minority retention is a fundamental flaw in any diversity program.4

At many large corporations, it may be a person of color or a woman deciding who to use as outside counsel. Today, 17% of all general counsel in Fortune 500 companies are women and 7.6% are minorities. The top brass of the Fortune 500 is more diverse. More than 90% of the corporate boards in the Fortune 500 have at least one female director. Minority CEOs are also increasing in number and influence. Additionally, many more minorities are employed at lower-executive levels by corporate clients, including a large number of key influencers that serve as chief diversity officers, procurement officers, and supplier diversity officers. Among emerging market companies in the United States, some of the fastest growing businesses are minority-owned and women-owned companies.

A major 2009 study at the University of Illinois at Chicago concluded that both racial and gender diversity are associated with increased sales revenue, more customers, greater market share, and higher relative profits within corporations.5 Within the proper context, therefore, “diversity provides a competitive advantage through social complexity at the firm level.” The “Call to Action”6 and similar initiatives suggest that this competitive advantage may extend to law firms doing business with corporate clients demanding greater workplace diversity from prime suppliers. Even if the diversity at one corporate firm does not result in incremental business, it can serve as an important factor to ensure that existing business is not lost to more diverse competitors.

A downturn in the economy often prompts organizations to reevaluate their business environments. The recent Recession has caused law firms to lay off a large number of associates,


6 Rick Palmore, A Call To Action: Diversity In The Legal Profession (2004), available at http://www.acc.com/vl/public/Article/loader.cfm?csModule=security/getfile&amp;pageid=16074. Rick Palmore was the CLO of Sara Lee Inc., and a member of the Board of the Directors of the Association of Corporate Counsel (ACC). Id. ACC’s Board endorsed Mr Palmore’s efforts and the “Call to Action” at their October 24, 2004 meeting. Id.
de-equitize partners, and create a “lost generation” of law school graduates. The impact of the Recession on diverse attorneys has raised serious questions about the genuineness of law firm commitment to diversity and inclusion. Specifically, corporate clients and advocates wonder whether law firms view diversity initiatives more as luxuries subject to outside factors that significantly threaten law firm earnings. If firms are going to continue to make progress on diversity, they need to pay more attention to structural obstacles in the business model and the model’s impact on retention issues. Diverse lawyers leave their firms for many reasons, but too often the reason is that they are not meeting billable requirements because their workflow diminishes after they are no longer viewed as partnership material.

**Management for Optimal Diversity**

Research suggests that professional service firms represent a unique type of organization because they rely on distinct input—namely, expertise provided by highly trained professionals—to produce complex and customized solutions for clients. Firms that generate superior reputations gain substantial brand equity. Thus, the firm considers its name, as a symbol of its reputation, among its most valuable assets. This brand equity serves to attract the best professionals and clients to the firm.

Because of the importance of reputation, professional service firms must always remain sensitive to client demand for diversity and refrain from any conduct that can adversely impact brand equity. Unsupported claims concerning a firm’s commitment to diversity can result in credibility gaps that impact financial performance in the long term. In addition, the potential impact of diversity on a firm’s reputation is likely to increase as a result of the increased use of RFPs by general counsel in procuring legal services. Most RFPs inquire about “the number of women and visible minorities and their seniority levels within the firm.” The RFPs also ask about the role that diverse attorneys will play in completing legal work. To further ensure accountability, clients also increasingly require periodic matter reporting from corporate firms concerning the breakdown of hours worked on their files by various demographic groups. The growth of RFPs in legal procurement magnifies the potential adverse impact of retention disparities for diverse attorneys.

Aside from the reputational impact of a revolving door, retention disparities for diverse attorneys also impact the financial performance of law firms via the loss of experienced and well trained lawyers—a firm’s most important resource. The loss of senior attorneys, especially those of diverse backgrounds, is costly to corporate firms. Clearly, it diminishes the firm’s marketability to clients demanding diversification, and can result in the loss of clients. Unlike other forms of business, law firms are prohibited by ethical rules from entering into non-competition agreements with lawyers to avoid clients following those attorneys who leave the firm. In addition, the loss of more senior diverse attorneys adversely impacts the firm’s reservoir of intellectual, multicultural, and social capital, thereby hindering the firm’s ability to tap alternate decision-makers’ networks. Lastly, the inability of law firms to maintain a diversified talent pool of more senior lawyers adversely impacts the firm’s ability to grow its partner ranks and to respond creatively to the complex problems posed by an increasingly global economy. In a recent survey of more than 1,500 chief executive officers worldwide, the CEOs singled out
“creativity” as the single most important quality required to deal with the greater complexity that 79% of the CEOs expect to face in the future business climate.\(^7\)

There is no doubt that the majority of law firms utilize a unique business approach. Specifically, ownership is vested in a decentralized group of professional owners (“partners”) dispersed among practice groups who assume responsibility for governance and share profits. The ownership of law firms is dictated by law and by ethical rules governing the profession and is credited with high commitment and productivity. Because of its success, the business model serves as the de facto standard for the practice of law within large law firms.

Under the law firm business model, hours worked, billable rates, and partner-to-associate leverage drive profitability. To maximize billable hours and profitability, law firms hire more lawyers than are expected to make partner. Firms make money by leveraging a large number of associates to a relatively small number of partners. The “up-or-out” nature of the business model creates a high attrition rate for associates. Those who are not selected for partner usually are let go.

Relationships are essential to success under this law firm business model. Thus, associates, who by virtue of less favored pedigree or bad luck with initial assignments do not end up on a “training track,” may still work very hard and profitably on discovery, research, and other lower quality work assignments during the associate years but never have a realistic chance of developing the skills required to eventually make partner. As confirmed by a University of Michigan study, success at large law firms is not significantly correlated to law school grades or class rank, although these do help associates secure their first employment. Assuming comparable innate ability and strong work ethic among associates, success is instead more a function of gaining access to meaningful work assignments from powerful partners, earning good evaluations, and receiving good mentoring and training opportunities.\(^8\)

A benchmark study by the NALP Foundation confirms that “female and minority associates at corporate firms depart their law firm employers with greater frequency than males and non-minorities at almost every benchmark.”\(^9\) Past diversity initiatives have focused on education and the elimination of perceived cultural bias through sensitivity training, community outreach, mentoring, recruitment, and marketing the firm’s diversity initiative to existing and potential firm clients. It has been common for firms to measure diversity progress in terms of well-drafted diversity statements and sponsorship of diversity luncheons, conferences, affinity groups, scholarships, and bar events. While these activities are laudable, they have not focused

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\(^7\) Int’l Business Machines, *Capitalizing on Complexity: Insights From The Global Chief Executive Officer Study* 8, 18 (2010).


on the business of law itself and therefore have not helped to lower attrition rates for diverse attorneys at corporate firms. As a result, the partner ranks within law firms have remained largely composed of white males.

Commentators, practitioners, and the organized bar now conclude that the business model itself contains organizational obstacles that impact the ability of diverse attorneys to integrate into corporate firms. The horizontal structure and informal management approach of law firms simply allows for greater subjectivity to exist, which can result in attrition disparities for diverse attorneys. Obstacles may exist in the assignment, evaluation, and mentoring processes, and existing training programs may be inadequate to bridge the gap.10

The implementation of management best practices to improve diversity is now possible at law firms due to organizational and technology shifts that have occurred over the past decade. As law firms have grown, there has been a movement away from the traditional model of informal decision-making to a more hierarchical system that includes full-time managers for critical functions within the firm, including chief operations officers, chief marketing officers, human resource directors, chief technology officers, and chief diversity officers. Firms also are leveraging technology and knowledge management for competitive advantage. While some firms have relied on the implementation of new technology systems for administrative tasks like billing, word processing, and research, the new frontier is to redesign the service delivery process itself to meet client demand. As clients place more demands on law firms for diversity, the pressure has mounted for tools and processes to manage these demands more effectively.

In applying best practices to workplace diversity, the threshold issue is to define what it means for an associate to succeed at a law firm in today’s economy. The Redwood Think Tank, an industry group associated with LexisNexis, has defined the measurement of success based on a combination of three key variables: “tenure, quality of work, and the next career move made by the associate.”11 The key determinants of associate success or failure at a law firm are the assignment and evaluation processes. Firms must do a better job at more accurately measuring these key functions in order to better manage retention disparities.

The failure to secure increasingly complex and challenging assignments will doom an associate’s potential to make partner or otherwise have a positive experience. Ideally, the objective of the staffing partner is to match practice group associates with matter requirements based on the perceived skill sets required to generate quality work. Despite the existence of a formal assignment process, staffing partners at the practice group level, and even assignment committees, the work-assignment process at some law firms can be more informal and partner-centric. In the informal assignment process, rainmaking partners select associates based on existing relationships. Various studies confirm that the distribution of assignments at law firms is socially constructed. Corporate clients also drive informal work assignments. In-house counsel

10 See Rkleen, supra note 126, at 15; Wilkins, supra note 38, at 416.

often develop “comfort zones” with the individual attorneys at corporate firms with whom they enjoy working.

In addition, aside from informal assignments, some commentators have argued that, because rainmaking partners are predominantly white males, the potential also exists for subconscious bias and stereotyping to permeate the assignment process. No one intends to purposefully discriminate against any group, but the result of unrecognized bias and stereotyping can be equally detrimental to diverse attorneys.

A law firm’s assignment system is one key to building an “inclusive” law firm environment that attracts and retains promising attorneys early in their careers. The goal of any work-assignment system is to ensure that all associates have an equal opportunity to obtain meaningful work within the firm environment. The cutting-edge approach is to integrate a firm’s work-assignment process with a merit- or competency-based model for developing, advancing, and promoting associates. Law firms may choose to establish a goals-based system for diverse attorney utilization. This is now possible without creating any incremental burden to practice group leaders or staffing partners, as firms have retained chief diversity officers who can assist with this process. The Chief Diversity Officer could collaborate with the client’s in-house counsel and diversity managers to establish client-driven diversity objectives and then interface with the practice group leader and/or staffing partner to ensure that, where feasible, the new matter is staffed so as to achieve the client’s objectives.

For associates on the path to partnership, the process utilized by law firms for evaluation is also a critical determinant of success. Most firms designate an associate evaluation committee to drive the process and determine associate compensation, bonus, advancement, and development. The typical evaluation tool is a short questionnaire that is completed by partners concerning associates who have worked on their matters. Law firms need to gather information about the abilities of their associates to make accurate and efficient promotion and assignment decisions. Unfortunately, the existing process for evaluation allows for subjectivity and possible bias to affect the process. Some commentators also have found that the evaluation process is hampered by teamwork limitations; legal production often occurs in teams, and only team outcomes are observable.

In a seminal study about law firm diversity strategies, the Minority Corporate Counsel Association (MCCA) identified patterns that impede the ability of diverse attorneys to be judged fairly, namely, “in-group favoritism, status-linked competence assessments, attributional bias, and the problem of polarized evaluations.” These realities work against diverse attorneys who typically are not like members of the “in-group”—predominantly white males—at corporate firms.

In order to overcome the problems associated with the existing process for evaluation, law firms can consider greater use of work product-based evaluations. They can also leverage technology to simplify evaluation and feedback systems. Lastly, the organized bars could assist corporate firms by promulgating standards for evaluation modeled on those promulgated by the ABA for women in the profession.\(^\text{14}\)

Reputation is a critical driver of performance in the legal industry. Thus, in any system designed to eliminate retention disparities for diverse attorneys, it is important for a business process to exist that ensures an independent, objective assurance of quality and performance. The existence of a more objective evaluations system would be a valuable tool to ensure diverse and female attorneys a level playing field. This would go a long way toward eliminating the revolving door.

**Bridging the Gap**

After a law firm has implemented sound, effective best practices to the associate assignment and evaluation processes, various additional policies and procedures might be needed to fully bridge the gap between minority and majority associate retention rates, including targeted mentoring, training, and experiential programs.

A mentor can be defined as “a person who took a personal interest in your career and who guided or sponsored you.” Whether it is through individual lawyers at firms, bar organizations, law school apprenticeships, or programs like the American Inn of Court, mentoring is an important activity that helps to foster success by (i) enhancing efficiency in job matching and (ii) reducing attrition. From the standpoint of the mentee, various empirical studies on the impact of mentorship on career success confirm that individuals with mentors experience greater job satisfaction and earn more than do their unmentored peers. Research suggests, however, that women and diverse attorneys are more frequently excluded from informal activities like mentoring due to type-based mentor preferences. These preferences, psychologists and sociologists confirm, are more likely to form between members of the same group. Generally, the reason is that communication, and thus mentoring, may be more natural and more effective when people share gender, race, or common interests. Thus, researchers have cited the prevalence of white men in the partner ranks at law firms as the reason that women and diverse attorneys may have fewer mentoring opportunities.

Effective mentoring also impacts assignments, business generation credit, and, ultimately, promotion opportunities. In light of these mentoring realities, law firms need to continue making efforts to ensure a level playing field for diverse attorneys with regard to mentoring opportunities. A key part of any formal mentoring program is matching the strengths of the mentor with the needs of the mentee. The program also should draw only willing participants who understand their respective roles and responsibilities and are willing to commit time and resources to the process. Law firms should also train both mentors and associates.

In addition, associates need to require knowledge about both the business of law and the successful generation of new client business. Although young attorneys certainly are not expected to be rainmakers early in their careers, if they want to make partner or start firms of their own, they need to develop their rainmaking skills. It is clear, then, that associates must start early in order to make an impact on their careers. An important marketing step for all attorneys, regardless of age or experience level, is to create formal, written plans that are reviewed and revised annually by mentors. These plans should identify target contacts, growth areas, and personal improvement strategies for the year ahead, and must be put in writing in order to commit to achieving these goals.

In recent years, law firms have also started to experiment with experiential training. Secondments have become a popular option. These are “short-term contracts under which companies ‘borrow’ an outside lawyer for a few weeks to a year or more.” The practice has gained acceptance as a means for firms to provide associates with excellent training opportunities within the corporate law departments of clients. The lawyer, typically an experienced associate, takes on duties comparable to any other newly-hired in-house lawyer. For diverse attorneys in particular, secondments represent an excellent opportunity to gain client exposure and experience. In addition to secondments, some firms are adopting apprenticeship-type programs, with new associates spending time attending classes or shadowing partners on client matters.

Finally, perhaps one of the greatest failures of formal law school training is the inability to teach a consistent analytical framework that can be useful to lawyers in the real world. The adoption of tools to better teach legal analysis would allow junior associates to better excel in the firm. The use of this type of training could help facilitate legal analysis and reasoning by giving junior associates a consistent framework for gathering and using data to formulate and test legal theories. Programs for all associates would benefit diverse and non-diverse attorneys alike.

CONCLUSION

In recent years, law firms have become less diverse. In the past, diversity efforts have focused on recruitment and not retention. Because reputation is a critical determinant of financial performance at firms, the existence of a revolving door for diverse attorneys may undermine long-term financial performance. Clearly, however, the management of key business processes can help eliminate retention disparities.

Law firms should consider the following steps to help change the tide: (i) using technology and diversity managers to ensure more objective work assignments, (ii) developing more objective evaluation processes that can bypass potential micro-inequities, and (iii) implementing an objective review process that can help ensure work product quality.

In order to further level the playing field, law firms should increase formal training programs to teach essential soft skills to all associates, namely (i) the role of mentoring and role models in professional development, (ii) business development skills, (iii) the use of secondment and other experiential programs that expose attorneys to clients and influencers, and (iv) the use of an analytical framework to improve legal analysis and outcomes. The programs would benefit
diverse attorneys the most, as they are formal in nature and not grounded in social constructs. Notably, the focus of these enhancements is to eliminate differential attrition rates for diverse attorneys—not to eliminate attrition in general.