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The Power of Partnering: Guidelines for Diverse Collaborations among NAMWOLF and Majority Law Firms

By Stephanie A. Scharf, N. Nate Saint Victor, and Antonio C. Castro – February 22, 2017

For many corporations, diversifying outside counsel teams has become a priority. That goal, however, quickly meets up with the reality that to obtain the services of senior women and minority lawyers, companies will need to do more than hire Big Law firms. Big Law has not yielded the number of experienced diverse lawyers that corporations are looking for—and will not anytime soon. Indeed, if firms continue to grow their women and minority equity partnership ranks at the current rate of 1 percent a year, it will take until 2045 for firms to reach gender parity at the equity level—and longer to reach parity based on race and national origin. Nat'l Ass'n of Women Lawyers, Report of the Ninth Annual NAWL Survey on Retention and Promotion of Women at Law Firms (2015).

One potential solution is increased use of firms that are members of the National Association of Minority and Women Owned Law Firms (NAMWOLF), a number of which are led and largely staffed by former Big Law partners, Assistant U.S. Attorneys, federal court clerks, and high-level members of corporate law departments. Their credentials, experience, judgment, and ability certainly rival those of partners in majority firms.

At the same time, we are aware that NAMWOLF firms are not always top of mind when any given corporation considers outside counsel for a major matter. The reasons vary. In some instances, corporations have found it difficult to identify and vet appropriate firms. There is a reluctance to try out firms that are not known, especially in an era when even small matters are scrutinized for the quality of the result. Inside counsel are evaluated on the basis of results. When a matter is handled by a well-known large firm and it does not go as well as desired, it is safer to be able to say, "We hired a big firm." Some companies hold the view that a large matter needs lots of lawyers and necessarily send the client to a large firm.

The Case for Collaboration
The benefits to such collaborations can be substantial. It has become well recognized that diversity imparts value to the results of business activities, including legal matters. Indeed, in this day and age with women making up roughly 35 percent of the legal profession and lawyers of color making up some 15 percent of the profession (Bureau of Labor Statistics, Current Population Survey, Household Data, Annual Averages, 2015), ignoring diversity means excising a
large chunk of legal talent from client matters. Yet, while diversity within the legal profession as a whole has increased, the nation's largest firms have, overall, struggled to advance a meaningful number of women and minority lawyers into lead positions. And while NAMWOLF firms are clearly diverse, the size of even a large NAMWOLF firm pales compared with the size of AmLaw 100 or 200 firms, which many clients view as the greatest impediment to retaining a NAMWOLF firm on large litigation and corporate matters.

The collaboration guidelines presented in this article, including the Checklist for Collaboration among NAMWOLF Firms and Majority Firms at the end of the article, provide models and procedures for the most effective working arrangements. By using the approaches described, clients will have the advantages of retaining highly qualified and deeply experienced women and minority lawyers on major matters, combined with the benefits of working with large majority firms. NAMWOLF firms will benefit through work on major matters for which they might not ordinarily be considered because of their size.

Many businesses and law firms have come to understand the value of diversity. Some of that understanding flows from data about businesses. The financial returns of companies with three or more women on the board outperform companies with all-male boards by 60 percent, looking at return on invested capital, 84 percent in return on sales, and 60 percent in return on equity. Catalyst, *Bottom Line: Corporate Performance and Women’s Representation on Boards (2004–2008)* (Mar. 1, 2011). A 2015 McKinsey & Company report shows a similarly positive impact:

- Companies in the top quartile for racial and ethnic diversity are 35 percent more likely to have financial returns above their respective national industry medians.
- Companies in the top quartile for gender diversity are 15 percent more likely to have financial returns above their respective national industry medians.
- Companies in the bottom quartile both for gender and for ethnicity and race are statistically less likely to achieve above-average financial returns than the average companies in the data set—that is, bottom-quartile companies are lagging rather than merely not leading.


Diverse teams perform well along a number of dimensions. With respect to problem solving, for example, one study concluded that on almost every measure, racially, ethnically, and culturally diverse workplace teams function more effectively than homogenous teams at solving problems—even better than teams whose individual members are uniformly "smart." Deloitte,
Only Skin Deep? Re-Examining the Business Case for Diversity (Sept. 2011). One explanation is that teams with members from diverse backgrounds, experiences, and perspectives avoid "groupthink," whereas non-diverse teams often approach problems from a unilateral perspective. As a team of well-known researchers wrote, if the goal "is to be accurate and objective," then diversity trumps homogeneity in its power to reach that goal. Evan P. Apfelbaum, Katherine W. Phillips & Jennifer A. Richeson, "Rethinking the Baseline in Diversity Research," Persp. on Psychol. Sci., May 6, 2014. In summarizing decades of multidisciplinary research, a prominent researcher concluded:

The fact is that if you want to build teams or organizations capable of innovating, you need diversity. Diversity enhances creativity. It encourages the search for novel information and perspectives, leading to better decision making and problem solving. Diversity can improve the bottom line of companies and lead to unfettered discoveries and breakthrough innovations. Even simply being exposed to diversity can change the way you think. This is not just wishful thinking: it is the conclusion I draw from decades of research from organizational scientists, psychologists, sociologists, economists and demographers.


The Virtual Firm Model
As background for these guidelines, we note that on certain litigation and corporate matters, some clients have teamed two or more majority firms, thereby forming a "virtual firm" to serve client needs. The virtual firm model is best known in the context of large national mass tort litigation, whereby each law firm is responsible for a given area of the litigation defense with ongoing coordination about strategy and goals at the senior partner level and with oversight by the client. The plaintiffs' side of the bar has also developed collaborative models. When pursuing major litigation, most plaintiffs' firms effectively join forces to work together on a matter against a corporate defendant.

There are many possible variations on the virtual firm or "collaboration" model, whether the context is class action defense, insurance coverage disputes, complex commercial disputes, white-collar investigations, mass torts, mergers, bankruptcy proceedings, and more. In the transactional context, for example, there can be one firm responsible for driving the core components of the deal while other firms may be responsible for the labor due diligence or regulatory due diligence or the intellectual property aspects of the transaction. Indeed, we view the virtual firm model as applicable to any engagement that would benefit from the talent and differing perspectives available in two or more law firms.

A collaboration may be suggested by the client, the majority firm, or the NAMWOLF firm, so long as the engagement plainly serves the client's legal needs and the client is firmly in favor of
Identifying participant firms can come from a variety of sources—through client networks, majority firm suggestions, and recommendations by NAMWOLF firms. We have seen successful models started by all three players (although to date it has been most common for a client to suggest a majority firm/NAMWOLF collaboration).

Any collaboration begins with some ideas about how the collaboration would work. Here are a few "true life" examples:

1. A majority firm specializing in mergers and acquisitions collaborated with a NAMWOLF firm on the acquisition of a large business unit being purchased by the client from a competitor. The NAMWOLF firm was responsible for the litigation due diligence and antitrust due diligence, while the majority firm handled the other aspects of the transaction. The client selected the NAMWOLF firm because its litigation and antitrust lawyers were highly experienced. The fact that the two firms' areas of responsibility were clearly defined led to an efficient and smooth working relationship. The two firms were in regular communication, and the collaboration was well managed on that basis.

2. A mid-sized majority firm specializing in class action litigation collaborated with a NAMWOLF firm in defending a class action. The NAMWOLF firm also had good class action experience and the added benefit of a strong local presence. The two firms worked jointly on pleadings. The large firm managed all of the written discovery and production of documents. The firms took and defended depositions of fact witnesses and experts, with each firm assigned to particular fact areas. Briefs were drafted by one firm with input from the other. The lead lawyer at hearings was from the firm that took the lead on the briefing. The firms met at least biweekly by telephone on case strategy and ongoing projects. Over time, the lawyers developed the same type of collegial and respectful working relationships that each had within their firms. The collaboration also worked well because there was meaningful work available to both firms, not just the majority firm.

3. A large toxic tort matter was staffed with three firms. One firm was responsible for developing both the corporate defense and the expert defense regarding the history of contamination at the property. This firm was also overall in charge of the strategy for the litigation. A second large firm was responsible for all written and document discovery. The NAMWOLF firm was responsible for developing the expert defense on medical issues. The firms met three times a year with the client and had frequent communications with each other. This is an example of a collaboration that worked well because of good client oversight and a clear understanding as to the roles that each firm would play.
4. Some clients have encouraged that for litigation matters, local counsel roles should be filled by NAMWOLF firms. That is potentially an excellent role for a NAMWOLF firm. For example, an effective collaboration could have the NAMWOLF firm responsible for jurisdiction-specific motions and hearings; or the NAMWOLF firm could be responsible for all local discovery. The danger to be avoided is for the NAMWOLF firm to be little more than a mail drop, with virtually all meaningful work taken by the majority firm.

Collaborative engagements work well in the following circumstances:

- the lawyers in collaborating firms respect the quality of work and quality of all the lawyers on the team;
- the focus of each firm is on getting the job done at the highest level of quality and efficiency;
- each firm appreciates that it is not best positioned to do all of the work on the matter, and all participating firms have meaningful work;
- the assignments given to each firm are understood by all the players to be appropriate for each firm; and
- the client strongly encourages a successful collaboration through his or her words and actions.

Shared Responsibilities
From the earliest stage of the collaboration, it is essential for firms working on a matter to have a clear understanding with each other and with the client about the roles each firm will play and reporting relationships. Client involvement is usually key. Otherwise, uncertainty regarding the roles that each firm will play can become counterproductive or an impediment to effective management and to the collaboration itself.

Although successful collaborations may exist upon merely a verbal agreement or understanding, with a writing there is much less chance of misunderstanding and disappointment about which firm has responsibility for given areas of work. Even a simple one-page "bullet outline" can articulate the overall goals, law firm roles and areas of work, communications between firms, and contact with the client.

We emphasize that each collaborating firm should have a meaningful role, even if the work is not evenly divided. On the other hand, firms may have shared responsibilities, either because the assigned areas of work overlap or firm personnel are fully integrated into subject matter teams. The parties should consider implementing mechanisms to ensure that the NAMWOLF firm is not drowned out of the collaboration. Where a NAMWOLF firm is paired with a majority firm, for instance, it is critical that the NAMWOLF firm have client contact to ensure meaningful
participation in the collaboration. Also, in consultation with the client, the collaboration can agree that a minimum percentage of the work done should be done by the NAMWOLF firm to ensure a consistent correlation between the firms' respective workloads.

**Teamwork**

There is another key factor in successful collaborations: the ability to work well with lawyers outside one's firm. We are aware that pressures inside firms, especially in Big Law firms, for lawyers to have greater billings, more obvious matter responsibility, and direct client communication may undercut any given lawyer's willingness to share work and responsibility with lawyers from another firm. Some firms have a culture that focuses on the value of teamwork while others may be so internally competitive that it is hard to imagine they would work well in collaboration with other firms. A collaboration, however, is not the place for hidden agendas. Nor should use of the NAMWOLF firm default to "window dressing," where the NAMWOLF ends up doing only low-level, routine tasks. That model does not take advantage of the talent in a NAMWOLF firm or its cost efficiencies, and it also demeans the value of diversity.

Collaborations work best when there is a true commitment to working as one team and an appreciation that the whole is more than the sum of its parts. While we are not naïve about all of the potential dynamics, we firmly believe that any such concerns can be overcome by straightforward discussion, ideally with all team members, about the value of the collaboration and the expected long-term benefits for all of the participating lawyers.

**Communications and Management**

From the outset of the collaboration, it is important to set out the framework for communication among the firms and also with the client, including how key strategic decisions will be made. Each firm should designate a senior team leader, who will be part of the decision-making/strategy group in communication with the client. Stakeholders to a collaboration should evaluate the right amount of contact among them. The parties should establish a frequency of reporting that does not unnecessarily burden any party, particularly the client, but that offers the transparency and ability to communicate that is necessary for an effective partnership. Parties will need to be flexible to adjust as necessary for the most efficient approach.

It is our experience that an effective collaboration between firms typically requires active management at least by the firms themselves and frequently by in-house counsel. Client and firms need to discuss upfront the level of client involvement and client expectations for how the firms will work together. As one example, in a three-firm collaboration, where each firm was assigned to a particular aspect of a multifaceted litigation with many fast-paced moving parts, the client met weekly with the three lead lawyers. No substitutions were permitted—the
lead client and the lead lawyers had to be on the call. This weekly call ensured that the client and its counsel could express their views about the substance of the work and necessary next steps and quickly address any loose ends or issues.

Ideally, decision making should be collaborative, and that is often the case when firms share common approaches to strategy and tactics. By "collaborative" decision making, we do not mean that every lawyer at every level needs to agree with a given decision. Just as there is a hierarchy of decision making within a firm, so we anticipate a similar hierarchy of decision making in a team of two or more firms. Certainly, when there are major differences in strategy or tactics, the designated leader from each firm should be able to articulate the value of a given approach.

Ultimately, of course, the client should make the decision—just as a client would make a decision about the pros and cons of a given strategy or tactic even when represented by one firm. Alternatively, depending on the circumstances, a given law firm may be designated as lead counsel, responsible for case strategy and the assignment of tasks and responsibilities for all attorneys participating in the case. With that structure, of course, it is important to maintain regular feedback among firms and with the client. At the completion of the assignment, all parties should check in with each other and the client to assess the partnership and best practices for any future collaborations.

With all of the foregoing factors in mind, we set forth below a checklist for collaboration among NAMWOLF firms and majority firms, to provide in a simple format the recommended procedures for a successful collaboration.

**A Checklist for Collaboration Among NAMWOLF Firms and Majority Firms**

**1. Initiating the collaboration**

- Choose outside counsel firms. List why each selected firm was chosen—for what capabilities.
- Confirm that the client and the outside counsel firms share the same understanding of the value that each firm brings. State which particular persons have communicated that understanding, and to whom.
- Set an early date for the client and key lawyers from each firm to meet in person at the beginning of the engagement.
- When staffing any matter, outside counsel should strive to ensure their team of lawyers is diverse.
2. Structuring the collaboration

- Identify which specific client representative is in charge of overseeing the engagement. Identify the areas of principal responsibility and of support work for each firm.
- Identify which firm partner is in charge of overseeing the collaboration of his or her firm's work. Identify who will have ultimate decision-making authority on the matter in a given area and who will have overall decision-making authority for the matter as a whole.
- Determine how the client will assess the value of each firm's contribution. Will it be a combination of quality of work, timeliness, specialized knowledge, cost, or other factors?

3. Ongoing communication

- Determine how often the lead lawyers from each firm will meet (at least by telephone) with the client.
- Set regular times for meetings and required attendance by each firm.
- Determine that the frequency of meetings is appropriate for the nature of the matter.
- Determine who will provide a written agenda for meetings, which sets out strategy, ongoing tasks, and assignments to firms.
- Determine how often the outside firms meet (at least by telephone) to discuss ongoing activities.
- For fast-moving matters, hold quarterly in-person meetings with the client.

4. Client check-in

- Determine when the client will "check in" with each firm about how the collaboration is proceeding.
- Determine if the client will solicit "360" views of how management by the client is proceeding.

5. Midterm/end-of-engagement review

- For longer-term engagements, set a date for in-person or midterm review. Conduct end-of-engagement review and lessons learned.

Keywords: litigation, minorities, law firm collaboration, National Association of Minority and Women Owned Law Firms, big law, small firm

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10 Tips for Maintaining Effective Boundaries with Clients: A Customer Service Approach

By Sherlyn Selassie – February 22, 2017

The practice of law can quite often expose very sensitive details of a client’s life to the advocate. Unfortunately, this type of intimate disclosure can have the effect of encouraging false client expectations that the attorney is a friend. Conversely, the high stakes of the client's legal controversy may lead the client to seek a scapegoat—blaming the attorney for any undesirable outcomes in the case. At best, the attorney should seek a healthy balance that creates a mutually beneficial relationship with the client that encourages full disclosure and mutual accountability.

Like those who provide world-class customer service, attorneys are professional problem solvers. We naturally seek to find legal solutions to our clients' needs. Yet, unlike some other professional fiduciaries—doctors, for example—attorneys are bound both by our duty to the client and as officers of the court. Here are a few customer-service-based considerations for maintaining professional boundaries, upholding your ethical responsibilities, and keeping clients focused and accountable for their outcomes.

1. Respect, trust, rapport, and empathy are touchstones for a healthy attorney-client relationship. If unresolved differences arise between the attorney and client, it may be due to a deficiency in one of these areas. A trusting client, who has positive experiences because he or she feels respected by his or her attorney, is more likely to divulge details that are essential to the representation.

2. Set the client's expectations as soon as possible. This golden rule in customer service and sales is also essential for the legal profession. When the attorney under-promises and over-delivers, the client's trust in the attorney increases, which also strengthens rapport.

3. As with most things, clients respect honesty—even if they don't like the message. In certain practice areas, attorneys must educate the client on how to have a healthy attorney-client relationship. Explain to your client you are the client's agent, not the decision maker; a legal counselor, not a therapist; an advocate, rather than the client's friend.

4. Keep clients focused by using a "goals addendum." Obtain the client's top five goals in the client's own words. Use these goals to develop a road map for the representation in
setting a clear path for what goals you, the attorney, can pursue on the client's behalf. Make the client's agreed-upon goals and your promises a part of your retainer agreement. For examples of how you can develop a goals addendum with your client, visit Establishing Boundaries, Goals Addendum.

5. Provide the client with a comprehensive SWOT analysis: the Strong facts, Weak facts, beneficial legal Opportunities, and potentially harmful legal Threats. This simplified legal memo illustrates the client's options in a manner that empowers the client to give informed consent. View a sample SWOT analysis and download a Word template at Establishing Boundaries, SWOT.

6. Develop a "Friends and Family Plan" by quickly identifying the most influential (and potentially most harmful) people in your client's circle. This provides you with an opportunity to discuss how the family's and friends' roles are essential but can become at odds with the attorney's role. Although friends and family members invariably care deeply about your client, their involvement can often undermine your client's objectives and your advocacy. For more details about this process, please visit Establishing Boundaries, Friends and Family Plan.

7. When appropriate, consider a "special needs addendum" as part of your retainer. This helps to emphasize to the client the importance of taking care of certain personal extralegal matters that can be essential or devastating to your case (obtaining or maintaining behavioral health treatment, supportive services for victims of violence, etc.). With this, the attorney has more leverage to remind the client how to best cooperate in his or her own representation. For sample language, visit Establishing Boundaries, Special Needs.

8. Use empathy to defang difficult or aggressive clients. A client who believes his or her attorney understands him or her is more likely to receive redirection or bad news from the attorney.

9. Insist on taking a "time-out" if tensions between you and the client run high and become argumentative or unproductive. This can be a 15- minute cooling-off period or an immediate adjustment of the client's tone.

10. Communicate your expectations to the client. This includes your office hours, your temperament, and your obligations to the tribunal that could potentially require your withdrawal from representation.
Keywords: litigation, minorities, attorney-client relationship, retainer

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"Sex" Discrimination under Title VII: An Ever-Changing World
By Sidney O. Minter – February 22, 2017

In the wake of Obergefell, we know that same sex marriage is legal across the nation. However, we still are not clear about whether a person's sexual orientation is protected under Title VII's "sex" provision.

What is considered sex discrimination under Title VII? That question has given rise to a number of claims and lawsuits across the country. Federal district courts have struggled with determining whether claims based on a person's sexual orientation are actionable as sex discrimination under Title VII. Currently, in both the Court of Appeals for the Seventh Circuit (hearing cases from Illinois, Indiana, and Wisconsin) and the Court of Appeals for the Eleventh Circuit (hearing cases from Alabama, Florida, and Georgia), these courts are considering the merits of two potential landmark cases. At the core, these courts are deciding whether to follow long-established precedent, which would preclude an employee's claim of discrimination based on sexual orientation—or, in the alternative, to move away from precedent, which would broaden the scope of Title VII's sex discrimination protection. Only time will tell what will happen.

Title VII and Its Protections
Title VII of the Civil Rights Act of 1964 was enacted primarily to protect minorities from discrimination in the workplace. Just before it was enacted, however, the U.S. Congress added a provision prohibiting discrimination based on "sex." From the beginning, our federal courts interpreted the "sex" provision narrowly. However, over the years, plaintiffs have pushed the courts for a much broader interpretation of the provision. Over the past few years—especially after the landmark decision in Obergefell—federal courts have grappled with determining which types of claims are actionable under the "sex" provision of Title VII. This has not proven to be a straightforward or uniform analysis across the nation.

Laying the Foundation: Important Sexual Orientation Decisions
Recently, there have been a number of cases addressing sexual orientation discrimination in an employment setting. In a July 2015 administrative decision, Baldwin v. Foxx, the Equal Employment Opportunity Commission held that "sexual orientation is inherently a 'sex-based consideration' and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII." Although this case involved a federal employee and is only binding on federal employers, other federal courts have discussed it in dicta, which seems to suggest that other jurisdictions will be swayed by the decision. More recently, on
November 4, 2016, the U.S. District Court for the Western District of Pennsylvania, in *EEOC v. Scott Medical Center*, held that sexual orientation falls within the protection of Title VII.

**The Seventh Circuit (Initially) Says "No" to Claims Based on Sexual Orientation**

In *Hively v. Ivy Tech*, Hively, an Indiana math instructor, alleged that she was denied a promotion and ultimately fired for being a lesbian. She filed a lawsuit in federal district court against Ivy Tech Community College, claiming the school was violating Title VII of the Civil Rights Act by discriminating against her because of her sexual orientation. This case tests whether sex discrimination protections afforded by Title VII of the Civil Rights Act of 1964 apply to discrimination based on sexual orientation claims. At the trial court level, Ivy Tech successfully moved the court to dismiss Hively's claim, arguing that Title VII does not protect employees from discrimination based on sexual orientation.

**Not So Fast: What Does the Entire Court Think?**

In July 2016, a three-person appellate panel of the Seventh Circuit upheld the trial court's decision. However, on October 11, 2016, the court set aside the previous ruling of the initial three-judge panel and agreed to rehear the case en banc (before all of the judges on the Seventh Circuit Court of Appeals). On November 30, 2016, the Seventh Circuit Court of Appeals reheard arguments in the case. (The arguments at the Seventh Circuit’s hearing in *Hively* can be heard online).

The basic argument advanced by Hively's attorneys was that sex stereotyping based on sexual orientation is the same as garden-variety sex discrimination. During oral argument, one judge mentioned an earlier U.S. Supreme Court case, *Loving v. Virginia*, which overturned a Virginia state law banning interracial marriages. The judge compared interracial marriages with marriages between people of the same sex in a way that seemed favorable to Hively. During this argument, the court seemed to focus on Congress's action or inaction on clarifying rules relating to sexual orientation discrimination. Based on the legal positions advanced during oral argument, it would not be surprising if new case law comes out of the Seventh Circuit on this issue.

**What Does the Eleventh Circuit Say?**

In an unrelated but factually similar case, Jameka Evans filed a lawsuit in the U.S. District Court for the Southern District of Georgia against Georgia Regional Hospital—her former employer. In the lawsuit, she alleges that she worked for the hospital as a security officer and that she was discriminated against and ultimately terminated because of her sexual orientation. Just as in *Hively*, the trial court dismissed the lawsuit by holding that Evans's sexual orientation claim was not protected by Title VII. Following the trial court's decision, however, Evans appealed the decision to the Eleventh Circuit Court of Appeals.
On December 15, 2016, the Eleventh Circuit heard oral arguments from Evans’s attorneys, as well as from counsel for Georgia Regional Hospital. Evans's attorneys argued that Title VII protects individuals from discrimination based on their sexual orientation. Georgia Regional, on the other hand, argued, among other things, that sexual orientation is not covered under Title VII's "sex" provision and that the court should follow long-established precedent holding same. Further, Georgia Regional argued that the court of appeals should affirm the trial court's decision dismissing Evans's lawsuit.

During the oral argument, at least one of the judges seemed to suggest that he would defer to precedent in which federal appeals courts concluded that "discharge for homosexuality is not prohibited" by antidiscrimination laws. This is but one judge's thought, but it is very interesting considering the Seventh Circuit has at least one judge who seems to be leaning in the opposite direction.

**What Does the Future Hold for Employers?**

Whether *Hively* and *Evans* are decided in favor of employers or in favor of employees, both cases should serve as a warning to all employers that they could still face a claim of sexual orientation discrimination. There are two other avenues whereby employers could face liability for such claims. The first is through state law. Almost half of the states in the country have laws prohibiting sexual orientation discrimination in employment (California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Washington, and Wisconsin), and some additional states protect state workers from such discrimination (Alaska, Arizona, Indiana, Kentucky, Louisiana, Michigan, Missouri, Montana, North Carolina, Ohio, Pennsylvania, and Virginia).

Employers in these states should take proactive steps to ensure sexual orientation is treated the same as any other protected class—this includes reviewing written policies, handbooks, training sessions, workplace investigations, hiring methods, discipline and discharge procedures, and all other aspects of human resources activities.

Second, plaintiffs have successfully argued to various federal courts that Title VII sex discrimination covers claims of mistreatment based on gender nonconformity actions. This includes situations where employers are alleged to have discriminated against workers for failing to live up to stereotypical gender norms. Courts have noted that drawing a line that separates these "sex-stereotyping" claims from pure sexual orientation claims is "exceptionally difficult" because the distinction is often "elusive," meaning that employers anywhere could face a Title VII claim akin to a sexual orientation discrimination claim that would be accepted as valid by a federal court, no matter what the federal appeals courts say.
Finally, it is possible that the Supreme Court will step in in *Hively* or *Evans* should the courts decide that sexual orientation is not actionable as "sex" discrimination. As one court recently stated, "it seems unlikely that our society can continue to condone a legal structure in which employees can be fired, harassed, demeaned, singled out for undesirable tasks, paid lower wages, demoted, passed over for promotions, and otherwise discriminated against solely based on who they date, love, or marry." Regardless of the rulings in *Hively* and *Evans*, employers should take heed and prepare for what appears to be an inevitable extension of workplace protection rights for workers based on their sexual orientation.

**Keywords:** litigation, minorities, Title VII, sex discrimination, sexual orientation

Roula Allouch currently serves as chair of the Council on American-Islamic Relations (CAIR) national board. She previously served on CAIR's Cincinnati chapter board, between 2008 and 2013. She is also very active in the ABA and is licensed to practice law in Kentucky and Ohio. Roula earned her undergraduate degree from the University of Kentucky in 2002, graduating summa cum laude with a BBA in economics, and earned her juris doctor from the University of Kentucky in 2006. She talked with Mark Flores about various issues related to her leadership roles, her practice, and her life.

Can you describe the various functions and roles you take in your community?
I've volunteered in a variety of ways. My service as chair of the CAIR national board takes up a primary amount of my time. I have also volunteered in my community at mosques and interfaith leadership discussions. I think that this is an important part of bridge building among our communities.

What are your responsibilities in these positions?
Locally, I seek to serve as a leader who can be a voice for the Muslim community in Cincinnati and northern Kentucky. My goal is to really connect with the community. I have served at the Ronald McDonald House and volunteered at local events. My responsibilities typically involve maintaining a media presence and taking part in speaking opportunities so as to create a better understanding of who an American Muslim is and what the religion teaches. This is important because there is so much misinformation.

Nationally, within CAIR, I have all the obligations you would expect of a chair. We have a strong board of nine people who work really well together. We work to focus on policies that the organization needs. We also work on maintaining our legal obligations. Of course, CAIR is the largest Muslim advocacy group, and we are working to protect and defend the rights of our community. This has led to multiple speaking opportunities, including on national broadcasts, as well as speaking opportunities at legal conferences and interfaith conferences. One of the biggest blessings associated with this position is the chance to visit our chapters across the country to meet staff and volunteers working tirelessly for our community.

How did you become the national chair of CAIR?
When I moved to Cincinnati, I got involved with the local chapter because I believe strongly in CAIR's mission. It connects well with my personal passion and commitment to advocating for
justice. As my term in Cincinnati was ending and I was looking for other organizations to volunteer with, I got a call that I had been nominated to the national board by a former professor who has always been a mentor and friend. I certainly wasn't expecting that nomination and was honored to be elected to the national board. Once on the board, the then chair encouraged me to accept the position as chair. I hesitated, thinking I didn't yet have the experience to serve in that role, but as a younger female attorney, I realized it was a teaching moment for me and I did have a skill set that could serve the organization. I had a gut check moment and took a deep breath before saying I'd be interested in taking on the role.

Why do you feel the need to be so involved?
I’ve always been driven by the need to serve. As a result, I have specifically focused on civil rights for all people. It comes from my religious beliefs and an obligation on all of us to help our fellow human beings. We are all one, and the more we focus on our common humanity, the better off we all are. As an attorney, I find an additional calling to public service through the use of my legal background to serve the community. Working with CAIR and volunteering with the ABA is a natural fit since it combines my desire to assist people and advocate for their rights with my legal background.

What impact does this mean for you in your role as an attorney?
My volunteering broadens my experiences and gives me a chance to speak publicly, both of which easily transfer to my role as an attorney. Being prepared for a national Fox News interview certainly helps you prepare for your work in a courtroom. It also allows me to be a well-rounded attorney, which, when combined with the broad experiences I have, serves me well as a civil rights activist.

Do you feel your role as a "civil rights advocate" as stated in the New York Times makes you a better litigator?
Yes. It impacts my ability to engage with people who may think differently and helps me with my arguments and discussion with counsel in my own cases.

Do you think this has a negative impact on your ability to be an effective advocate?
No. My obligation is always to my client first. My first role is as someone's attorney. They deserve someone who will give them their full attention. My role as a civil rights advocate, however, leads to less personal things to do. That said, this is how I chose to spend my time and it is an honor to serve in the roles that I have. The weekend regarding the immigration ban executive order is a good example. I spent all weekend working with our CAIR team. It was long and tiring, but we had a really good time, and I wouldn't change it for anything. We are blessed with the privilege to serve and have an impact on people's lives.
How do you balance your life as an active member of your community, an attorney, and just being Roula?
I think that the two first parts, being an active member of my community and being an attorney, are what make up just being Roula. I believe in the saying "To whom much is given, much is expected." I feel so blessed to be in a unique role as an American Muslim woman who is also an attorney. I want to use this position to protect the civil rights of all of us and protect American values of liberty and justice for all. It's my heart and my passion, and it doesn't feel like I'm separating out Roula time.

Of course, I struggle sometimes with self-care and making sure I spend enough time with family and friends, particularly now, but overall I think that the balance comes from loving what you're doing.

That said, I remember when I used to have time to watch University of Kentucky basketball, one of my favorite pastimes. Go CATS!

What role has the ABA played in your career and life?
I've had tremendous personal benefit from the ABA. I remember when I first got involved in the ABA and I would hear about the friendships people made. I remember having some skepticism about the idea of building close friendships with people across the nation, but now I understand as some of my dear close friends are ABA members. The reality of adult life means we don't have time to socialize. For instance, I see a local attorney more at ABA conventions than around town. Being able to connect with these attorneys from across the country is also an excellent source of referrals and broadening my legal network.

Do you feel it is equally important for the ABA to maintain diversity among its leaders?
Absolutely. Overall, it's important for the ABA to continue to have diverse attorneys in leadership positions so that we are adequately representing the diverse communities we serve and protect.

If you had it all to do over again, what would you change?
I don't think in those terms. I think things happen the way they are supposed to happen. I certainly appreciate the profession and mentors who encouraged me along the way, including those at the ABA, and I will forever be grateful for the opportunity to advocate for civil rights through my work with CAIR.

Keywords: litigation, minorities, Roula Allouch, Council on American-Islamic Relations, civil rights

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Practice Hacks—Capturing Time
By Edd Peyton – January 29, 2017

For all of us, 'extra' time is a scarcity. On a daily basis we juggle billable hours, family time, volunteering, networking, and leisure—all of which can be instantly compromised by random unexpected requests. In this environment, it's essential to use time judiciously.

Are you making the most of your time? We may think we are, but many of us fritter away more minutes than we realize on non-productive activities. We all need an occasional break from the grind, but it behooves most of us to take a closer look at our time and how we manage it. I've done the math, and I've vastly improved my productivity at work. Here's how I did it.

Know Thyself
Awareness of your weak spots is the first step to correcting them. For one week, track every moment of the workday, whether billable or non-billable. Actually, logging each activity and the time you spend performing it can be eye-opening. Include work that you actually bill, then include telephone conversations, office hallway chats, restroom breaks, lunches, coffee runs, and commute time. If you spend your evening on a work-related activity like a networking event, log that time, too. At the end of the week, your productivity patterns will have emerged, and you will be able to identify areas where you're losing valuable time.

Work Smart
When you’re working at your desk, it's easy to get lost in to-do lists and lose an afternoon before you realize it. It's also hard to resist the temptation to move quickly from one legal task to another without attending to administrative details like billing. A visible reminder on your desk can solve both of these problems: an old-fashioned stopwatch or, for the more tech-minded among us, a smartphone’s stopwatch app. Place your stopwatch on top of or next to a daily calendar, and start it with each new task. When you finish, stop the clock and immediately jot the elapsed time on your calendar. Just like that, you've eliminated those head-scratching moments at billing time. And when the work isn't billable, there's a visible reminder to move things along.

Technology Is Your Friend
Fortunately for us, there is a wealth of great productivity technology on the market. I still use the paper calendar as a backup, but I primarily rely on the electronic calendar and stopwatch embedded in Aderant Total Office (ATO) case management software. ATO software starts a stopwatch whenever I open a client's file and allows me to enter my time into a billing system.
as I work. I can track hours billed across weeks, across months, or by file, and most importantly, I can tell at a glance whether I’ve captured my time on a given client. If I'm away from my computer, I track time manually, dictate an email with the details, and record them later.

There are a number of tools designed to work across platforms that we should be using. For example, Outlook’s contacts database is accessible from any device: smartphones, tablets, laptops, and desktop computers. You can sort your database into customizable categories and add notes, which makes searching for a contact painless. Apps like CamCard can scan and sort business card data directly into Outlook; I use this on the fly immediately after an encounter, while it’s fresh in my mind. Similarly, the CamScanner app makes copies in PDF format; it’s much easier to snap a quick photo with your phone than track down a free copier at the courthouse.

In summary, to improve your productivity, document your daily activities to determine where you are least productive. Capture time immediately and minimize non-productive activities during the work day. And employ apps to automate time-consuming tasks by performing non-taxing and non-billable activities at off peak hours.

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Client Hacks: Protecting Yourself When a Corporate Client Is Hedging Its Bets

By Florence M. Johnson – January 28, 2017

As any lawyer knows, corporate clients are occasionally reticent about the truth of a case or focused on a questionable agenda. While we can't always anticipate which clients will create a legal crisis, we can lay the groundwork to prevent one. I've been able to successfully navigate these matters for my corporate clients, but not without a few casualties along the way. Here are a few takeaways.

The Truth and Nothing But
At the very first encounter with new clients, I always insist on the whole story right away, no matter how unflattering it may be for the organization. Often what I get is one-third of the story up front, while the remainder of the picture comes into focus as discovery rolls on. The emails. The secret audiotape of a screaming supervisor. A grainy video of an out-of-control after-work party that casts doubt on your star witness' original version of events. Avoid these headaches by staying on high alert for the subtext behind your client's side of the story.

Engagement Letters
Engagement letters are more than simple contractual statements. When you explicitly define the outcome the client is hiring you to pursue, this document also serves as a critical risk management tool. Use your engagement letter or retainer agreement on each and every matter for which you are retained to work for a client. Spell out what you are expected to do, in what forum, and the amount you are to charge for the services you are providing. Revamp these documents every year, as our firm does, and tailor each to the specific client and project at hand. For more in-depth information on engagement, see ABA Model Rule 1.5: Client-Lawyer Relationship Fee.

Layers of Information
Educate yourself about the problems lawyers and clients may face at the start of the relationship. Ask your client to explain exactly what they are looking for, and ask that question at every subsequent meeting. If there are multiple corporate departments involved, you may have to talk to different actors at different levels to understand the big picture. Be aware that in labor matters, Human Resources staff may have different files than shift managers; security and surveillance teams may keep their own files; and off-site data storage facilities can yield interesting information. Don't be afraid to put on your detective hat and make inquiries. Remember, third-party requests are fair game during discovery.
Client Communication Strategy
How do you protect yourself from an angry email or the dreaded ethics complaint? Realize that there will always be clients that require more hand-holding than others. Fortunately, they're mostly recognizable from the start. Protect yourself from particularly needy or demanding clients by setting read receipts for emails, and ask the client for confirmation that correspondence was received. A lawyer's communication style with a client is equally important, as it can set the tone for a harmonious relationship. Always correspond in a timely and courteous manner, but avoid overt friendliness or chattiness. When in doubt about whether to fire off a tense email to a client, take a breath and review ABA Model Rule 1.4: Communications.

Limits of Representation
Ultimately, if a corporate client wants something that you know that you cannot do, then you cannot take the matter. If trouble arises during the case, you have to withdraw. It's as simple as that. For more information, see ABA Rule 1.16: Declining or Terminating Representation.

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